

WASHINGTON STATE
Title 26 Family Law
Guardian Ad Litem
Guidebook



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ACKNOWLEDGMENTS

In 1996, the Washington State Legislature required the Administrative Office of the Courts (AOC) to develop a curriculum for prospective guardians ad litem in family law cases under Title 26 RCW. The requirement was mandatory as of January 1, 1998. In 2005, stakeholders in the GAL programs called for a revision in the curriculum. AOC convened a Title 26 Revision Committee to review and revise the original curriculum. The need for a statewide guidebook was identified during that process.

The 2006 – 2007 Title 26 Curriculum Revision Committee, chaired by Pierce County Superior Court Judge Kitty-Ann van Doorninck, consisted of Jorge Chacon, Guardian ad Litem in Wenatchee; Marilyn Finsen, Assistant Administrator, Snohomish County Superior Court; Margaret E. Fisher, AOC; David M. Hardy, Administrator, Spokane County Superior Court; Peter J. Karademos, Attorney at Law; Karen Kirk, Family Court Services Coordinator, Benton County Superior Court; Roxanne Mennes, Guardian ad Litem Training Provider, King County Bar Association; and Commissioner Tracy Waggoner, Snohomish County Superior Court.

One obstacle remained that might have prevented the production of a Family Law GAL Guidebook. That obstacle was funding. The following entities made production of this Guidebook possible.

AOC Gender and Justice Commission

Washington State Bar Family Law Section
Spokane County Superior Court's Family Law GAL committee
American Academy of Matrimonial Lawyers, WA
Snohomish County Bar Association
Clark County Bar Association
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King County Bar Association

Please join the Washington State Administrative Office of the Courts in thanking these entities for their generous contributions.

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CHAPTER 1
INTRODUCTION TO SERVICE AS A FAMILY LAW GAL

INTRODUCTION TO SERVICE AS A FAMILY LAW GAL

Submitted by Roxanne Mennes

A guardian ad litem (GAL) is an adult who is appointed by the court to represent the best interests of a vulnerable or underage individual for a specific purpose, for a specific period of time. Under the direction of the court, a GAL performs an investigation and prepares a report. To become a GAL, an individual must complete an initial training program, provide background information to the court(s) in which the GAL wishes to serve, and meet all eligibility requirements set by individual county local court rules. (See Washington Courts at: http://www.courts.wa.gov/committee/?fa=committee.display&item_id=314&committee_id=105).

There are different types of GALs. Some investigate whether an aging adult is incapacitated. Some investigate child abuse, neglect and foster care issues. Some investigate settlement offers in personal injury cases. Family Law GALs investigate child custody disputes. Even though all GALs investigate what might be in the “best interest” of a vulnerable or underage person, the duties and responsibilities differ widely in each type of GAL assignment. The legal term “best interest” conforms to the statutes, rules and caselaw in each category of GAL work. This Guidebook will focus only on Washington State Family Law GALs, who investigate child custody issues.

Just like there are different types of GALs, there are different types of child custody disputes. Family Law GALs may be appointed in the following five types:

1. Dissolution: The parents are getting a divorce and a parenting plan must be ordered by the court.
2. Paternity: The parents are not married and a parenting plan must be ordered by the court.
3. Modification: A parenting plan was ordered by the court in the past, but one or both parties are seeking to change the parenting plan.
4. Relocation: One of the parents is seeking to move the child to a new location.
5. Third Party Custody: Someone who is not a parent has petitioned the court for custody, i.e., Grandparent or relative.¹

While each type of child custody dispute differs from the rest, two factors remain constant for GALs. Family Law GALs are generally appointed in *high conflict* cases and the court needs additional information from a *neutral* source. The parties are typically struggling through very difficult child custody disputes that generate intense and painful emotions. Emotions can become so intense that the parties are unable to think or communicate rationally at times. Complex issues related to temporary or lifelong mental health issues might generate additional conflict between the parties or confusion for the court. Concerns about domestic violence, child

¹ Cases of Dependency, Child Abuse or Neglect are governed by RCW 13.34.100. GALs appointed under this statute are often called Dependency GALs. This Guidebook will focus only on GALs appointed under RCW 26.12.175, commonly referred to as Family Law GALs.

abuse or neglect might come into question. Substance abuse issues might concern or confuse the court. In short, child custody disputes involve families in varying degrees of crisis and the court appoints a GAL to gather more information it needs to make a decision.²

The role of a GAL is very different than anyone else associated with a child custody court case. Parties pursue their own interests. Lawyers advocate specifically for their clients. Doctors, social workers and therapists professionally evaluate and diagnose conditions. GALs do not act as lawyers, therapists or parties in the case. GALs do not provide legal advice, counseling or diagnosis. However, it is important that GALs become knowledgeable about family law and generally accepted therapeutic or diagnostic tools so the GAL's report will be useful to the court.

Three primary sources govern the appointment and work of a GAL:

1. RCWs: The Revised Code of Washington statutes govern appointment, duties and responsibilities of GALs. (See RCW 26.12.175 at <http://apps.leg.wa.gov/RCW/default.aspx?cite=26.12.175>).
2. Local Rules: Each county may have additional rules and policies that govern appointment, duties and responsibilities of GALs. These are called local rules. (A directory of courts can be found at http://www.courts.wa.gov/court_dir/?fa=court_dir.county . Local rules may be posted on the county's court webpage or available at a local law library.)
3. Order of Appointment: When a court appoints a GAL, the court enters an Order of Appointment that specifies the scope of the GAL appointment. GALs should take care to read the Order of Appointment carefully. (A sample template of an Order Appointing Guardian ad Litem on Behalf of Minor is available at <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=62>).

Family Law GALs are expected to have read and understood the statutes, local rules and order of appointment prior to any investigation. Furthermore, GALs are expected to be familiar with the basic elements the court will weigh in each case type and gather information accordingly. Before taking cases, Family Law GALs are required to complete the following practicum in the county in which application is made, unless the court waives this requirement for good cause. A prospective GAL must complete the following before accepting appointments:

- Five hours shadowing a mentor for two cases. The focus should be on best practices. The prospective GAL should observe a child interview, observe an adult interview, assist in information gathering and investigation, and assist in report writing -AND-
- Five hours observing Title 26 cases in court. The focus should be on best practices. The prospective GAL should observe Family Law GAL-involved hearings.

² Note: GALs are not the “eyes and ears” of the court. Judges understand that the GAL presents one source of information among many... In re Guardianship of Stamm, 121 Wn. App. 830.

- In counties with no mentors available, the prospective GAL should observe 10 hours of Title 26 hearings in court. The prospective GAL should observe Family Law GAL-involved hearings

Serving as a Family Law GAL is an important job that requires clear understanding of the governing regulations whether one accepts volunteer assignments or paid assignments. GALs can be paid for their services, or serve as volunteer GALs or Family Law CASAs (court appointed special advocates). Policies and regulations about pay rates and payment procedures vary widely from county to county. Paid GALs might be employed by a county (perhaps family court services) but more often are individuals who accept appointments as independent contractors.

To get started, a prospective GAL should contact a Registry Manager in the county where application is intended. The superior court in each county maintains a list, called a Registry, of individuals who are qualified to serve as Family Law GALs. A Registry Manager is assigned to provide administrative oversight of the registry. A list of Registry Managers for each county can be found at http://www.courts.wa.gov/committee/?fa=committee.display&item_id=363&committee_id=105). GALs should contact a Registry Manager with any questions about applications, mentors, process of appointment, payment procedures or educational opportunities.

GALs as a group are typically passionate about helping courts better serve children and families. The community of GALs throughout the state offers support and insight. Meetings, listserves and mentors are available and welcoming. Network and exchange ideas. Family Law GALs are an insightful, interesting and energetic community of professionals!

CHAPTER 2
ETHICS AND PROFESSIONAL CONDUCT FOR
FAMILY LAW GUARDIANS AD LITEM

ETHICS AND PROFESSIONAL CONDUCT FOR GUARDIANS AD LITEM

Submitted by Karen L. Hallis, JD, CPC

INTRODUCTION

Chapter Two covers some aspects of ethical issues in Family Law Guardian ad Litem (GAL) work. The ethical issues are evolving and have become more complex in recent years. This chapter will cover some of the issues. There is no way to inclusively know all the issues until they are brought to the attention of the GAL and legal communities.

GALs come from a wide variety of backgrounds. They may be: psychologists (Ph.D.), therapists (MA/MS), social workers (LiSCW and MSW), teachers (M.Ed. and BA/BS), lawyers (JD, LL.M, Ph.D. and licensed to practice law), graduates from law schools (JD) and others come from a wide variety of other fields. Some GALs have licenses to practice in their original professions and some do not.

In the past, GALs were not trained to perform custody investigations. At hearings, when it became apparent that family dynamics were complicated and the interests of children were not protected, judges would pick an attorney from the courtroom (there to present matters on their own cases) to act as GAL and represent the child's best interests. Selection did not follow specific rules or protocol.

The process of using GALs has evolved. The three-day trainings for GALs in King and Pierce Counties cover a wide variety of topics. The trainings have changed over time to meet the changing needs of family law cases. GALs in some counties must take the Pierce or King County trainings in order to work as GALs in their home counties. Some counties do not require these trainings.

Ethical issues can have serious implications. The Washington Supreme Court decided in *In the Matter of the Disciplinary Proceeding Against Joseph P. Whitney* (No. 200, 173-4, September 29, 2005) that an attorney acting as a GAL could be disciplined as an attorney. Mr. Whitney was disbarred from the practice of law. This case may be looked upon as precedent, and GALs who are licensed to practice professions such as psychology, social work or other professions may be disciplined for work done as a GAL.

This material is a general overview of the ethical issues in GAL custody investigations. Each county may have its own local rules which address the application process for the GAL registry, requirements for being/remaining on the registry, GAL appointment processes, GALs' duties, GAL compensation, grievances against GALs, grievances by GALs, conflicts of interests, evaluation procedures and other topics. These local rules are in *Washington Court Rules: Local 2007*. They are probably online on each county's website. There may also be customs regarding local practices regarding GALs; these may be unwritten.

Hypothetical situations are dispersed throughout the material as practice questions or “PQs.” These hypotheticals are intended to raise awareness of ethical issues. Since these situations can be interpreted in many ways, there are no answers. It is helpful to discuss these hypotheticals and your own experiences as GALs with other GALs and mentors. Each situation will be prefaced with “PQ.”

CODES OF PROFESSIONAL CONDUCT, GENERAL RULES AND GAL RULES

GAL Rules

The Washington State Court Rules: Superior Court Guardian ad Litem Rules (GAL Rules or GALR) are the basis for all other rules and expectations for GAL conduct. These rules apply to conduct of people acting as GALs and also for how the GAL is treated by other professionals (attorneys included) and the Court. The GAL Rules can be found in *Washington Court Rules State 2007* or online at www.courts.wa.gov and click on Court Rules. The volumes may be a wise investment, as they contain the rules for state court actions and also the new rules of Professional Responsibility for attorneys. If you come from a profession that has a code of ethics (like nursing, psychology, law, social work or medicine) get a copy of that code and read it.

The GAL Rules are broken into seven parts.

Rule 1 is “Scope and Definitions,” and it states that the purpose of the GAL Rules is to establish a minimum set of standards applicable to all superior court cases where the court appoints a GAL. It defines a GAL as “...any person... appointed in a Title 11, 13 or 26 action under the Revised Code of Washington to represent the best interest of a child....The term [GAL] shall not include an attorney appointed to represent a party.” This section also defines other terms.

Rule 2 is “General Responsibilities of GAL” and is widely referred to by the Court and attorneys who have read these rules. This rule applies to “every case in which a [GAL] is appointed.” 2(a) states that the GAL “shall **represent the best interests** [emphasis added] the person for whom he or she is appointed. Representation of best interests may be inconsistent with the wishes of the person whose interests the [GAL] represents. The [GAL] shall not advocate on behalf of or advise any party as to create in the mind of a reasonable person the appearance of representing the party as an attorney.”

PQ: what if a child tells you that s/he wants to live with one parent. Your investigation reveals that this parent is not the best suited for primary residential placement (“custody”). Do you have to follow the child’s wishes? What factors do you consider as you make your decision?

2(b) states that a GAL “shall **maintain independence** [emphasis added], objectivity and the appearance of fairness in dealing with parties and professionals, inside and outside of the courtroom.”

PQ: while making a home visit to a parent’s home, you are offered a glass of wine. Do you accept it? Would your answer change if you are offered a glass of water? Dinner? A cup of coffee?

PQ: a parent asks you to meet him or her at a coffeehouse instead of an office setting. What will you do?

PQ: you make a home visit to a parent's house. The children are not home. Do you stay?

PQ: an attorney on one of your GAL cases asks you to lunch. Do you go?

2(c) addresses **professional conduct** and states that a GAL "shall maintain the ethical principles according to the GAL Rules...."

PQ: do your local county rules state that a GAL shall follow the rules of ethics for their professions" (e.g. psychology or law)?

2(d) states that a GAL shall **remain qualified for the registry** and "shall satisfy the training requirements and continuing education requirements developed for ... Title 26 [GALs}..." GALs shall promptly notify the Court of any grounds for disqualification from serving as a GAL or unavailability to serve.

PQ: if you cannot make a local training to remain qualified for the registry, what do your local rules say about attending other trainings?

2(e) states that GALs shall avoid any actual or apparent **conflicts of interests**. GALs shall avoid self-dealing or associations for which the GAL might in-directly benefit, other than for compensation as GAL. A GAL shall take immediate action to resolve any potential conflict or impropriety, and a GAL shall advise the Court, attorneys and parties of actions taken, and then either resign from the matter or ask for Court directions regarding resolving the conflict. A GAL shall not accept or maintain appointments if the performance as GAL may be limited by the GAL's responsibilities to another client or a third person or the GAL's own interests.

PQ: your spouse, friend, neighbor is a psychologist and does parenting evaluations. Can you recommend that this person does a parenting evaluation on one of your GAL cases?

PQ: one of the parents in one of your cases has threatened you with physical harm. What will you do? Would your answer change if this person has not threatened you, but makes you feel uncomfortable?

2(f) states that a GAL is an officer of the court and shall **treat parties with respect**, courtesy, fairness and good faith.

PQ: you have been trying to treat the parties with respect, but a parent in a case continues to use abusive language with you. How will you treat this person with respect? Would your answer change if this person has not yet paid you and has told you that the case "is a slam dunk" and s/he stated that s/he will never pay you?

2(g) states that that a GAL shall **become informed about the case** and contact the parties, and that the GAL shall take into account the position of the parties as s/he investigates the facts of the case.

PQ: you are trying to contact the parties. One party does not return your phone calls. You want to get started with the investigation. What will you do about this party?

2(h) states that the GAL shall **make requests for evaluations to the court** as authorized by statute or court orders following notice and opportunity to be heard.

PQ: one party keeps telling you what evaluator that s/he wants to use. Will you select this evaluator? If you do, will you tell the other party of the first party's insistence on this evaluator?

2(i) states that a GAL shall **timely inform the court of relevant information**. The definition of "timely" may vary from county to county and may vary between judges and commissioners.

2(j) states that a GAL shall comply with the court's instructions as set out in the order of appointment, and shall **limit duties to those ordered by the court**. A GAL shall not provide or require services beyond the scope of appointment.

PQ: you have discovered some information that impacts your views of this investigation. Your appointment order is vague about what you can actually do as GAL. What will you do about this?

2(k) states that a GAL shall **inform individuals about role in case**. A GAL shall identify his/her role in a case and explain the GALs duties to the parties and information sources at the "earliest practical time."

PQ: do you have a set speech that you give to all parents (and their lawyers) about what your role as GAL is? If parties or lawyers expect you do perform certain functions due to your license in another profession, what do you do?

2(l) states that a Gal shall be given notice of all hearings and proceedings and shall **appear at hearings** for which the GAL's duties or scope of appointment are at issue.

PQ: you do not get notice of and miss a hearing; what will do you?

2(m) states that a GAL shall not have **ex parte communication** concerning the case with a judge or commissioner involved in the matter except as permitted by a rule or statute.

2(n) states that a GAL shall **maintain privacy of parties** and make no disclosures about the case or the investigation except in reports or as necessary to perform the functions of GAL. A GAL shall maintain the confidential nature of identities or addresses where there are allegations of domestic violence or risk to the party's or children's safety. A GAL may recommend that the court seal the report or portions of the report to preserve the privacy, confidentiality or safety of the parties or of the person for whom the GAL was appointed.

PQ: people who are not part of a GAL case that you have walk up to you and ask you questions about the case. These people tell you that "everyone knows about this case, so you can talk to me." What will you do?

2(o) states that a GAL shall **perform duties in a timely manner** and may request judicial intervention in writing with notice to the parties.

2(p) states that a GAL shall **maintain documentation** to substantiate recommendations and conclusions shall keeps records of actions taken as GAL. The files are open and can be reviewed by parties and attorney upon written request to the GAL.

PQ: a lawyer tells you to "drop the GAL file off at my office and pick it up in a few hours." What will you do?

2(q) states that a GAL shall **keep records of time and expenses** incurred during the GAL investigation and shall provide a copy of the time/expenses to each party responsible for payment. The Court shall make provisions for fees and expenses pursuant to statute in the Order of Appointment or in any subsequent order.

Rule 3 covers the Roles and Responsibilities of Title 13 GALs in Juvenile Court.

Rule 4 covers the **Authority of the Guardian ad Litem** and it starts out "[a]s an officer of the court, a [GAL] has only such authority conferred by the order of appointment;" the rules then enumerates a GAL's authorities.

4(a) states that a GAL shall have **access to party** for whom the GAL is appointed to represent and to all information relevant to why the GAL was appointed. When a GAL seeks access to a party represented by an attorney, a GAL shall get permission from the lawyer, unless otherwise ordered by the court.

PQ: do you get lawyers' permission to talk to their clients?

4(b) states that a GAL shall be in **timely receipt of case documents** (relevant pleadings, documents and reports by the party which served or submitted this).

4(c) states that a GAL shall be **timely notified** of all hearings, administrative reviews, staffings, investigations, depositions, and other proceedings concerning the case.

4(d) states that a GAL shall be given **notice of proposed agreements** and opportunity to indicate dis-/agreement to any proposed agreed orders relating to the reasons why a GAL was appointed.

PQ: you are not told that the parties are settling the matter. The proposed settlement does not take into account parenting arrangements that are in the best interests of the children. Do you sign off on the proposed settlement? What will you do if a party/his/her lawyer applies a lot of pressure on you to sign off?

4(e) states that a GAL shall **participate in all proceedings consistent with 2(l)**, and that GAL shall submit written and supplemental oral reports.

PQ: what if the facts of a case are so complicated that you cannot make a recommendation about primary residential placement?

4(f) states that a GAL shall have **access to records** pertaining to why a GAL was appointed, unless otherwise limited by law or if good cause is shown.

4(g) states that a GAL shall have **access to court files** of juvenile and superior court files. A GAL shall have access to a sealed court file through a separate court order.

4(h) states that a GAL shall have **additional rights under RCW 13.34 and 26.09**. Read the rule for enumeration.

4(i) states that for good cause shown, a GAL may petition the court **additional rights and power in other cases**.

4(j) states that the AOC shall amend the current GAL mandatory training so that GALs are prepared to carry out their roles.

Rule 5 covers **Appointments of GALs** and states that each court will promulgate local rules to provide a system that establishes an **equitable distribution of workload** and that each court shall provide a **procedure to timely address complaints** made by any GAL regarding registry or appointment matters.

Rule 6 covers **limited appointments** of people in addition to, or instead of, a GAL to fulfill limited roles of **mediator, evaluator, visitation supervisor, settlement of minor's claims, or other**.

Rule 7 covers the **Grievance Procedures** and states that each court shall set out or refer to policies and procedures establishing and governing the filing, investigation and adjudicating grievances made by or against a GAL in a Title 11, 13, or 26 matters. These rules, at a minimum, comply with and address the following:

7(a) the rules are **clear and concise** and easily understood by attorneys and non-attorneys.

7(b) the rules shall establish **separate procedures** addressing the grievances or complaints made by pending cases and closed ones.

7(c) the rules shall establish procedures providing for **fair treatment of grievances** including appearance-of-fairness and conflict issues.

7(d) concerns **CASA grievances**.

7(e) the rules shall provide for **confidentiality** of complaints until merit has been found.

7(f) the rules shall provide a procedure for any GAL who is subject to a complaint to **respond** to it.

7(g) the rules shall include a time limit for **complaint resolution time standards** during which the complaint must be resolved. The limit for pending active cases is 25 days and is 60 days for closed cases.

7(h) the court shall keep a **record of the grievance** and any sanctions issued pursuant to local rules.

7(i) when a GAL is **removed from the registry**, the court of the county that a GAL served in shall send notice to the AOC of such removal.

7(j) local court rules establishing grievance procedures shall be filed in a manner provided in GR 7 (Local Rules- Filing and Effective Date).

APPOINTMENT ORDER

The Appointment Order (AO) is referred to in the GAL Rules and it is a basis for a GALs role. Appointment orders are fairly uniform, but they can be confusing. If a GAL has an AO that is vague, unclear or otherwise hard to understand, a GAL may note up a hearing for court clarification and simply ask the court what it wants the GAL to do. Most AOs state that a GAL “shall investigate and report factual information to the court concerning parenting arrangements for the child and shall represent the child’s best interests.” This language states that a GAL is a reporter of information. This is not be to confused with being an attorney, a therapist or any other role.

When looking at an AO, a GAL should be able to determine what type of case it is, who the parties are, the children’s ages, what the court wants the GAL to do, how much the GAL is paid per hour and in an advancement of fees, the timeline for filing a report and the authority of the GAL and access to records pertaining to the case. A GAL will be able to determine if there are any conflicts of interest by seeing the names of the parties, children and attorneys. A GAL may have a conflict of interest with some attorneys due to a wide variety of reasons.

GENERAL RULES

There are rules which govern proceedings in court actions. The rules apply to attorneys and non-attorneys alike. Ignorance of the rules is no defense. In the *Washington Court Rules State 2007*, the General Rules are listed, as well as the Superior Court Civil Rules, the evidence rules, the Juvenile Court rules, Rules of Professional Conduct (attorneys) and the GAL Rules. It is helpful for a GAL to know what the rules are for drafting and filing motions, the rules regarding service of process and all the rules regarding hearings and trial. The rules apply to the GAL and also state how the cases should proceed. If a GAL notices that parties and/or lawyers are not following the rules, then a GAL can bring this to the attention of the court and ask the court for instructions. If a GAL notices that a person (attorney, party or any other person) is preventing a GAL from performing his or her duties, then the GAL will be responsible for bringing this to the attention of the court.

PROFESSIONAL CONDUCT

The GAL (State of WA) Rules itemize how a GAL shall conduct his or her investigations. There may be local rules in each county that establish local rules for GAL conduct. There may also be amended administrative policies addressing GAL conduct.

If a GAL is a licensed professional, then s/he is subject to the codes of conduct for that profession. If a GAL is licensed to practice law, medicine, social work, psychology, nursing, teaching or any other profession, then a GAL should be aware of what the applicable code of ethics for that profession says. The question as to whether a person acting as a GAL can be disciplined in their licensed field of practice cannot be covered in this material and should be researched thoroughly by individual GALs in their respective fields of practice.

As is stated in a Washington State Court of Appeals Division II case, *In re the Marriage of Kimberly S. Bobbit and Ronald K. Bobbit*, No. 31997-7-II,

[i]t has long been a concern of the legislature that GALs, who are appointed in family law matters to investigate and report to superior court about the best interests of the children, do their important work fairly and impartially. Following public outcry about perceived unfair and improper practices involving GALs, the legislature adopted RCW 26.12.175 to govern the interaction of the courts and GALs and our Supreme Court adopted the GALR.

RCW 26.12 covers Family Court proceedings, of which Title 26 GAL work falls into. 26.12.175 covers **appointments of GAL, independent investigation, CASA, background and review of appointment**. This statute refers to best interests of the child, a GAL's role, recommendations, investigation, abilities of the parties to file responses to a GAL's report, GAL payment, training and education and applying to be on a GAL registry.

RCW 26.09.220 also refers to a GAL investigation and report concerning parenting arrangements, the GAL's role, the GAL's investigation, filing of a report and other requirements.

ETHICAL STANDARD AND DECISION MAKING

The AOC is not in a position to tell GALs how to make decisions regarding parenting arrangements for children for whom they are appointed.

When making decisions regarding primary residential placement and visitation regarding children, a GAL will be better able to make a decision if s/he understands the state and local rules pertaining to GALs, the applicable statutes to the case and all the facts as were either presented to him/her or discovered by the GAL throughout the course of his/her investigation.

A GAL may have biases that may or may not affect his/her decision making. If these biases can remain in the background and not impact his/her decision, then a GAL can proceed to the recommendation phase of the investigation. If the biases will prevent a GAL from making a fair and impartial assessment of the facts, law and rules and reach a set of recommendation, then under the GALR, a GAL must either resolve the bias or inform the Court of his/her inability to proceed with a case.

In the GAL training, it is suggested that GALs have mentors whom they can talk to and brainstorm with regarding the GAL's cases and recommendations. A GAL who works with a mentor must balance the rules regarding privacy of the parties and the cases when s/he talks with the mentor to get guidance. Some counties require that new GALs work with a mentor for a specified time after being added to a GAL registry. Check your GAL registry manager for the local rules regarding GAL appointment and conduct.

A GAL will benefit from understanding how s/he makes decisions – the procedure that s/he follows when making a recommendation concerning parenting arrangements. If a GAL can develop a step-by-step formula for making decisions in GAL cases, then the work will be easier to complete and easier to defend in the case of grievances and complaints against the GAL.

This formula will differ from GAL to GAL. The GALR and local rules provide some guidance. A mentor can share his or her decision making process. Other GALs can be a source of insight into a decision making formula.

GAL investigations produce information that GALs weigh and balance. Some of the information will have been provided to a GAL by parties and lawyers, some information will have been intentionally withheld from a GAL and discovered by a GAL through “digging,” and some information will have been discovered that is not relevant to a GAL appointment. A GAL will have talked to a variety of collateral contacts. Some of these contacts are professionally trained to perform skilled jobs. A GAL may decide to give information from a party's friend different weight than information from a licensed therapist. A GAL may give different weight to information from a licensed therapist who worked with a party for two one-hour sessions than to a licensed therapist who worked consistently with a party in weekly sessions for two years.

If a GAL cannot reach a conclusion, then s/he may ask the court for direction. A GAL may ask the court to order evaluations of the children and/or parties if this would assist the GAL in his/her investigation and said evaluation falls into the scope of appointment. A GAL may also file the GAL report with the documents and sources considered and simply inform the court that the GAL cannot reach a recommendation and let the court decide what to do.

GAL Rules and Appointment Orders state that representing the best interests of a child may be inconsistent with doing what the child states that s/he wants. A GAL may take into account a child's stated preferences; however, a GAL must also consider a variety of factors. How old is the child? How mature is the child? Was the child coached by his/her parents? Is the child capable of knowing which parent s/he wants to live with? How emotionally stable is the child? Is there a "magic age" for children to state what they want?

REASONS AND PROCESSES FOR GAL REMOVAL

GALs can be removed from a registry for a variety of reasons.

GALs can be removed from the registry **upon their own requests**. GALs will ask to be removed from the list due to a new job, a career change or personal reasons. Methods for GAL requests for removal vary from county to county. A GAL will write a letter to the registry manager or appropriate court personnel, and this letter will be placed in the GALs file in the court, and in whatever binder or file that the superior court in the county has available to the public. If a GAL who is asking for removal has pending cases, the GAL will either finish the investigation or petition the court for withdrawal from the cases and re-appointment of a new GAL.

GAL withdrawal methods and requirement vary from county to county. Some courts do not allow for GAL withdrawal, as removing GALs from cases impacts the parties, the children and the status of the cases. Additionally, there may be an additional cost to the parties for a new GAL to familiarize his or herself with the facts of the case and become knowledgeable about what steps the new GAL needs to take.

GALs can be removed from a registry by **not applying to be on the GAL registry** at the next renewal date. GALs are required to apply to be on the GAL registry on a yearly basis. Some GALs decide that they do not want to continue the work and simply do not apply. Their names will not appear on the new GAL registry. These GALs will have to complete investigations on any active cases that they have.

GALs can be removed from a registry if they **do not meet the education and training requirements** specified by the GAL Rules and local county superior court requirements.

GALs can be removed from a registry if they **misrepresent their qualifications** to be a GAL.

Generally GALs can be removed if they (1) are **not suitable** to be a GAL for a wide variety of reasons, (2) has **exhibited inappropriate conduct** on a particular case, or (3) has exhibited **questionable conduct** in a particular case. Counties will differ on reasons for removal. Only parties or lawyers associated with the particular cases where the conduct is questioned or

allegedly inappropriate may file a complaint against the GAL appointed on those cases. This may vary from county to county.

Removal for any reason may be brought to the attention of the county superior court by a party or attorney. The court may also bring an action to remove GALs. If a party or attorney discover lack of a GALs education or training, allege questionable or inappropriate conduct or allege that a GAL is generally not suitable to be a GAL, they will file a complaint with the court administrator or court following the local rules for GAL grievance procedures. The complaint makes allegations and requests removal of the GAL or sanctions of some kind.

Someone, a judge, the court administrator or another designee, determines if the complaint has merit. If no merit is found, then the complaint is dismissed and notice of said dismissal is sent to the GAL and the complaining party. If the complaint is found to have merit, then a letter stating that merit was found is sent to the person who filed the complaint and to the GAL.

This complaint (after having been found to have merit) is forwarded to a judge, a GAL committee or another designee within the court. A GAL committee is composed of a panel of judges or groups of designees. The GAL committee looks at the complaint and may dismiss the complaint. A letter is sent out to the person who filed the complaint and the GAL, informing them of the GAL committee's decision. This decision can be appealed and will depend upon the local rules.

If the GAL committee does not dismiss the complaint, it may request a response from the GAL. A letter is sent to the GAL and asks for the response within a time deadline. The complaint will be included with that letter. The GAL writes a response to the complaint, methodically responding to each point. The GAL supplements his or her response with GAL reports filed with the court. If the GAL has not filed any reports, then the GAL refers to his or her file for dates and times of interviews with parties and collateral contacts, home visits, observations, pleadings and documents from the court and GAL files. The GAL attaches exhibits to his or her response. There may be a page limit or protocol for the response, depending on the county.

The GAL committee looks at the response and then copies and mails it to the complainant. Depending on the county, the complainant may or may not be able to reply to the GAL's response.

The GAL committee may dismiss the complaint based on the complaint, GAL response and complainant reply (if there was one). A letter of dismissal is sent out to the complainant and the GAL. The complainant may file a written request for reconsideration within a time deadline set by local rules. The appropriate judge receives the reconsideration request and all documentation, and s/he presents the documents to the judges at their next regular meeting for final decision.

If the complaint is not dismissed, the complaint may be set for a hearing in front of a judge assigned to the complaint. Either the party who filed the complaint or the court, on its, own motion, may set the hearing. The rules for setting the hearing and service would be followed so that the GAL is afforded due process rights. At this hearing, the GAL appears and makes his or her case. The GAL may choose to hire an attorney to represent him or her. The complaining

party will have his or her counsel present. If one party is the complaining party, then the other party (non-complaining party) must have been served with notice of this hearing and have the opportunity to be present.

The GAL committee may order that a local attorney perform a fact-finding investigation to determine what occurred in the case. Is a local attorney the appropriate person for this job? Can s/he be fair and impartial? Should an attorney from another be used in the place of a local attorney? How would an outside attorney be chosen? How would any attorney, regardless of where s/he is from, be paid?

If the non-complaining party is not present at the hearing or was not served, the hearing may be continued to allow for another attempt at service. At the next hearing, if the non-complaining party is still not present, the hearing may or may not proceed, depending upon the judge and the local county rules and customs.

Once the hearing proceeds, the matter may or may not be adjudicated. If the matter can be adjudicated in this hearing, then the court will make a ruling. If either the GAL or the complaining party does not feel the ruling was appropriate, then that person may file a written request for reconsideration within a time deadline set by local rules. The presiding judge receives the reconsideration request and all documentation, and s/he would present the documents to the judges at their next regular meeting for final decision. This procedure varies depending on the county.

The complaint may not be able to be resolved at the hearing. The GAL or complaining party may request at the hearing that the matter be set for trial. The court may, upon its own motion, set the matter for trial. The trial may or may not be in front of a different judge than the judge who presided at the hearing, depending upon the county.

The GAL may represent him/herself at trial. The GAL may elect to hire an attorney. Trial will be a “typical” trial, with all applicable laws and other local court rules for civil procedure. The GAL calls her/her own witnesses and cross-examines witnesses for the complainant. The GAL is called as a witness by the complaining party, and may testify on her/his own behalf and will be called as a witness by his/her own counsel. The GAL will pay the attorney an advancement of fees (“retainer”) and may request attorney fees at the conclusion of the trial. The trial court may or may not grant the request.

The decision of the trial court may be to remove the GAL from the case, remove the GAL from the registry, to remain on the registry pending completion of additional training, sanction the GAL in some way, or to retain the GAL on the case and simply not take into account his or her recommendations in the determination of parenting arrangements for the child.

The decision of the trial court may be appealed to the court of appeals, following the appropriate court rules and applicable law.

WORKING WITH MENTORS

Working as a GAL can be an isolating experience. The cases that GALs work on are high conflict cases, and emotions may run high. GALs can experience pressure regarding their recommendations, and it is nice to have someone to brainstorm with about these cases. Privacy, in terms of parties names' and identities, is easy to maintain. It is a good idea to work with a mentor with whom you have a relationship with and have a level of trust. A mentor, to be effective in their role, will have more experience that you do and will have experience in areas that you do not. This allows the mentor to bring in a different perspective and add depth to your evaluation of the facts.

CONCLUSION

GAL work is a big commitment. It is work that can save lives and shape children's lives. It is not work that we can do without careful consideration. The current legal climate can make the work more combative and less efficient. Taking careful notes and following case procedure will help you maintain control of your cases. The state and local rules are there for your benefit. Read them and use them in your case procedures.

CHAPTER 3
LAWS AND LEGAL PROCESS FOR
FAMILY LAW GUARDIANS AD LITEM

LAW AND LEGAL PROCESS

There are five basic types of cases where a court may appoint a Family Law GAL:

1. Dissolution Cases
2. Paternity Cases
3. Modifications of Parenting Plans
4. Relocation Cases
5. Third Party Custody Cases

In each case type, the court will weight certain factors established by statute and case law. While a Family Law GAL does not act as an attorney in a case and does not provide legal advice, it is important for the GAL to understand what information the court will need in order to make its findings and rulings. This chapter will provide a short overview of the five basic case types and the elements the court must weigh in making its determinations.

DISSOLUTION CASES

Submitted by Virginia Amis, The Gouras Law Firm PLLC

When parents of minor or dependent children decide to dissolve their marriage, the court is required to enter a final parenting plan. The parties to the dissolution sometimes agree to which parent will be the primary residential parent. More often, the parties differ significantly as to where the children should reside. However, even if the parties can agree to where the children primarily reside, often the parties differ as to the time each will receive under the residential schedule or who should have decision-making and transportation responsibilities. When the parties differ the court looks to the guardian ad litem's report for guidance in making a final decision.

The phrase "best interests of the child" permeates all custody and residential time decisions. The statutory basis for the standard appears at RCW 26.09.002. The statute upholds that parents have the responsibility to make decisions and perform all customary parenting functions that are crucial to raising children. The relationship between the children and each parent should be fostered in a dissolution case unless that contact is inconsistent with the child's best interests. Any custody arrangement should provide as little disruption as possible to the interaction of each parent with the children. Practically speaking, there is no such thing as a "little disruption" when parents are divorcing. The process uproots children who are required to travel between the parents' homes on a regular basis. Nonetheless, the objective is to preserve the "status quo" for the sake of the children.

While the sanctity of the parent-child relationship is recognized in the law, the statutes provide for some balancing factors when parents disagree as to custody arrangements.

Under RCW 26.09.184, the stated objectives of a final parenting plan are:

1. To provide for the child's physical care. Baring 191 restrictions, this usually means that the parenting plan will divide the child's time between the parents in such a way as to foster continuing and consistent contact between the parent and child.
2. To maintain the child's emotional stability. The court may consider how frequent exchanges or extended residential time will affect the child.
3. To allow for a child's changing needs as the child changes and matures. This is a challenge as it requires the court to see into the future. The parenting plan should be flexible and anticipate that a child who is three years old when the plan is entered will have different needs at eight years old and thirteen years old and seventeen years old.
4. To provide for each parent's authority and responsibilities as to the children. The parenting plan will state the parents' decision-making authority and responsibilities with regard to notification in case of emergencies involving the child. It will also state where the child primarily resides and where he will be on each holiday and during each school break. Although judges encourage parties to be flexible in their application of the residential schedule, as a practical matter it is advisable to have a framework on which the parties can rely if a disagreement arises. Many judges will not approve plans that are too vague (including "reasonable days and times vs. specific days and times) as they are a hotbed for future conflict.
5. To minimize a child's exposure to harmful parental conflict. Ostensibly, if a parenting plan is well written there is less likelihood that the parties will argue over what a provision provides. Then again, when dealing with two parents who each claim to be "right" when opposed on a parenting issue, it is likely that the child will have some exposure to the conflict. The goal is to include workable provisions in the parenting plan which help to reduce tensions between the parents. That can mean something different in each case.
6. To encourage the parents to strive for agreements in parenting rather than court intervention. The courts encourage flexibility and require the parties to attend mediation if there are problems in implementing the parenting plan provisions.
7. **To protect the best interests of the child.** This phrase can be interpreted in a myriad of ways. Of course the best interests of a child are served when a child has a stable home and consistent guidance from parents.

The court may also take into consideration the cultural heritage and religious beliefs of a child when entering a parenting plan.

Two individuals experiencing the breakup of their relationship typically cannot agree as to what is in the children's best interest. Is a child's best interest served when the non-residential parent receives substantially more residential time with the children than the usual every other weekend and alternating holidays and breaks? It depends. That schedule may provide for the child's physical care (Factor 1) and foster frequent contact but how does that residential schedule affect the children's emotional stability (Factor 2)? Does it disrupt the child's ability to participate in after school sports? Sleep in his or her own bed? If so, is the disruption less

important than spending more time with that parent? What is the schedule that best serves the “best interests of the child”? Only the court can decide, but a judge will consider carefully the recommendations of a guardian ad litem. Those recommendations need to consider all of the statutes which apply to parenting.

When residential placement, or custody, is being decided by the court, the court is required to consider the factors set forth in RCW 26.09.187(3)(a)(i-vii). These factors include:

- (i) The relative strength, nature, and stability of the child's relationship with each parent, including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child.

This factor examines the relationship of each parent with the child. The court will want to know which parent performs daily parenting functions and to what extent. For instance, the mother may get the child up in the morning and feed her breakfast, and take her to school. Just as important, though, is that the Father volunteers at the child’s school, attends parent teacher conferences and picks the child up from school. It is possible that the parties equally share the parenting responsibilities of the child. Since this factor is given the most weight the balancing of the remaining factors becomes even more important where both parents have significant or equal involvement with the child.

- (ii) The agreements of the parties, provided they were entered into knowingly and voluntarily.

This factor addresses whether the parties agreed to parenting roles. For instance, many families agree that one parent will stay home and raise the children while the other parent works outside the home to earn the family’s income. If they had such an agreement it becomes a factor in determining custody arrangements

- (iii) Each parent's past and potential for future performance of parenting functions;

It may be that one parent was providing most of the care for a child during the marriage while the other parent helped after work and on weekends. That is the history of parenting in that family. However, circumstances may occur where the parent who used to provide primary care takes a full-time job or has a substance abuse problem which alters the potential for future performance of parenting functions. All of these facts need to be explored in determining custody arrangements in a dissolution case.

- (iv) The emotional needs and developmental level of the child;

Children have different needs at varying times. A parenting plan needs to address the needs of the child at his or her current developmental level.

- (v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his

or her physical surroundings, school, or other significant activities;

A court is loathe to separate siblings in a dissolution proceeding. However, there is no prohibition in this regard so long as “the best interest of the child” is met with the custody arrangement.

- (vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule;

Many parents believe that a child should choose the parent with whom he wants to live. That is not the law. A child of 12 or older must consent to speak to a guardian ad litem but that does not mean that he or she should have the responsibility of choosing between his or her parents. It is a fact that teenagers tend to have more independence than younger children and a parenting plan should provide for flexibility for that child’s preferences.

- (vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

This is a practical point. If a parent wants primary custody but works 10 hours per day and travels frequently, those factors impact his or her ability to be available for the child.

Factor (i) is given the greatest weight.

Shared Custody Arrangements

A shared parenting arrangement is where both parents share a substantially equal amount of residential time with the children. Until mid 2007, there was a presumption against shared parenting unless both parties agreed to that arrangement, had a satisfactory history of shared performance, were available to each other and the provisions were in the child’s best interest. RCW 26.09.187 was modified effective July 22, 2007. Under the new law, unless RCW 26.09.191 restrictions apply,

The court may order that a child frequently alternate his or her residence between the households of the parents for brief and substantially equal intervals of time if such provision is in the best interests of the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties’ geographic proximity to the extent necessary to ensure the ability to share performance of the parenting functions.

RCW 26.09.187(b).

Also, under new subsection (c), the statute provides that “residential provisions may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of residential time by a parent, including but not limited to requirements of reasonable notice when residential time will not occur.” Most parenting plans have a litany of “other” provisions which spell out each parent’s responsibilities, requirements for notifications and the like. A customary provision would include a prohibition against making derogatory remarks about the other parent when the child is present.

Non-Residential Provisions

The parenting plan has many more facets than just the residential schedule. A guardian ad litem can also be asked for a recommendation on the following issues:

Decision making authority. (Paragraphs 4.1, 4.2, 4.3) Except where the court has found that a limitation under RCW 26.09.191 is warranted which allows one parent sole decision-making authority, a parenting plan needs to provide decision-making authority to “one or both parties regarding the children’s education, health care and religious upbringing. “ RCW 26.09.184(5) In many parenting plans the parties want to include more than just education, non-emergency health care and religious upbringing in this category. Other issues under this section include child care, extracurricular activity expenses, body piercing, permission to enter the military before age 18, marriage before age 18 and driver’s license. A guardian ad litem’s recommendations can be helpful on this issue as a GAL will have special knowledge of certain decisions where the parties experience difficulties.

Transportation arrangements: (Paragraph 3.11) This provision can cause headaches in implementation if not handled well. Many parenting plans provide that “receiving parent shall transport.” That works if the parties live in the same county, but what if they do not? What if there are RCW 26.09.191 restrictions which prohibit contact? Does one parent have to handle all the transportation? Can the child be exchanged at school, daycare or activities? What if one parent is habitually late to the exchange? Recommendations by a guardian ad litem as to how to handle these problems can save the parties many problems in the future.

Dispute resolution: (Paragraph V) RCW 26.09.184 provides that every parenting plan shall make provision for dispute resolution “precluded or limited by RCW 26.09.187 or 26.09.191.” A guardian ad litem can make recommendations on what type of alternative dispute resolution the parties use and in what instances (i.e., for disputes related to tardiness or no-shows, a child’s participation in extracurricular activities, etc.). If dispute resolution is provided for in the parenting plan, the parties must use this process if a problem arises with regard to the implementation of the parenting plan.

Priorities: (Paragraph 3.9) If the “school schedule” conflicts with the “special occasions” schedule in a parenting plan, which schedule prevails? The Priorities section of a parenting plan can give guidance if it applies (some choose not to select priorities). A guardian ad litem’s recommendations in this section may help the parties avoid conflict.

Judicial Information Search: Another new law which became effective in July 2007 requires the court to search the judicial information system (JIS) for information and proceedings which relate to parenting. Specifically, this means that judges and commissioners are looking for domestic violence, DUI and other criminal convictions which might impact parenting. If either

party has these convictions on their record the judge or commissioner examines the proposed final parenting plan to ensure that it addresses these concerns. RCW 26.09.182

PATERNITY CASES

Submitted by Carol Bryant, Attorney at Law

Overview

A parent-child relationship can be created between a child and a man in a number of different ways in this State (RCW 26.26.101): 1) The unmarried parents of a child may sign an acknowledgement of parentage and have that acknowledgement filed with the Department of Health. 2) A legal action can be filed requesting that the court establish that a man is the father of a child. 3) A child who is born to a married woman is presumed to be the child of her husband unless this presumption is rebutted pursuant to the law. 4) A child may be born as a result of in artificial insemination or surrogate parentage and be presumed to be the child of parties who signed a written agreement to the procedure. It is, actually, easier to create a parent-child relationship than to try to terminate such a relationship.

The Uniform Parentage Act (RCW 26.26) which governs **all** determinations of parentage in Washington was enacted in 2002 and was effective June 13, 2002. One of the biggest changes the new act made in the arena of paternity actions was to remove the child as a **necessary** party to a paternity case. Much of the paternity case law that developed up to that date has been codified in the law or no longer applies because the child is no longer a necessary party. There has not been much case law based upon the new Act.

Definitions

It is helpful that the new UPA includes a definitions section in RCW 26.26.011. The lack of definitions in the old law led to a lack of clarity and to disagreement as to the meaning of provisions in the statute. Some of the more important definitions now contained in the UPA are the following:

“Acknowledged father” means a man who has established a father-child relationship by signing a written acknowledgement of parentage (that meets certain requirements set out in RCW 26.26.305) which acknowledgement has been filed with the Department of Health.

“Adjudicated father” means a man who has been adjudicated by a court to be the father of a child.

“Alleged father” means a man who alleges himself to be, or is alleged to be the genetic father of a child, but whose paternity has not been determined. (The section then states what the definition excludes).

“Assisted reproduction” means a method of causing pregnancy other than sexual intercourse. (A number of terms are included in the definition).

“**Child**” means an individual of any age.

“**Presumed father**” means a man who, under RCW 26.26.116, is recognized to be the father of a child until that status is rebutted or confirmed in judicial proceeding.

Overview of Paternity Case

A paternity action is to be filed in the county where the child resides or, if the child does not reside in the State, in the county where the respondent resides (RCW 26.26.520). Necessary parties to a paternity action are: the mother, a man “whose paternity of the child is to be adjudicated” and (if a surrogate parentage contract is at issue) a person intended to be a parent (RCW 26.26.510). “A man whose paternity of the child is to be adjudicated” includes a presumed father whose paternity of the child is sought to be disestablished.

Because a child is no longer a mandatory party to a paternity action, a guardian ad litem is not necessarily involved in every paternity action. The child can be made a party to the action (and as such must be represented by a guardian ad litem). The court is required to appoint a guardian ad litem to represent the best interests of the child if the court finds the interests of the child are not adequately represented (RCW 26.26.555(2)).

If the alleged father does not deny paternity, temporary orders can be entered for parenting and support. Otherwise upon paternity being denied an order compelling paternity genetic testing can be obtained. The testing used must be of a type that is reasonably relied upon by experts and performed by an accredited laboratory. Although it is customary for the alleged father, the mother and the child to be tested, it is possible to run the tests without the involvement of the mother. If the genetic test results in a probability of paternity of at least 99 percent (or a paternity index of at least 100 to 1) the man tested is rebuttably identified as the father of the child.

The final orders in a parentage action may include an award of back support but the statute limits the right to back support to five years prior to the commencement of the judicial action (RCW 26.26.134). The order shall include a provision requiring the amendment of the child’s birth certificate if necessary to add in the father’s name and to change the surname of the child if ordered. The form of the order of child support entered must comply with RCW 26.23.050 and RCW 26.26.132. A parenting plan is not required in paternity actions unless requested by a party (RCW 26.26.130(7)) but the court will, at minimum enter terms regarding custody and visitation.

The court has the discretion to change the surname of the child if it determines that it is in child’s best interest. The definitive case setting forth the analysis of a child’s interests when it comes to surname is *Daves v. Nastos*, 105 Wn.2d 24, 711P.2d 314 (1985). Factors to be considered in analyzing what surname the child should have include: the child’s preference, the effect of the change of the child’s surname on the preservation and development of the child’s relationship with each parent, the length of time the child has borne a given surname, the degree of community respect associated with the present and the proposed surname and the difficulties,

harassment or embarrassment the child may experience from bearing the present or proposed surname.

Actions Based Upon Acknowledgements

A paternity acknowledgement which meets the requirements of RCW 26.26.305 is tantamount to a judicial establishment of parentage. These statutory requirements include that the acknowledgement be in a record, be signed under penalty of perjury, state that the child has no presumed father and that there is no other acknowledged or adjudicated father, state if there has been genetic testing and if so, if those results are consistent with the acknowledgement, and state that the parties understand that the acknowledgement has the same effect as a judicial finding of parentage. The acknowledgement is void if there is a presumed father and that man has not signed the denial of parentage or if there is another acknowledged or adjudicated father.

A party who has signed a paternity acknowledgement which is on file with the Department of Health may file an action for support or a parenting plan based upon the acknowledgement.

If a party who has signed an acknowledgement wishes to vacate that acknowledgement, they can only do so during a limited time period after the filing of the acknowledgement. Within **sixty days** of the filing of the Acknowledgement a party can file an action to **rescind** the acknowledgement. The action to rescind does not have to be for cause. If the affidavit has been filed for **more than sixty days** but **less than two years**, a signatory to the acknowledgement can file an action to **challenge** the acknowledgement. An action to challenge an acknowledgement must be based on fraud, duress or material mistake of fact. Either one of these actions requires all signatories to the acknowledgement to be made parties to the action. A signatory who has a support obligation will not have that obligation suspended without a showing of good cause. These proceedings are conducted in the same manner as an adjudication of parentage.

A minor can sign an acknowledgement without being represented by a guardian ad litem, and the acknowledgement will be valid under the law. That same minor, however, cannot file an action to rescind or challenge an acknowledgement or an action for support and parenting without being represented by a guardian ad litem.

Presumption of Paternity

A man is presumed to be the father of a child if: the father and mother are married to each other when the child was born; **or** the child is born within 300 days of the termination of the marriage; **or** the parents attempt to marry but their marriage is ruled invalid and the child is born during that invalid marriage; **or** after the child's birth the father and mother marry and the father voluntarily asserts his paternity (either by filing with the State Registrar of Vital Records to have his name put on the child's birth certificate or by a written promise to support the child as his own) (RCW 26.26.116).

Generally, there is no time limitation on when a proceeding to adjudicate the parentage of a child can be commenced. However, if the child has a presumed, acknowledged or adjudicated father, the statute does provide for such time limitations to disestablish paternity.

If the child has a presumed father, a proceeding to establish parentage in another man must be commenced by the time the child turns age two. RCW 26.26.530(1). An action to disestablish the parentage between a child and the child's presumed father may be commenced at any time, but only if the court finds that:

- the presumed father and the mother neither lived with each other or engaged in sexual intercourse with each other during the time the child was conceived; AND
- The presumed father never openly treated the child as his.

RCW 26.26.535(2).

If the child has an adjudicated or acknowledged father, an action by another individual to establish himself as the child's father must be commenced before the child is two years of age. RCW 26.26.540(2). RCW 26.26.540(1) makes it clear that the signatories to an acknowledgment of parentage can only rescind or challenge the parentage of a child within the time limits allowed under RCW 26.26.330 or 26.26.335.

In *In re the Parentage of M.S.*, 128 Wn. App. 408, ___ P.3d ___ (2005), the court held that the mother's former husband is an adjudicated father, rather than a presumed father and thus the mother's former paramour's petition to establish parentage was timely. The child (M.S.) was born in 2000. The mother, Shawn, was married to David and was having a sexual relationship with Hampson, the petitioner. In 2002, the mother filed for divorce. In 2003, David found out that he may not be the child's biological father. In 2003, Hampson filed a petition to establish parentage of M.S. Hampson dismissed the petition when he and the mother reconciled. In April 2003, the mother's divorce was final and provided that David have visitation rights and pay child support. In May 2004, Hampson again filed to establish parentage of M.S.

The court held that David is M.S.'s adjudicated father because he was involved in a dissolution proceeding and the court's final order provided that he must support the child. RCW 26.26.630(3)(b). When he and Shawn divorced, the court ordered David to pay child support for M.S. and he became her adjudicated father. Therefore, under RCW 26.26.540(2), Hampson has two years from the date of adjudication to commence his action. The divorce was final in April 2003 and he filed his petition in May 2004. Thus, the petition was timely filed. *In re the Parentage of M.S.*, 128 Wn. App. at 414.

Additionally, the court held that even if David were a presumed father, Hampson's petition was timely. The court stated that when the legislature shortens a statute of limitations, the time for bringing claims that accrued prior to the new law's enactment begin to run on the new statute's effective date. The new limitations period began to run on June 13, 2002, the statute's effective date, and Hampson had until June 13, 2004 to file his petition. He filed in May 2004 and thus his petition was timely. *In re Parentage of M.S.*, 128 Wn. App. at 415.

Although genetic testing can affirmatively resolve the issue of biological parentage of a child, biological parentage is not the exclusive goal in an action to disestablish the parentage of a presumed father. The law was crafted to protect the child against a circumstance in which that child would be bereft of the only person the child has been led to believe is his or her father. Thus, before the court can enter an order requiring paternity genetic testing (for the purpose of disestablishing paternity of a presumed father), the court is required to analyze a number of factors to determine if the testing is in the child's best interests. It is also mandated that in this proceeding the child be represented by a Guardian ad Litem. RCW 26.26.535(3). A motion to appoint a Guardian ad Litem for the minor child should be the first step after the filing of the petition to disestablish.

RCW 26.26.535(1) provides that a court may deny genetic testing of the mother, child and presumed father if the court finds that:

- The mother or presumed father have acted in such a way to make either of them estopped from denying parentage; and
- It would be inequitable to disprove that the presumed father is the father of the child.

In analyzing whether to deny genetic testing, the court is required to consider what is in the best interests of the minor child by considering the following factors:

- The length of time between the action to disestablish parentage and the time the presumed father knew he might not be the biological father;
- The length of time the presumed father had acted as the father of the child;
- The facts surrounding the presumed father's discovery of the possibility that he was not the child's biological father;
- The nature of the father-child relationship;
- The age of the minor child;
- The potential harm to the child resulting from disestablishing parentage;
- The relationship of the child to the alleged biological father;
- The extent the passage of time reduces the potential of establishing parentage and a support obligation in another man;
- Any other factors that may affect the equities of disestablishing parentage or the possibility of harm to the child.

RCW 26.26.535(2)(a-i). The investigation of the guardian ad litem appointed in such a case should focus on these factors and state whether an analysis of these factors supports paternity genetic testing.

If the court denies the request for genetic testing it must do so based upon clear and convincing evidence. RCW 26.26.535(4). Upon the denial of genetic testing, the court is required to issue an order establishing the presumed father as the father of the minor child. RCW 26.26.535(5). This requirement, that the court consider and make findings regarding these factors, codifies the case law developed in *McDaniels v. Carlson*, 108 Wn.2d 299, 738 P.2d 254 (1987), *In Re Marriage of T*, 68 Wn. App. 329,842 P.2d 1010 (1993); *In Re Marriage of Their*, 67 Wn. App. 277, 841 P.2d 794 (1992), and *In Re Marriage of Wendy M.*, 92 Wn. App. 430, 962 P.2d 130 (1998).

The final step in disestablishing the parentage of a presumed father is paternity genetic testing that confirms that he is not the child's father, or tests that confirm that another individual is the child's father. Pursuant to RCW 26.26.600(1) a presumed father's paternity cannot be disproved without either exclusionary genetic test results for the presumed father or positive genetic test results showing another man to be the child's father.

MODIFICATIONS OF PARENTING PLANS

Submitted by Michael Loudon, The Family Law Group

Modifications in General: Modifications of parenting plans are governed by RCW 26.09.260. The statute provides for six different bases for modification. It is important to know on which basis the petition for modification is based, because the GAL's investigation and recommendations (and the court's authority) are constrained by the limits of the statute. If a court orders a GAL investigation for a minor modification of the residential schedule, then the GAL might exceed her authority if she investigated and reported on a possible major modification.³

A parenting plan may be modified in the following ways:

- (1) a "major" modification, in which the primary residence of the child is changed, or the residential schedule is changed in a very significant way;⁴
- (2) a modification to address necessary restrictions based on RCW 26.09.191;⁵
- (3) a "minor" modification of the residential schedule which⁶
 - (a) does not exceed 24 full days in a calendar year,
 - (b) is based on a change of residence or work schedule of the non-residential parent, or
 - (c) is less than 90 overnights per year if the original order did not provide reasonable time to the nonresidential parent;
- (4) a modification resulting from a relocation;⁷
- (5) modification based on a failure or exercise residential time for a year or longer;⁸
- (6) adjustments to nonresidential aspects of the parenting plan (such as decision-making and dispute resolution).⁹

Any modification of a parenting plan requires a substantial change of circumstances. For a major modification, the change must be in the situation of the nonmoving parent or child; for a minor modification, the change can be in the situation of either parent or the child.¹⁰ A substantial change in circumstances must be a change occurring after the entry of the original decree or based on a fact unknown to or unanticipated by the trial court at that time. While a child growing older or starting school would normally be anticipated (and thus not a substantial change of circumstances), there is no "bright-line rule that ordinarily anticipated life events will always bar a finding of a substantial change of circumstances. The determinative considerations are whether the facts underlying the substantial change of circumstances existed at the time of entry of the prior or original plan or were unanticipated by the superior court at that time. RCW 26.09.260(1). If the underlying facts did not exist or the prior or original plan did not anticipate the substantial change in circumstances, the superior court may adjust the parenting plan. RCW 26.09.260(5)."¹¹

Procedure: After filing, a party must seek a finding of "adequate cause." This is a determination by the court as to whether the party seeking modification of the parenting plan

³ See, e.g., *In re Marriage of Watson*, 132 Wn. App. 222, 130 P.3d 915 (2006).

⁴ RCW 26.09.260(2).

⁵ RCW 26.09.260(4).

⁶ RCW 26.09.260(5).

⁷ RCW 26.09.260(6).

⁸ RCW 26.09.260(8).

⁹ RCW 26.09.260(10).

¹⁰ *In re Marriage of Tomsovic*, 118 Wn. App. 96, 106, 74 P.3d 692 (2003).

¹¹ *In re Marriage of Hoseth*, 115 Wn. App. 563, 571, 63 P.3d 164 (2003), *review denied*, 150 Wn.2d 1011 (2003)

should be allowed to continue with the case. If not, the case is dismissed and no GAL is appointed. In most cases, a GAL will only be appointed after the finding of adequate cause has been made. In rare cases, the court may seek the GAL's input on the question of whether adequate cause should be found.¹² In either event, the GAL should be familiar with caselaw interpretations of the modification statute. "Custodial changes are viewed as highly disruptive to children, and there is a strong presumption in favor of custodial continuity and against modification."¹³ Litigation over custody is inconsistent with the child's welfare. There is a high threshold for modification of parenting plans.¹⁴ Adequate cause, therefore, requires something more than prima facie allegations that, if proven, might permit inferences sufficient to establish grounds for a custody change.¹⁵ Since the litigation itself is inherently harmful, modification actions should not be allowed to continue just to investigate unfounded or baseless allegations.

One exception to the high threshold for modifications is the 50-50 parenting plan. Since these plans were considered exceptional under prior law, modification was allowed when the cooperative situation giving rise to the plan became unworkable.¹⁶ The statutory restrictions against 50-50 plans having been eliminated in 2007, however, this principle may not apply in future modifications of 50-50 plans.¹⁷

Parties may stipulate to the existence of adequate cause.¹⁸ If adequate cause has been found before the GAL's appointment, then the GAL would have no input on the question. If the GAL has been appointed prior to a finding of adequate cause, then the stipulation would require her agreement as well.

After adequate cause has been found, the court can move forward on the question of how and whether to modify the plan. Note that just because adequate cause has been found, the plan does not *have* to be modified. It may still be in the best interests of the child to maintain the old plan.

Major Modifications: While there are six bases for modification, the court will most often seek the input of a GAL in actions to change the primary residential care of the child (also called "major modifications"). There are four bases for major modifications: (1) agreement, (2) integration, (3) detriment, and (4) a conviction for custodial interference or multiple contempt findings. The first basis leads to no appointment of a GAL because nothing is contested. The last circumstance arises rarely. So usually, the GAL will have to investigate the questions of integration and detriment.

Integration occurs where the primary residential parent consents for the child to change residences on a permanent basis.¹⁹ Where a temporary arrangement is made for the child to reside with the other parent because the primary parent needed medical care, this does not give rise to modification.²⁰ "Consent" refers to a voluntary acquiescence to surrender of legal custody. It may be shown by evidence of the relinquishing parent's intent, or by the creation of

¹² An issue may be raised as to the court's jurisdiction to appoint a GAL prior to a finding of adequate cause. If the court lacks jurisdiction to proceed with the case, then it may also lack jurisdiction to appoint the GAL.

¹³ *In re Marriage of Shryock*, 76 Wn. App. 848, 850, 888 P.2d 750 (1995).

¹⁴ *In re Marriage of McDole*, 122 Wn.2d 604, 859 P.2d 1239 (1993).

¹⁵ *In re Parentage of Jannot*, 110 Wn. App. 16, 25, 37 P.3d 1265 (2002), *aff'd*, 149 Wn.2d 123 (2003).

¹⁶ *In re Marriage of Stern*, 57 Wn. App. 707, 789 P.2d 807, *review denied*, 115 Wn.2d 1013 (1990).

¹⁷ *See also Selivanoff v. Selivanoff*, 12 Wn. App. 263, 529 P.2d 486 (1974).

¹⁸ *In re Marriage of Naval*, 43 Wn. App. 839, 719 P.2d 1349 (1986); *In re Marriage of Adler*, 131 Wn. App. 717, 129 P.3d 293 (2006).

¹⁹ *George v. Helliard*, 62 Wn. App. 378, 814 P.2d 238 (1991).

²⁰ *In re Marriage of Taddeo-Smith*, 127 Wn. App. 400, 405-06, 110 P.3d 1192 (2005).

an expectation in the other parent and in the children that a change in physical custody would be permanent. The children's views as to where 'home' is, and whether the environment established at each parent's residence is permanent or temporary are significant in determining whether 'consent' and 'integration' are shown. While time spent with each parent is not determinative, it is a factor."²¹

When contested, the primary parent is strongly motivated to dispute any claim that she consented to integration of the child into the other parent's home. This author believes a relevant inquiry should be whether the *child* perceived the integration to be a permanent change in his or her living situation. Frequently (especially with older children), the parents agree that the child can live with the other parent on a temporary or trial basis. Just because a change in the child's primary residence has been accomplished in fact does not mean the parenting plan should be rewritten. Again, although adequate cause may have been found, the GAL must still engage in an independent analysis of the child's best interests.²²

*A finding of **detriment** requires more than a showing of illicit conduct by the parent who has custody. There must be a showing of the effect of that conduct upon the minor child or children.²³ Detriment is a different (and less stringent) inquiry than parental unfitness.²⁴ Cohabitation or remarriage alone is not sufficient to establish detriment.²⁵ However, if the parent chooses to reside with (or even expose the child to) a sex offender, then this would certainly rise to the level of detriment (as well as allowing for modification under RCW 26.09.260(4)). If a parent commits a crime, then this does not necessarily put the child at a risk of harm; however, if the parent is going to jail for a long period of time, then detriment might lie.*

Relocation: If appointed to examine the question of relocation, the court – and thus, the GAL – must examine each of the eleven factors under RCW 26.09.520.²⁶ The court may not consider the question of whether the relocating parent would forego relocation if not allowed by the court.²⁷ In other words, for purposes of its decision, the court must assume that the relocating parent does, indeed, relocate, and ask whether it is preferable for the child to relocate as well, or remain with the other parent in a significant change from the existing parenting arrangement. If the relocating parent ultimately determines she will not relocate, then the court lacks the authority to modify the parenting plan (absent some other petition).²⁸

Other Procedures: At times, a GAL may be asked to have a continuing role in a case, e.g., as a monitor of the parents' progress in treatment or services, or to make ongoing recommendations regarding expansion or reduction of residential time. While legally

²¹ *In re Marriage of Timmons*, 94 Wn.2d 594, 601, 617 P.2d 1032 (1980).

²² *Clark v. Gunter*, 112 Wn. App. 805, 51 P.3d 135 (2002).

²³ *In re Marriage of Frasier*, 33 Wn. App. 445, 450, 655 P.2d 718 (1982).

²⁴ *In re Marriage of Velickoff*, 95 Wn. App. 346, 354, 968 P.2d 20 (1998).

²⁵ *Wildermuth v. Wildermuth*, 14 Wn. App. 442, 542 P.2d 463 (1975).

²⁶ *In re Marriage of Horner*, 151 Wn.2d 884, 93 P.3d 124 (2004).

²⁷ RCW 26.09.530.

²⁸ *In re Marriage of Grigsby*, 112 Wn. App. 1, 57 P.3d 1166 (2002).

permissible,²⁹ this puts the parenting plan in a state of flux, where the plans are intended to be permanent and not the subject of ongoing litigation. The GAL’s ongoing determinations are not court orders, and are always subject to review by the court, and the GAL should make any “decisions” with appropriate recognition of this lack of ultimate authority.³⁰

See RCW 26.09.260

RELOCATION CASES

Submitted by Douglas Becker, Wechsler Becker, LLP

Relocation cases are filed when a parent or non-parent who has the majority of residential time with the children intends to relocate the children outside their current school district (in the larger sense of a school district, not just the catchment area for a particular school).³¹ The statutory law is contained in RCW 26.09.405-.909.

A relocation case can only occur after some kind of order concerning access to the children has been issued³². Such an order will typically designate a parent with whom the children reside the majority of the time (“the primary parent”). Cases of 50/50 parenting plans will be addressed below.

It isn’t up to the relocating parent to file a case. The relocating parent gives notice to the non-relocating parent. It is then up to the non-relocating parent to file an objection. The official Objection to Relocation form is also a Petition for Modification of Parenting Plan. They are two sides of the same coin.

If the objecting parent doesn’t object to the relocation itself, but only the terms of the parenting plan that will result from the move, the Objection to Relocation will request a minor modification of the parenting plan. Such a case would be investigated in the same way any minor modification would be investigated, so GALs in those cases are referred to that section of the Handbook.

This chapter will only deal with cases where the objecting parent does not want the children to be relocated. In that case, the Objection will request a major modification that reverses the primary parent. There is no such thing as a petition to block the relocation by maintaining the status quo. The Objection must include a viable proposal for where the children will live if the relocation is blocked. Here is why:

- a. the relocating parent has a constitutional right to live anywhere they want;
- b. the relocating parent cannot be questioned about whether they will “give up” the relocation if the child is prevented from moving—everyone has to take the relocating parent’s intention to move as a given;
- c. therefore, if the relocation of the *children* is prohibited, the only remaining option is to transfer their primary residence to the non-relocating parent.

²⁹ *In re Marriage of Possinger*, 105 Wn. App. 326, 19 P.3d 1109, *review denied*, 145 Wn.2d 1008 (2001).

³⁰ *In re Parentage of Schroeder*, 106 Wn. App. 343, 22 P.3d 1280 (2001); *In re Parentage of Smith-Bartlett*, 95 Wn. App. 633, 976 P.2d 173 (1999).

³¹ RCW 26.09.450

³² RCW 26.09.405

The reason why the GAL cannot ask the relocating parent if he or she would forgo the relocation is that the court is prohibited from considering such information under RCW 26.09.530. If the GAL obtains that information anyway, it is assumed to be a factor in the GAL's recommendation, even if it is never mentioned. If the GAL recommends the relocation be prohibited, the relocating parent will bring a motion to exclude the GAL's testimony and report on the grounds they are fatally infected with information the court cannot consider—by listening to the GAL, the court would be considering prohibited information without knowing it was doing so.

The exact same prohibition applies to asking the objecting parent whether he or she would relocate if the children were allowed to be relocated.

However, it's OK to ask both parents what their *alternatives* are if they lose.³³ The crucial distinction is what they could do, not what they would do. It would be smart to avoid “could” and “would” altogether and stick with “*what* are your possible alternatives if you lose the case.” Some parents will have alternatives and some won't. Each parent can also discuss what the other parent's alternatives are, but you should stop them from discussing what the other parent's intentions are.

The statutes provide a presumption that the relocation will be approved.⁴ That means the burden of persuasion is on the objecting parent. To overcome the presumption, the objecting parent must demonstrate “the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person.”³⁴

Obviously, the effect on “the relocating person” is affected by what the alternatives are, as well as the benefits of the relocation. But the major focus will be on the impact on the children, which is what the GAL is investigating. Examples of how the benefits to the relocating parent can be benefits to the children include better living conditions, maintaining the stability of the second family, support from and contact with extended family, more resources for college or private school, etc.

The “best interest” of the children is not a factor for deciding relocation cases.³⁵ That is due to the presumption favoring relocation. In determining whether the objecting parent has shown that the detriments outweigh the benefits, the court must consider all of the factors below and document its findings.³⁶ Therefore, GALs should frame their report around the statutory factors³⁷ (they are not listed in order of importance):

- (1) The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;
- (2) Prior agreements of the parties;
- (3) Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;

³³ RCW 26.09.520(8) & (9)

³⁴ RCW 26.09.520

³⁵ *In re Marriage of Momb*, 132 Wn. App. 70, 79, 130 P.3d 406 (2006); *In re Marriage of Horner*, 151 Wn.2d 884, 895, 93 P.3d 124 (2004)

³⁶ *In re Marriage of Horner*, 151 Wn.2d 884, 894, 93 P.3d 124 (2004)

³⁷ RCW 26.09.520

- (4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191;
- (5) The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation;
- (6) The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;
- (7) The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;
- (8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;
- (9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;
- (10) The financial impact and logistics of the relocation or its prevention; and
- (11) For a temporary order, the amount of time before a final decision can be made at trial.

As is apparent, there is nothing important that won't fit under one of these factors. The court will make findings on *all* of these factors, so the GAL should address all of them as much as possible. In each individual case, however, some factors will be more important than others and the GAL should help the court identify those.

As an overall approach, it is handy to think of what is really being investigated. It is both the good and bad aspects of each parent as the primary parent *and* the good and bad aspects of staying in this community versus moving to another community. So it is two parties and two communities that are being investigated. If one parent and environment are better than the other parent and environment, the recommendation is easy. If the "better" parent has the "worse" environment, the question becomes whether changing primary parents outweighs changing environments.

Special cases include 50/50 parenting plans. Some courts won't apply the relocation statutes to 50/50 cases, but that decision will have been made before you begin your investigation. If the case is proceeding under the relocation statutes, the effect of a 50/50 parenting plan is to eliminate the presumption in favor of relocation.³⁸ Thus, both parents have an equal burden to prove their case.

Other special cases are relocations that occur in the middle of an action to create a parenting plan, such as a divorce or paternity action. In that case the standards for decision are not the relocation standards, they are the normal standards for a divorce or paternity case. However, in those cases the intention to relocate (or an actual temporary relocation) are factors that must be considered³⁹ under factor (v) of RCW 26.09.187(3): "The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities."

³⁸ Rep. Dow Constantine, JOURNAL OF THE HOUSE, 56th LEG. 551 (2000)

³⁹ *In re Marriage of Combs*, 105 Wn. App. 168, 19 P.3d 469

Unfortunately, relocation cases have a higher than average chance of going to trial because they are inherently all-or-nothing. There's no easy way to adjust schedules that provide frequent or substantial contact with the non-primary parent and allocating most or all of the summer has its own problems. For that reason, a mediated settlement is difficult unless there's an unambiguous recommendation, if that is possible.

THIRD PARTY CUSTODY CASES

Submitted by Caroline Davis, Executive Director, King County Family Law CASA

Third party custody cases are filed by an individual or couple, who are not the biological parent, and are seeking primary custody of a child. The statutory law is contained in RCW 26.10. Typically these cases are filed by a person (it does not have to be a blood relative) who has had the child(ren) a significant amount of time and is seeking legal rights to obtain benefits or enroll a child in school or simply does not feel comfortable returning the child to the parents. One common scenario is a grandparent who has been asked to care for a child for longer and longer periods by one or both of the parents. Parents in these cases are often either homeless, mentally ill and untreated, or suffering from drug and alcohol abuse. But for the filing of the case and the existence of the third party, the case might have been a dependency matter.

Case law and statutory law do not match in third party custody cases so you must be familiar with the case law. The statute states that custody shall be based on "the best interests of the child." RCW 26.10.100. This is the same standard that exists in dissolution or paternity cases. However case law has repeatedly required a much tougher standard to be met by the third party custodian. The law favors the rights of biological parents over others.

Under the heightened standard, a court can interfere with a fit parent's parenting decision to maintain custody of his or her child only if the nonparent demonstrates that placement with the fit parent will result in actual detriment to the child's growth and development. The court in *Allen* rejected the "best interests of the child standard" because it did not provide proper deference to the fit parent.

Matter of Custody of Shields, 157 Wash. 2d 126, 144, 136 P. 3d 117 (2006).

[Note that RCW 26.09.004 (3) defines parenting functions in the context of care and growth of a child.]

The only time the best interests standard would be applied in a third party custody case is if both parties were not parents. See In re Custody of Brown, 153 Wn. 2d 646, 105 P. 3d 991 (2005). In that case neither parent was asking for custody. Despite the parents asking one of the petitioners to care for the child, that person had no leg up on the other party seeking custody. Nor did it matter that one of the petitioners was a blood relative and the other was not.

The detriment standard is determined on a case by case basis. The amount of time the child has spent with the parent(s) versus the third party can be extremely relevant. As the GAL you should put together a time line of where the child has lived and with whom since birth.

The parent's ability to address the specific needs of that child may also be critical. The case of In re Marriage of Allen, 28 Wn. App. 637, 626 P 2d 16 (1981) which is frequently cited, involved a step mother who taught her deaf step child sign language and pressed hard for the school to provide the child with an education back in a time when that was not the norm. She also taught her own children sign language so they could communicate with the step child. When the biological father divorced the step-mother, she sought custody and was awarded the child.

The father had not learned sign language and although present in the home, was not able to meet the needs of this child. The father was not considered unfit but the court felt it would be detrimental to the child to live with him.

Third party custody cases require a threshold hearing before the case can move forward to trial. The requirement arose in the case of In re Nunn, 103 Wn. App. 871, 14 P.3rd 175 (2000) and has since been codified in law. See RCW 26.10.032 (2). The third party custodian must also submit to a criminal records check (as well as anyone in that household) and provide a release for any CPS records involving that adult. As the GAL you are going to want to see the criminal background check and get a release for all CPS records involving the child(ren) in the case as well as that adult. See RCW 26.10.135.

The Nunn case is also of interest as the guardian ad litem had applied the wrong legal standard, “best interests of the child.” (A position you don’t want to find yourself in.) In the Nunn case the aunt was battling the mother for custody. The court noted that the fact that an otherwise fit parent is angry towards the third party custody petitioner and may prevent the child from seeing extended family members related to that petitioner and may not trust the GAL, are not in themselves a basis for denying custody to a parent.

A recent case raised the term *de facto* or “psychological parent” which you may come across in pleadings or in your order of appointment. This term arose in Custody of Stell, 56 Wn. App. 356, 783 P. 2d 615 (1989) as well as Shields, cited above. It reappeared in the case of In re Parentage of L.B. 155 Wn. 2d 679, 122 P. 3d 161 (2005), cert. denied 126 S. Ct. 2021, 164 L. Ed 2d 806, case which involved two women who were same sex partners. While together they decided to have a child and one of the women got pregnant through artificial insemination. She gave birth and the other woman stayed home and helped to care for the little girl. After a few years, the women split up. The girl lived with the biological mother and visited the other woman for a time until the bio mom cut off the contact. The non bio mom filed, not for primary custody, but for the right to have an ongoing relationship with the child and she prevailed. The court deemed the non bio mom a “psychological parent” and noted that she had been invited to serve in the role of a parent by the biological parent and that the woman had in fact been in a parental role.

To establish standing as a *de facto* parent we adopt the following criteria.:

“1) the natural or legal parent consented to and fostered the parent-like relationship, (2) the petitioner and the child lived together in the same household, (3) the petitioner assumed obligations of parenthood without expectation of financial compensation, and (4) the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship, parental in nature. In addition, recognition of a *de facto* parent is “limited to those adults who have fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child’s life.”

We thus hold that henceforth in Washington, a *de facto* parent stand in legal parity with an otherwise legal parent, whether biological, adoptive, or otherwise.... As such, recognition of a person as a child’s *de facto* parent necessarily “authorizes a court to consider an award of parental rights and responsibilities.... based on its determination of the best interest of the child.”

In re Parentage of L.B., p. 708.

The appointment of a GAL in a third party custody case is set forth in RCW 26.10.130. There is authority to order fees for an attorney for a child (and presumably a guardian ad litem) in RCW 26.10.070. GAL's need to be aware that statutory law does allow a judge to interview a child in chambers, see RCW 26.10.120. The guardian ad litem needs to be ready to weigh in on whether or not appearing before a judge, even in chambers, is best for a child. In my experience judges rarely, if ever, will want to question a child in chambers and would not consider doing so unless the child is an older adolescent. Finally the judge is not bound by the GAL's recommendations, see In Re Custody of Brown.

If one or both parents are not awarded custody, they may be visitation granted to the parents. See RCW 26.10.160. Note that this statute mirrors RCW 26.09.191 but is not identical in that the provisions for substance abuse and mental health issues are not included. The duties of the third party custodian are laid out in RCW 26.10.160. Both parents can be ordered to pay child support to a third party custodian.

Although the statutory law, RCW 26.10.190, sets out a basis to modify third party custody cases in line with the standards under the dissolution law (RCW 26.09), there are no cases on this standard. I expect in the next year or two, case law will come down addressing the legal standard. Should a biological parent have an easier time modifying a third party custody case than a parent in a divorce or paternity case? Does it matter how long the child has lived in the care of the third party custodian? Is it better for a child to be with a parent ultimately if that parent takes the steps necessary to become an appropriate caretaker?

Knowing the current case law is absolutely critical! At least two of the major third party custody cases discuss actions of a guardian ad litem based on an incorrect legal standard or reliance on a case that was overturned. To keep up to date on new case law, sign up for automatic receipt of court cases using the information below:

<http://www.courts.wa.gov/notifications/?fa=notifications.updateaccount>

See Custody of Anderson, 77 Wn. App. 261, 890 P. 2d 525 (1995) for a case where there was not a sufficient showing of detriment.

Custody of Stell, cited above, deals with expert testimony on the issue of psychological parent. R.R.B., 108 Wn App. 602, 31 P.3rd 1212 (2001) addresses the question of who has standing to file a nonparental custody case.

MOTIONS IN FAMILY LAW CASES

Submitted by Jennie Laird, Seattle Divorce Services

General Information:

While a family law case is pending, any party – including the Guardian Ad Litem – may bring a motion before the court for temporary relief. For instance, a party may make a motion for a temporary parenting plan and/or for temporary child support in the context of a dissolution case. In parenting plan modification and in third party custody cases, a motion for adequate cause is necessary to allow the petitioning party to proceed, and a motion for temporary orders often accompanies a motion for adequate cause so all necessary issues to provide stabilization for the parties are decided in one hearing.

A motion for temporary orders is also the method for requesting a court to order specific services for a parent or for both parents while a case is pending – such as a substance abuse

assessment, substance abuse treatment, domestic violence batterer's treatment, or other counseling or treatment services. Typically, a Guardian Ad Litem is appointed via a motion for temporary orders which includes a request for such appointment.

Specific Procedures:

The moving party in any motion must follow the Civil Rules and the relevant county's Local and/or Local Family Law Rules of court in setting the hearing and in submitting the motion materials to the other parties and to the court itself. Failure to follow the relevant rules may result in incorrectly filing the motion; in many counties, deviation from the procedural requirements for motion setting result in the hearing being "stricken" or canceled by the court itself.

Notice: "Notice" is a concept engendered in Constitutional law – every party to a legal action has the right to "notice and an opportunity to be heard" before relief is granted by the court. "Notice" on a pragmatic level means that the other party must be served all paperwork submitted for the hearing, including the document which reveals the day, date, time, and location of the hearing, within a certain number of days of the hearing itself.

Typically, all other parties (and the court) are entitled to at least six days' notice of a hearing. In many counties, the notice requirement for family law motions is longer than for a general civil motion. For instance, in Snohomish County parties are entitled to 12 days notice; in King County, parties are entitled to 14 days notice of any temporary orders hearing. The other parties and the court must receive the motion paperwork at least that many days (12 days in Snohomish, 14 days in King, etc.) prior to the date the hearing is set to take place. A county's Local or Local Family Law court rules usually contain the specifics regarding Notice, and should be consulted prior to filing any motion for temporary orders.

Because the concept of adequate "Notice" stems from a party's Constitutional right to participate in any legal action in which they are a party, failure to comply with a particular county's Notice requirements in setting a temporary orders hearing by motion will result in the hearing being stricken, or if the hearing proceeds despite such failure to comply, the relief ordered could be overturned in the future because of lack of notice to a party.

What constitutes adequate "Notice" may vary from county to county and may vary depending on what relief is requested in the motion itself. Personal service may be required for some motions; for others, personal delivery may be acceptable. In some counties, delivery of the motion materials to other parties by mail may be allowed. The Local or Local Family Law Rules for the relevant county should contain this information. If the materials are sent to parties by mail, some counties will require that three (3) additional days notice be factored in, to allow for the additional time that it may take for delivery to be accomplished. Again, the Local or Local Family Law Rules should contain this information.

What Documents Are Needed?: Typically, any motion would include the following documents: the Motion itself, which lists the relief requested and the basis for such requests; a Declaration supporting the motion (a narrative statement signed as sworn under the penalty of perjury) which includes the moving party's basis for the requests and any information the court should know in considering the motion; Declaration(s) from other witnesses, also supporting the moving party's assertions and providing evidence to the court regarding why the relief should be granted; proposed orders, including a proposed temporary parenting plan, proposed order of child support with worksheets, and a proposed temporary order which lists any/all other relief requested in the motion; for motions which include financial relief, a Financial Declaration with

supporting financial documents, so the court may review the specific financial situation of the moving party; and, a Note for Motion or Notice of Hearing, which documents the type of motion being brought as well as the day, date, time, and location of the hearing.

Who Makes a Motion?: Any party seeking relief may prepare and file a motion. Where a GAL has been appointed, the GAL may make a motion. For instance, if the GAL discovers information mid-investigation which is of great concern, such that the GAL believes whatever temporary parenting plan currently in place should be changed, the GAL may bring a motion to amend or change the temporary parenting plan based on that information. Or, if a GAL report is issued mid-case, either parent may wish to bring a motion to implement the GAL recommendations, if the recommendations are different than the “status quo” and if the trial date in the case is a significant distance of time in the future.

Responding to a Motion: All parties have the right to, and if they wish to dispute the motion they must, respond to the motion. A response to a motion typically includes a Declaration in Response, from the responding party, and explaining why the motion should not be granted or what other information the court should consider before making a decision; witness Declarations in Response from others who may have relevant information regarding why the relief sought should not be granted; a Financial Declaration and supporting financial documents if the motion includes financial relief; and proposed orders from the responding party’s point of view (what parenting plan, order of child support, or other temporary order should be granted at the hearing, in the responding party’s opinion).

There are deadlines for responding parties, to be found in the Local or Local Family Law Rules, as well. These deadlines can be very specific; for instance, in King County a responding party must submit the responsive materials to all parties and to the court by noon four (4) court days prior to the hearing. As with the initial motion documents, failure to meet such responsive deadlines may have serious consequences, including the court declining to consider late submissions.

After the Response: After the response, the moving party typically has the opportunity to submit materials in “Strict Reply” to the response. This is usually in the form of a Declaration from the responding party and/or from other witnesses, specifically replying to the information raised in the Response. Reply documents may not generally bring up “new” issues; rather, they are to “strictly” reply to the information in the Response only. There are deadlines for a Reply, as well; for instance, in King County, Reply documents are due to all parties and to the court by noon two (2) court days prior to the hearing.

Papers Due to or Filed With “The Court”: In most counties, any documents submitted for motions must be filed with the court *and* an additional courtesy or “working” copy of the documents must be delivered to the courthouse for the Judge or Court Commissioner who will preside over the hearing. The Local or Local Family Law Rules of the county will contain this information. This requirement basically means that any party submitting materials—moving, in response, or in reply—to the court for a motion hearing must provide *two copies* to the court, often to be submitted to two different locations within the courthouse. The “working” copy is the copy specifically provided to the judicial officer who will preside over the hearing, so that she may read them in advance. Failure to follow this requirement may result in the motion being stricken, or the materials not being read by the court in advance.

Other Requirements: Many counties require the moving party to “confirm” the hearing at a specific point in the time line between filing the motion and the hearing itself. This information will be found in the county Local or Local Family Law Rules. This is usually

required in the form of a phone call to the court, at a specific number, at a specific day and time to let the court know that the hearing will, in fact, go forward. Failure to confirm in counties that require this will result in the motion being stricken, such that no hearing will take place.

The Hearing:

In many counties, the motion itself will be decided primarily on the basis of the written material properly submitted to the court in advance, according to the time lines mandated by that particular county. The hearing is a time for “oral argument,” or a short verbal presentation which highlights the most important information submitted in the written materials, and reiterating the relief requested. In many counties, only the parties themselves (or, if the parties are represented, only the attorneys for the parties) may speak at the hearing. For a GAL, this is specifically important because a failure to submit information in writing (if responding to a motion) may preclude the GAL from submitting any argument or information orally at the hearing itself. In many counties, no testimony is taken by the judicial officer during the hearing (because all of the evidence should have already been submitted in the written materials).

The hearing itself may have time limits (for instance, King County limits oral argument to 5 minutes per side for general family law motions) which are also found in the relevant court rules for that county. The moving party presents first, and then the responding party. If there are multiple responding parties (such as the other parent and the GAL) the judicial officer will generally dictate who speaks when. Then, the moving party has a brief opportunity to reply after the responding party(ies) is/are heard from.

Usually, the judge or court commissioner presiding over the hearing will “rule,” or state her decision verbally, immediately after all parties are heard from. If not, the judicial officer may set a time in the future when all parties must return to court to receive the ruling verbally, or she may indicate that she will send out an order reflecting her ruling. In many counties, when the judicial officer rules immediately following the parties’ arguments, the orders reflecting that ruling must be filed that day. This often results in taking proposed orders from one party or the other and literally “marking them up” in handwriting, to make them reflect the terms dictated by the judicial officer. The orders are then signed by that judicial officer, and the parties are responsible for making multiple copies for all parties and filing the original in the court clerk’s office.

In some counties, however, the expectation is that the parties will work on orders reflecting the decision after leaving the courthouse, and that the order will be submitted to the judge or court commissioner for signature at a later date. These procedures vary from county to county, and the Local or Local Family Law Rules may not specifically contain this type of detail. Having a conversation with other GALs, or with lawyers who practice in the relevant county, in advance of a hearing to discuss their experiences may help a new GAL learn what to expect.

Resources for Other Information:

Because the procedures from county to county can vary considerably, it may be helpful to seek out other GALs in the relevant county and ask to meet with or speak with them in advance of your first hearing. Listening to another’s experiences can be quite helpful and may educate you so you know what to expect. Family law hearings are also generally public in nature, such that a new GAL could go to the courthouse during a time when family law hearings are being held and simply sit in the courtroom and observe other hearings. This may also be quite helpful, as a new GAL would not only see and hear the proceedings and therefore get an idea of what

issues are dealt with and how, but a new GAL would also see the very practical issues relating to hearings—such as where the various parties stand, which rooms the hearings are held in, whether orders are entered immediately following the hearing or whether the parties leave the courthouse without having orders entered—and hopefully feel more comfortable when his or her own hearing takes place.

County Local or Local Family Law Rules may be found online at the county Superior Court's website. Hard copies of the rules will also be found in your county's law library; they are sometimes for sale in your local Superior Court clerk's office.

More detailed information regarding what specific paperwork is required or needed when making a family law motion, and the types of family law motions, is also available online at www.washingtonlawhelp.org, in the "WA" section. County bar associations or legal services offices are also possible sources of additional written materials specific to your county's family law court procedures.

Practice Tip:

Statutes governing the five case types a Family Law GAL will encounter, including those cited in this chapter, may be found at <http://apps.leg.wa.gov/rcw/default.aspx?Cite=26> . It is crucial that the GAL become familiar with these statutes in order to gather relevant information for the court.

CHAPTER 4
FAMILY LAW GUARDIAN AD LITEM
INVESTIGATIONS

FAMILY LAW GUARDIAN AD LITEM INVESTIGATIONS

Submitted by Honorable Paul Bastine and Honorable Tracy Waggoner

INVESTIGATION

“It has long been a concern of the legislature that GALs, who are appointed in family law matters to investigate and report to superior courts about the best interests of the children, do their important work fairly and impartially. Following public outcry about perceived unfair and improper practices involving GALs, the legislature adopted RCW 26.12.175 to govern the interactions of courts and GALs and our Supreme Court adopted the GALR. These measures are intended to assure that the welfare of the children whose parents are involved in litigation concerning them remains the focus of any investigation and report, and that acrimony and accusations made by the parties are not taken up by an investigator whose only job is to report to the court after an impartial review of the parties and issues. To that end, GALR 2 articulates the general responsibilities of GALs. As relevant here, it states:”

[I]n every case in which a guardian ad litem is appointed, the guardian ad litem shall perform the responsibilities set forth below[.] - . (b) Maintain independence. A guardian ad litem shall maintain independence, objectivity and the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom. - . (f) Treat parties with respect. A guardian ad litem is an officer of the court and as such shall at all times treat the parties with respect, courtesy, fairness and good faith. (g) Become informed about case. A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. A guardian ad litem shall examine material information and sources of information, taking into account the positions of the parties. - (o) Perform duties in a timely manner. A guardian ad litem shall perform responsibilities in a prompt and timely manner, and, if necessary, request timely court reviews and judicial intervention in writing with notice to parties or affected agencies.

Bobbitt v. Bobbitt, 2006 App. Slip - 31997-7, Division II (Citation pending).

I. PLANNING AN INVESTIGATION

A. REVIEWING THE ORDER APPOINTING GUARDIAN AD LITEM

Superior Court Guardian ad Litem Rule 4(1) As an officer of the court, a guardian ad litem has only such authority conferred by the order of appointment.

When beginning a guardian ad litem investigation, the GAL should first review the Order Appointing Guardian ad Litem. That order will contain many important provisions. Among others, the order contains the following:

1. The order defines the scope of the guardian ad litem investigation;
2. The order defines contains deadlines for the oral and written reports;
3. The order contains provisions regarding payment of guardian ad litem fees; and
4. The order contains provision regarding discharge of the guardian ad litem.

The Order Appointing Guardian ad Litem may differ from county and it is important that the GAL become familiar with the order issues in the county in which the appointment is accepted.

Whenever possible, the GAL should be involved in the entry of the Order Appointing Guardian ad Litem. It is important to review the order before it is entered. In particular, any questions regarding the scope of the investigation should be answered before entry of the order. If possible, the GAL should be the last person to sign the order before it is entered so that all disagreements between the parties have been resolved before the GAL signs the order.

Once the Order Appointing Guardian ad Litem is entered, the GAL should make several copies for the GALs file as copies will often need to be sent out with requests for information.

Scope of Investigation

Superior Court Guardian ad Litem Rule 2(1)(j) Limit duties to those ordered by court. A guardian ad litem shall comply with the court's instructions as set out in the order appointing a guardian ad litem, and shall not provide or require services beyond the scope of the court's instruction unless by motion and on adequate notice to the parties, a guardian ad litem obtains additional instruction, clarification or expansion of the scope of such appointment.

The scope of the GALs appointment is set forth in the Order Appointing Guardian ad Litem. The scope can be as broad as a “full investigation” or as narrow as “investigate allegations of domestic violence”. A GAL should never conduct an investigation beyond the scope within the order. If, in the course of the GAL investigation, the GAL becomes concerned that the scope should be expanded, a request should be made to the court to expand the scope of the investigation.

In such event, the GAL should inform counsel about the concerns that have been raised that may warrant expansion of the GAL’s scope of appointment. Ideally, that will then prompt one or both of the attorneys to request a court order expanding the scope. If the parties are not represented by counsel or no action is taken by their counsel, the GAL should ask the Court for direction.

Exceeding the scope of the investigation can have repercussions, including disregard of the conclusions and recommendations made, as well as a challenge to the

level of immunity granted to the GAL as part of the investigation. See chapter(s) on GAL Quasi-judicial Immunity.

Due Dates

Superior Court Guardian ad Litem Rule 2(1)(I) Timely inform the court of relevant information. A guardian ad litem shall file a written report with the court and the parties as required by law or court order or in any event not later than 10 days prior to a hearing for which a report is required. The report shall be accompanied by a written list of documents considered or called to the attention of the guardian ad litem and persons interviewed during the course of the investigation.

Superior Court Guardian ad Litem Rule 2(1)(o) Perform duties in timely manner. A guardian ad litem shall perform responsibilities in a prompt and timely manner, and, if necessary, request timely court reviews and judicial intervention in writing with notice to parties or affected agencies.

A GAL should always be aware of the due dates within the GAL report as well as deadlines imposed by statute. Pursuant to statute, the GAL must provide recommendations to the parties and their attorneys sixty days prior to trial. Failure to provide a report to the parties at least sixty days prior to trial is an automatic basis for a continuance of the trial date. The Order Appointing Guardian ad Litem, or other court order, may require an oral or written report sooner than sixty days prior to trial.

There are occasions when the order issued by the court contains a due date that is less than sixty days prior to trial. In that event, the GAL should treat the statutory requirement of sixty days prior to trial as the actual due date. The court cannot shorten the time imposed by statute, absent agreement of the parties. The parties and their attorneys may agree to a due date that is less than sixty days prior to trial. In the event that the attorneys or the parties do reach such an agreement, the GAL must make sure that an order is entered with the court.

Provision of Payment of Fees

It is also important to resolve any issues concerning the language regarding payment of GAL fees before the order is entered. In cases where payment is being made by the county in which the orders have been issued, often the individual county requires specific findings and specific provisions placed within the order. The GAL should make sure that the parties and their attorneys have included the appropriate findings and provisions.

For private pay cases, if the GAL is requiring payment of the GAL retainer before the investigation begins, that provision should be clearly set out in the Order Appointing Guardian ad Litem. However, be advised that once the order is entered, the GAL should take steps to ensure that the parties and the court are kept up to date regarding the status of a party's failure to pay and the delay in the start of the GAL investigation. The court then has the option of compelling payment, obtaining payment via other means and/or discharging the GAL. Any delay in the start of a court-ordered GAL investigation is an important issue that should always be brought to the attention of the parties and the court.

Discharge Provisions

The Order Appointing Guardian ad Litem often contains provisions regarding the triggering event for the GAL's discharge. For example, in a dissolution case, the order may contain a provision discharging the GAL upon entry of a final Parenting Plan. The GAL should always be aware of what event results in the discharge of the GAL. Other than issues relating to the payment of fees, a GAL should take no action in a matter after the GAL has been discharged. Thus, it is important to know what triggers that discharge.

B. REVIEWING THE COURT FILE

Superior Court Guardian ad Litem Rule 4(1)(g) Access to court files. Within the scope of appointment, a guardian ad litem shall have access to all superior court and all juvenile court files. Access to sealed or confidential files shall be by separate order. A guardian ad litem's report shall inform the court and parties if the report contains information from sealed or confidential files. The clerk of court shall provide certified copies of the order of appointment to a guardian ad litem upon request and without charge.

After review of the Order Appointing GAL, the GAL should then read the court file. A GAL should never rely on one party or the other to provide copies from the court file to the GAL. To avoid any questions or concerns on that issue, the GAL should obtain the file directly from the court. The court file will not only provide information regarding the current case and the status quo, it often provides historical information useful to the GAL. In reviewing the court file, the GAL should make note of the following:

1. All court dates and notices;
2. Any other cases or proceedings mentioned;
3. Names of any individuals mentioned, other than the parties, who may need to be interviewed or investigated;
4. Names of any professionals who have been involved with the children or the parties;
5. The allegations raised by the parties within the pleadings;
6. Each parties request for relief; and
7. Any potential conflicts.
8. Consider what records are involved and applicable statutes.

Court Dates and Notices

Superior Court Guardian ad Litem Rule 2(1)(l) Appear at hearings. The guardian ad litem shall be given notice of all hearings and proceedings. A guardian ad litem shall appear at any hearing for which the duties of a guardian ad litem or any

issues substantially within a guardian ad litem's duties and scope of appointment are to be addressed. In Title 11 RCW proceedings, the guardian ad litem shall appear at all hearings unless excused by court order.

Superior Court Guardian ad Litem Rule 4(1)(e) Participate in all proceedings. Consistent with rule 2(1), a guardian ad litem shall participate in court hearings through submission of written and supplemental oral reports and as otherwise authorized by statute and court rule.

The GAL should never assume that the parties and/or their attorneys have advised the GAL of all court dates and notices. When reviewing the court file, the GAL should note any dates for upcoming hearings, the status conference date, the parenting conference date, the pre-trial date and the trial date. The GAL should also always obtain and keep a copy of the Case Scheduling Order.

Orders within the court file may also require the GAL to do something specific as part of their investigation. For example, the court may direct the GAL to review an exchange of the children or to conduct a home visit prior to an upcoming hearing. The GAL should make note of all such orders and comply fully with the court's orders.

Other Proceedings

Petitions for Dissolution, Petitions for Legal Separation and Petitions for Modification contain provisions in which the parties are to disclose any other legal and non-legal proceedings in which the children at issue have been involved. These may include dependency proceedings, protection order proceedings, custody proceedings in other counties or states, etc. Whenever possible, the GAL should review the files for any proceedings that have been disclosed.

Other Individuals

In reviewing the court file, the GAL should make note of the names of any individuals mentioned by the parties who would appear to have information relevant to the GAL investigation. This may include current spouses, significant other, parents, siblings, friends, landlords, former landlords, employers, former employers, etc. Ultimately, the GAL may not contact each and every individual mentioned, however, it is important to note those individuals so that a determination regarding future contact by the GAL can be made.

Professionals and Professional Organizations

The GAL should also note the names of any professionals and or professional agencies that have had contact with the children and/or the parties. This may include social service organizations, drug and alcohol treatment facilities, counselors, physicians, psychologists, psychiatrists, teachers, etc. The GAL may need to send a request for

release of records, or a request for an interview, to one or more of these professionals or organizations during the course of the GAL investigation.

Allegations Raised in Pleadings

To the extent that the allegations raised by a party are relevant to the scope of the GALs investigation, the GAL should note all allegations made by a party in the pleadings in the court file. It is important to have this information in mind before conducting interviews with the parties

Each Parties Requests for Relief

Likewise, it is important for the GAL to review the file and make note of what each party is requesting and where the differences are in their respective proposals. Although the GAL is not required to recommend the proposal made by either party, the GAL should have in mind what the parties are requesting when conducting the investigation

Potential Conflicts

Superior Court Guardian ad Litem Rule 2(1)(e) Avoid conflicts of interests. A guardian ad litem shall avoid any actual or apparent conflict of interest or impropriety in the performance of guardian ad litem responsibilities. A guardian ad litem shall avoid self-dealing or association from which a guardian ad litem might directly or indirectly benefit, other than for compensation as guardian ad litem. A guardian ad litem shall take action immediately to resolve any potential conflict or impropriety. A guardian ad litem shall advise the court and the parties of action taken, resign from the matter, or seek court direction as may be necessary to resolve the conflict or impropriety. A guardian ad litem shall not accept or maintain appointment if the performance of the duties of guardian ad litem may be materially limited by the guardian ad litem's responsibilities to another client or a third person, or by the guardian ad litem's own interests.

Any issues of potential conflict should be raised as soon as possible in order to avoid delays in the GAL investigation. To that end, a GAL should review the file carefully to determine whether any conflicts exist. Any conflicts, no matter how minor, should be disclosed to the parties, their attorneys and to the court. In order to avoid future problems as to any such conflicts, the GAL should obtain a waiver of the conflict signed by the parties, their attorneys and the court. In obtaining such a waiver, the GAL should never accept the signatures of the attorneys on behalf of their clients but should require the signature of the clients themselves.

Consideration of what records are involved and applicable statutes

The following check-list was prepared by attorney Mark Iverson and the Honorable Nancy Bradburn-Johnson, King County Superior Court Commissioner, and included in the chapter authored by them in the Family Law Deskbook. The Chapter is entitled “Guardians ad Litem and Court-Appointed Special Advocates”. When preparing for an investigation, the GAL should use this summary when considering what records should be obtained and the applicable statutes relating to those records.

- √ Adoption Records:
 - Chapter 26.33 RCW; WAC 388-70-480
- √ Chemical dependency treatment records:
 - RCW 70.96A.150; 42 C.F.R. Sec 2; 42 U.S.C. sec 290dd2; CH. 18.205 RCW
- √ Child Abuse Prevention and Treatment Act:
 - 42 U.S.C. Sec 5101; 45 C.F.R. Sec 1340.14
- √ Child Abuse and Neglect Records
 - CH 26.44 RCW; WAC 388-15-132/143
- √ Counseling Records
 - RCW 18.19.060, 180
- √ Criminal Records
 - Criminal Records Privacy Act, CH 10.97 RCW
- √ Department of Social and Health Services or supervising agency records
 - RCW 13.34.090; RCW 13.50.100(4)
- √ Domestic violence records
 - RCW 70.123.075
- √ Education Records
 - 20 U.S.C. Sec 1232g; 20 U.S.C. Sec 1415; RCW 28A.600.475; RCW 26.09.225; RCW 26.19.090
- √ Health care records/information
 - Medical Records - Health Care Information Access and Disclosure Act - CH 70.02 RCW; RCW 26.09.225; RCW 5.60.060
- √ Hospitals
 - CH. 70.41 RCW
- √ Juvenile Offenders
 - CH. 13.50 RCW
- √ Juvenile Sex Offenders
 - RCW 13.40.215-217; WAC 388-70-700
- √ Involuntary Mental Illness (Adult)
 - CH. 71.05 RCW
- √ Minor Mental Health
 - CH. 71.34 RCW; RCW 13.50.100
- √ Physicians
 - CH. 18.71 RCW
- √ Psychological Records
 - RCW 18.83.110
- √ Public Disclosure Act of 1972
 - CH 42.17 RCW
- √ Sex Offenders

- RCW 4.24.550
- √ Sex Offender Treatment Providers
CH. 18.155 RCW
- √ Sexually Transmitted Disease-related and Aids-related Information
RCW 70-.24-015; WAC 246-100-011(33)

THE GAL'S ROLE

When planning an investigation, as well as throughout the investigation, it is important for a GAL to remember the GAL's role. Within the scope and direction of the court, the GAL functions as an observer and reporter. The GAL is not appointed to personally correct the deficiencies the GAL observes in one or both parents or households. The GAL is not appointed to personally provide food or diapers, to personally arrange for needed services from community organizations, etc. . The GAL is not appointed to provide personal advice regarding the parties parenting of their children such as whether or not the GAL agrees with the parents approach to discipline. The GAL is appointed to gather information and report it to the Court, along with the GALs observations, conclusions and recommendations.

In effect, [the GAL] acts as a neutral adviser to the court and, in this sense, is an expert in the status and dynamics of that family who can offer a commonsense impression to the court.

Fernando v. Nieswandt, 87 Wn. App. 103 (1997)

II. MAINTAINING RECORDS OF AN INVESTIGATION

A. MAINTAINING THE GUARDIAN AD LITEM FILE

Superior Court Guardian ad Litem Rule 2(1)(p) Maintain documentation. A guardian ad litem shall maintain documentation to substantiate recommendations and conclusions and shall keep records of actions taken by the guardian ad litem. Except as prohibited or protected by law, and consistent with rule 2(n), this information shall be made available for review on written request of a party or the court on request. Costs may be imposed for such requests.

The GAL must maintain a separate file for each GAL case. Because of the volume of information received as part of the GAL investigation, it is important for the GAL file organized and up to date. The GALs file is subject to discovery by the attorneys and parties and failure to appropriately maintain the GAL file may compromise the GAL. All documents, notes, orders, letters and releases should be maintained in a secure manner at all times.

The GAL should take notes outlining conversations with parties and others in each investigation. The notes should be dated and kept as part of a file. In addition, the GAL

should keep copies of any letters written, as well as copies of pleadings, reports, photographs, and other correspondence. Things which cannot go into an actual file, such as DVD's, should be marked with the file name and number and stored in a secure place.

As previously discussed, the role of the GAL is to gather information not give out information. To that end, the GAL should never release information to any person absent a court order. Should a request be made to the GAL for a release of information from an attorney for the parties, the GAL should obtain an order specifying what will be released and directing that the party and their attorney be restrained from disseminating the information released to them.

B. CHECKLISTS

As the GAL requests more information and there are more requests for information pending, it is important to set up a system in which the GAL can note the date that the request for information was made, the information requested, the date of any follow-up requests and the date that the information was received or the request was denied.

III. ACCESSING INFORMATION AND RECORDS

RCW 26.09220 (2): In preparing the report concerning a child, the [GAL] may consult any person who may have information about the child and the potential parenting or custodian arrangements.

A. CONTACTING THE PARTIES/PARTY QUESTIONNAIRES

Superior Court Guardian ad Litem Rule 2(1)(k) Inform individuals about role in case. A guardian ad litem shall identify himself or herself as a guardian ad litem when contacting individuals in the course of a particular case and inform individuals contacted in a particular case about the role of a guardian ad litem in the case at the earliest practicable time.

After the Order Appointing Guardian ad Litem has been entered, the GAL should then send a letter of introduction to the parties including the GAL's name, professional address and professional telephone number.

Included with the letter of introduction should be the GAL's questionnaire. All GAL's should have a standard questionnaire that is sent to each party to an action. That questionnaire should be completed by the parties and returned to the GAL before the initial GAL interview with that party, whenever possible. The questionnaire should be comprised of three parts. The first part should request specific information such as:

1. The personal information for each party such as name, address, telephone number, social security number, birth date, driver's license number, any other names under which the party has been known, etc;

2. The parties current and previous places of employment;
3. The names and addresses of school attended by the children;
4. The names and addresses of any professionals seen by the parents or the children;
5. The dates of any arrests or criminal convictions of either party

The second portion of the questionnaire should include open-ended questions that allow the party to provide what information the party believes to be relevant. For example, in a dissolution/custody proceeding, the GAL questionnaire may ask each parent to describe, from that persons perspective, each parent's day-to-day involvement in parenting functions, each parent's strengths and weaknesses as a parent; and to identify any concerns the party may have regarding the other parent.

The last portion of the questionnaire should include a request for the names, addresses and telephone numbers of other individuals the parties believe the GAL should contact during the GAL investigation. It is often necessary to limit the number of requests to avoid receiving a large number of references. As the GAL should always contact each reference, either via a written reference questionnaire or directly, limiting the number of references requested will help to manage the investigation. The GAL should recommend that the party provide the names of individuals who are familiar with the parties and the children.

The GAL should advise the parties that at a questionnaire will be sent to each person identified, giving that person a chance to state whatever information the person feels would be useful to the GAL investigation. The person will also be told that they are not required to respond to the GAL but that any information provided to the GAL by that person is not confidential and can be released to the parties, counsel or the court. (Superior Court Guardian ad Litem Rule 2(k) A guardian ad litem shall advise information sources that the documents and information obtained may become part of court proceedings.)

Following a review of the questionnaires, a GAL will often call the reference for additional information, especially if it appears that they have knowledge of the matter.

The party questionnaire is a useful tool in many ways:

1. It provides a resource for the GAL for contact information for parties, collateral sources and professionals;
2. It allows the GAL to learn information directly from the parties themselves and to compare it to information received from the other party and the court file;
3. It serves as a useful outline for the subsequent interview with the parties.

B. INTERVIEWING THE PARTIES

Superior Court Guardian ad Litem Rule (4)(1)(a) Access to party. Unless circumstances warrant otherwise, a guardian ad litem shall have access to the persons for whom a guardian ad litem is appointed and to all information relevant to the issues for which a guardian ad litem was appointed. The access of a guardian ad litem to the child or alleged incapacitated person and all relevant information shall not be unduly restricted by any person or agency. When the guardian ad litem seeks contact with a party who is represented by an attorney, the guardian ad litem shall notify the attorney in advance of such contact. The guardian ad litem's contact with the represented party shall be as permitted by the party's attorney, unless otherwise ordered by the court.

The GAL should always conduct separate interviews with each party. During those initial interviews, the GAL should not allow any other person (parties friends, family, etc.) to be present. Prior to interviewing the parties, the GAL should advise any attorney representing that party that an interview will be conducted and give that attorney an opportunity to be present.

Regarding that issue, whenever possible, the GAL should obtain stipulation from counsel prior to the start of any investigation that the GAL may interview the parties without prior notice to the parties attorneys. However, in all cases where one party is the subject of a pending criminal action, the GAL should never discuss the facts, circumstances and allegations surrounding that action with the party without their attorney present.

The GAL investigation should take place in the office of the GAL whenever possible. To avoid any question of fairness, the GAL should conduct the initial interviews of each party in the same location. It is not recommended that the GAL conduct an interview in a public or informal setting, such as a restaurant. The GAL investigation is a professional matter and should be handled professionally at all times.

During the interview, the GAL should ask any questions that have arisen after reviewing the court file and the questionnaire completed by that party. The GAL should not share the questionnaire of the other party with the party being interviewed. The questions asked by the GAL should be limited to those issues relevant to the scope of the GAL's appointment.

It is recommended that the GAL take notes during the interview. All notes taken should be maintained as part of the GAL's file.

Regarding further discussions of interviewing parties please see Chapter(s) on Interviewing.

C. INTERVIEWING CHILDREN/OBSERVING CHILDREN

As part of the investigation, the GAL may also interview the children of the parties. See Chapter on Interviewing.

Outside of direct interviews with the children, the GAL investigation will also present opportunities for the GAL to personally observe the children such as during home visits in each parties home or when the GAL views an exchange of the children between the parents. In such situations, the GAL should take careful notes of the GAL's observations of such issues as the children's interaction with each parent, the children's interactions with siblings and other significant persons in their lives, the children's activities while in the home, etc. The GAL should also note any comments made by the children during such observations that are relevant to the investigation.

D. GATHERING INFORMATION FROM COLLATERAL SOURCES

As part of the GAL investigation, the GAL may seek information from collateral sources. What collateral sources may be contacted vary from case to case. In seeking information from collateral sources, the GAL must always remember that the role of the GAL is to gather information, not provide information.

Superior Court Guardian ad Litem Rule 2(1)(n) Maintain privacy of parties. As an officer of the court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall maintain the confidential nature of identifiers or addresses where there are allegations of domestic violence or risk to a party's or child's safety. The guardian ad litem may recommend that the court seal the report or a portion of the report of the guardian ad litem to preserve the privacy, confidentiality, or safety of the parties or the person for whom the guardian ad litem was appointed. The court may, upon application, and under such conditions as may be necessary to protect the witnesses from potential harm, order disclosure or discovery that addresses the need to challenge the truth of the information received from the confidential source.

Collateral sources will often request information from the GAL. Absent a court order, a GAL cannot provide information regarding the investigation to collateral sources. When requested, the GAL can provide a copy of the Order Appointing Guardian ad Litem.

Superior Court Guardian ad Litem Rule 4(1)(f) Access to records. Except as limited by law or unless good cause is shown to the court, upon receiving a copy of the order appointing a guardian ad litem, any person or agency, including but not limited to any hospital, school, child care provider, organization, department of social and health services, doctor, health care provider, mental health provider, chemical health program, psychologist, psychiatrist, or law enforcement agency, shall permit a guardian ad litem to inspect and copy any and all records and

interview personnel relating to the proceeding for which a guardian ad litem is appointed.

Beyond family members and friends, there are some agencies that are contacted more frequently as part of GAL investigations. Those include:

1. Law Enforcement;
2. Department of Corrections;
3. City, County, State and Federal Courts;
4. Child Protective Services;
5. Daycare providers
6. Schools;
7. Healthcare providers;
8. Treatment providers and centers;
9. Cultural Resources
10. Other third parties

Law Enforcement

In almost every case (again depending upon the scope of the GAL appointment), it is important to review police records and associated reports. In order to request such records, the GAL should send a letter and request for the record to the police records department along with a copy of the Order Appointing Guardian ad Litem.

At a minimum, requests for records are generally sent to the county in which each party lives and works, as well as any counties or states either party has lived or worked in during the last five years. Addresses for police records in different states and counties are easily found on the internet. Additionally, requests for records should also be submitted to any county or state identified by either party as a county or state in which police records will be found concerning the parties or individuals at issue.

Generally, law enforcement will send the GAL a listing of arrests (RMS), which are often in the code used by the particular department, on each person requested. This usually includes the date of arrest, reason for arrest, incident/report number, and the incident disposition (guilty, not guilty, not charged, not adjudicated, etc.)

From the RMS list provided, the GAL can request copies of the individual police incident reports identified. Depending on the number of reports identified, the GAL should usually request all of the reports. At a minimum, the GAL should request all reports regarding drug or alcohol offenses, all reports regarding crimes of violence, all reports regarding crimes against children and all reports regarding crimes charges as felonies. When the incident reports are received, the reports may be partially redacted, (blacked out). Generally, law enforcement redacts only that information required by statute such as names and birth-dates. In reviewing all police reports, it is important for the GAL to note that the reports are the written statements of the particular law enforcement officer

and may not have been proven in court. The GAL should take steps to investigate the outcome of the charges that stemmed from the police report and whether a party agreed, as part of the criminal proceeding, that the law enforcement officers report was accurate.

When reading the reports, the GAL should take specific care to note any reports that reference the children that are the subject of the GAL investigation. For example, were the children present at the time of a drug-related arrest, a domestic violence incident, etc.

As part of the investigation, the GAL may want to request information regarding the number of calls law enforcement has made to a particular address. For example, if there are allegations of drug activity, the GAL will want to find out if law enforcement has a history of drug related calls to the parties address. If there is an allegation of a history of domestic violence, the GAL will want to find out if there has a history of law enforcement calls to the address for that reason. For such information, the GAL can request a Calls for Service for an address. This requires a GAL Order and for one of the parties to be linked to a particular address. The GAL will get a listing of all of the calls to an address, with dates, whether a report was written or not.

The Washington State Patrol is another resource for law enforcement reports. Sometimes on a listing of arrests, WSP will be noted as the agency having possession of the written report. If this is the case, contact the WSP with the date of arrest and report number, and a report will be provided. A copy of the GAL Order is necessary for this report.

Another avenue to get records from the WSP is via the WATCH system on the internet. With a person's name and birthdate, via the WSP website, the GAL can request criminal conviction history with related information about incarceration data. A release or a GAL Order is not needed to request this information. In that respect, the WATCH system is an additional avenue to investigate the backgrounds of other collateral individuals such as one parties significant other.

Additional information may also be available to the GAL from local COPS programs and volunteer precincts. With a release, volunteers will often talk with GALs about various calls and problems with homes in their area. Often this is information about suspected "drug houses" based on neighbor complaints or police calls.

Information regarding registered sex offenders can also be found on the internet. In Washington sex offenders by county can be found on at www.wasapc.org on the sex offender links. Additionally, most other states have a similar list that can be used for this information.

DOC Records

If a party has been incarcerated, often a GAL can access part of the their DOC records by sending a request to the prison along with a GAL Order. The records may include some criminal history, infraction data, and courses or programs the person has completed while

incarcerated. If a party is currently incarcerated or recently released, the GAL may be able to talk to the parties' counselor at the facility.

If a party is on probation or community custody, a GAL can speak with that party's PO or CCO. Generally this person can tell the GAL with what conditions the party must currently comply and whether the party is in compliance with those conditions.

Other Court records

There are other records available for the GAL in the courthouse and online. Washington Courts Online (www.courts.wa.gov/) gives a history of any filing in a Washington court. Using the first and last name of the party, the GAL can obtain a listing, by county, of each case by name and case number. This is invaluable when looking for information regarding significant others or persons related to the case but for whom the GAL has no release.

Other court files can hold valuable information for the guardian ad litem as well. These include criminal files and civil files, such as earlier dissolutions, for parties and other involved persons. Most of the time court files are open to the public and may be located by case number or the persons name.

There is also the possibility of juvenile court records in the form of criminal records, truancy records, or a dependency. A GAL will usually need a court order specifically allowing a review of these records.

Child Protective Services.

CPS records can contain much information including information on calls to CPS regarding a family, information resulting from full investigations of a family and information relating to active or closed dependency actions. This information requires a request for information along with a GAL order. In order to obtain the most comprehensive reports, the names of the parties and the children must be included. The records should be requested from the county in which the family now lives as well as any counties or states where the families have lived for the last several years.

Following a request for information, a GAL will generally receive one of several reports from CPS:

1. A statement that there are no records in the statewide system regarding the family or that the records have been destroyed;
2. A statement that the letters have been sent to a retention center and will be forwarded at a later date, generally 30-60 days;
3. A statement that the matter is open and assigned to a caseworker; or
4. A copy of the CPS file.

If a case is open to a caseworker, generally the GAL will contact that caseworker for information on the case and copies of the file. A GAL should interview the caseworker regarding the case, whenever possible. If there is a dependency or has been a dependency, a GAL can seek to review the dependency file via a court order, as discussed above.

When reviewing CPS records, there will be a number of redactions, sometimes which include an entire redacted page. These redactions include referent names, and information outside of what a GAL can get with the Order Appointing Guardian ad Litem. CPS records contain a number of things, usually beginning with a referral to CPS, where information is taken from the referent and assigned a risk tag. Some referrals are noted as information only, while some are investigated immediately. The records may include notes of interviews, phone calls, and interviews with interested persons. The child may be interviewed and a transcript may be included. Following a referral, there is generally a summary page, which lists whether the allegations are “founded” “unfounded” or “inconclusive.”

Schools

The GAL should always contact the children’s schools. Generally it is optimal to talk with a child’s teacher and perhaps a school counselor or administrator if they have been involved with the child.

Once the individual school is identified, the GAL should send a copy of the GAL order and a letter requesting information regarding the child, to the principal of the school. Some schools will then allow the GAL to conduct interviews via telephone while others request that the GAL come to the school in person. Teachers and staff may be interviewed individually or they may meet with the GAL as a group. In higher grade levels, when there are multiple teachers, it is often better to schedule a conference with all teachers and staff at one time.

In addition to an interview, a GAL will generally review records from a school. These include grade/progress reports and attendance records as far back as possible. These can often form a baseline for how a child is doing in school both when the family was intact and at present. A GAL is also interested in any disciplinary or behavior records for each child as far back as possible for the same reason. In addition, schools also have various testing for children, including the WASL records, IEP testing, ADHD questionnaires, and others. A GAL should always ask if there is testing data available. Lastly, a GAL should ask if there are any clubs or activities, through the school, in which the children are participating. Especially in at the grade school level there are a number of divorce groups that children participate in which can be a wealth of information.

In addition to the actual school, a GAL should find out if a child participates in a school before or after school program. If so, the staff should be interviewed and records should be reviewed.

Daycare Providers

A GAL should speak with any daycare provider and review any relevant records. This would include a regular daycare center as well as an occasional babysitter. Relevant records to review might include sign in/sign out sheets, disciplinary notices, and accident reports.

Children's Medical Professionals

Regarding a child's primary physician, a GAL generally does not need all of the information contained in a child's medical chart. Unless there is a specific allegation, such as medical neglect, talking with a physician or nurse is often a better avenue. It is often less expensive for the parties and the GAL gets more useful information.

If records are sought, it is prudent to ask if the records are handwritten or typed and what the chart contains, so as to pare down what is requested. When requesting and reviewing charts, it is often to address issues relating to allegations of medical neglect, what a parent said to a physician during office visits, which parent brought the child to exams, whether or not there was follow through with medical advice, or exactly what maladies the child has suffered from.

In addition to the primary physician, there child may have also seen a specialist, been taken to an Emergency Room or admitted to a hospital. The GAL should also take steps to request those records.

Health care providers often require payment for records and interviews. In the event that payment is required that is not covered by the fees previously paid to the GAL, a letter should be sent to the parties and/or the attorneys requesting payment. In the event payment is not forthcoming and the GAL believes the records are important to the investigation, the GAL should petition the court for instructions on how to proceed.

Further for children over the age of twelve, RCW 26.09.220(2), the child will need to sign the Order Appointing Guardian ad Litem consenting to the release of records or a separate release provided by the healthcare provider.

Children's Mental Health Professionals

There are several types of children's mental health professionals that a GAL might come into contact with. First, a child may be seeing a counselor for therapy, either individual or as part of family therapy. In that case, a GAL will always want to speak to the therapist about the child, relevant issues, and their progress. Depending on what records are available, a GAL will also want to get therapy records, as these often include intakes, summaries, testing, impressions, what has been discussed, and any "no shows" or cancellations.

Second, the child may have seen a mental health professional for testing purposes, such as psychological testing, ADHD testing, occupational/physical or educational testing. In these cases, it is advisable to request the records and then speak with the tester while reviewing the records.

Third, it is possible that a child has been in a psychiatric facility or triage for mental health testing or problems. Again, it is often advisable to request records but attempt to pare them down. In situations like this there is often psychological testing which is important to review.

Further for children over the age of twelve, RCW 26.09.220(2), the child will need to sign the Order Appointing Guardian ad Litem consenting to the release of records or a separate release provided by the healthcare provider.

Parent's Physician or Mental Health Provider

Generally, a GAL does not review a parties' medical or psychological file without a specific purpose. These records cannot be reviewed by a GAL with just a GAL Order, as that does not provide releases for a parents' records. As such, in order to review these, a separate release by a parent is needed. Providers might include a parties' primary physician, specialist, hospital records, psychiatric/triage records, therapist/psychologist records, and pharmacy records. In most cases, the GAL will not ask to review the routine records of the parties primary physician.

There are various reasons that a GAL might request to review a parties' records. Some of the most common are when there are issues of substance abuse, drug seeking behavior, or mental health problems.

Other Medical Providers

In addition to what is stated above, there are other medical providers that may have relevant information to the case, both in regard to the child and the parties. These include dentists, chiropractors, physical therapists, occupational therapists, and paramedics/ambulance. Generally these are not routine contacts for a GAL, rather they are possible sources of information in some specific cases.

Drug and Alcohol Testing and Treatment

If a party has undergone drug or alcohol evaluation, testing or treatment in the recent past, the GAL will want to review all records and evaluations. It is important for the GAL to review not only the final report provided as part of the evaluation process but also the information provided by the party to the evaluator. Many of the evaluations are based solely on the self-reported information of the party. If the party is not truthful when providing information to the evaluator, the conclusions reached may be affected. The GAL should also review any testing, such as a MAST or SASSI, which contributed to the evaluation.

Other Third Parties

Every case is individual and presents different questions. Depending on the information needed, there are a myriad of sources other than has been presented above. Generally these are not relied upon in every case, but can be useful when necessary. These sources might include talking with employers, landlords, and neighbors. Perhaps reviewing any newspaper articles that apply to your case and “googling” the names of the parties. In terms of older children, they might have a listing in “my space” or similar sites might be useful.

Cultural Resources

In some instances it may be appropriate for the GAL to seek information from cultural resources specific to the cultural heritage one or both parties. For example, in families with Native American ancestry, the GAL may decide to seek information from the particular tribe.

Significant Others

Significant Others are generally married to or in a relationship with one of the parties. Often they live together. If a significant other resides in the home, spends significant time with the child, or is in more than a casual dating relationship with a party, the GAL should interview and request information regarding that person.

If a significant other signs a release, a GAL can get conviction data and CPS information regarding that person. In addition to that, even without a release, a GAL can get information from Washington Courts Online regarding past court filings, have a conviction check via the WSP, review the WSP sex offender website, and review relevant court files, perhaps from a previous divorce.

Should a significant other refuse to sign a release after being requested to do so, the GAL should consider recommending that the individual have no contact with the children until a release is provided.

IV. CONDUCTING VISITS

In each case, a GAL usually visits each of the parties’ homes when the children are present. The GAL may conduct announced visits and unannounced visits. Generally, unannounced visits are done when there is a specific purpose, such as checking to see if a visit is supervised, if a person is present who should not be, or the condition of the home at the time of the visit. In most cases, the GAL will not conduct unannounced visits.

At a home visit , the GAL tours the home, especially the child’s room, and notes any issues. The GAL may review whether the home condition is sanitary, whether it is safe for the age of the children, whether there are appropriate furnishings, toys and clothing for the children. A home visit is also an opportunity to meet the child in their own home and to observe them in that environment.

A GAL needs to be careful to have home visits of approximately the same length with each parent and should, whenever possible, conduct the visits at approximately the same time of day. The GAL should always avoid such activities as eating dinner, watching a movie, etc. The home visit should be treated as a professional matter at all times In addition, a GAL should not discuss the case at all during the home visit or allow either parent to do so.

Following a home visit, it is helpful to write a brief synopsis of the home visit to be kept in the file. This would include the GAL’s impressions or anything else of importance which would later be used for the GAL report.

Other “Visits”

There are other situations in which the GAL may have contact with the parties on an unannounced basis. For instance, a GAL may, unbeknownst to the parties, watch an exchange of the child if it is done in a public place or watch the parents interact at a child’s baseball game in a public park.

V. REQUESTING FURTHER INFORMATION

Superior Court Guardian ad Litem Rule 2(1)(h) Make requests for evaluations to court. A guardian ad litem shall not require any evaluations or tests of the parties except as authorized by statute or court order issued following notice and opportunity to be heard.

Depending on the facts of the case, the GAL may request that the parties do things, such as subject themselves to psychological testing, as part of the GAL investigation. This may be done by agreement or may be ordered by the court. Although the GAL may request such additional information, the expense to the parties may be prohibitive.

VI. MAINTAINING CONFIDENTIALITY OF REPORTS AS REQUIRED, INCLUDING THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

As discussed above, the GAL's role is to gather information through an appropriate investigation. In gathering that information, the GAL is also required to maintain the information in a confidential manner and is prohibited from inappropriately disclosing that information. For the integrity of the investigation and the protection of the GAL, in almost all circumstances, the GAL will want to request an order allowing the release of information before releasing information to the parties, counsel or third parties, outside of the GAL report. The GAL should further request that any person receiving the information pursuant to the court's order should be restrained from sharing that information with anyone else.

The GAL report is also considered a confidential document and the full report should always be filed in the confidential portion of the court file. Any summary reports filed in the public access portion of the court file should not contain any information of a confidential nature.

HIPPA

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, was enacted on August 21, 1996. The purpose of the act is to maintain the privacy and security of health information. HIPPA sets standards for the exchange and security of healthcare information.

RCW 70.02 Medical Records Health Care Information Access and Disclosure contains the following findings at RCW 70.02.005:

(1) Health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy, health care, or other interests. . . .

(4) Persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers.

In dealing with medical records in particular, it is imperative that the GAL maintain the confidentiality of those records in compliance with all state and federal regulations. The GAL should not discuss such records or release information from such records to any party, attorney or third party without a court order. As discussed above, the GAL should also require that the court order prevent the persons receiving the information from further disseminating that information.

In order to ease access to such information, the GAL should also request that the parties, and children over the age of 12, sign the release used by their individual healthcare provider and direct that the GAL may have access to the records. In many circumstances, healthcare providers will not accept the Order Appointing Guardian ad Litem, even with the parties and children's signatures, as a sufficient release.

VII. MAINTAINING FAIRNESS AND THE APPEARANCE OF FAIRNESS

Superior Court Guardian ad Litem Rule 2 (b) Maintain independence. A guardian ad litem shall maintain independence, objectivity and the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom.

Superior Court Guardian ad Litem Rule 2 ©) Professional conduct. A guardian ad litem shall maintain the ethical principles of the rules of conduct set forth in these rules and is subject to discipline under local rules established pursuant to rule 7 for violation.

Superior Court Guardian ad Litem Rule 2(e) Avoid conflicts of interests. A guardian ad litem shall avoid any actual or apparent conflict of interest or impropriety in the performance of guardian ad litem responsibilities. A guardian ad litem shall avoid self-dealing or association from which a guardian ad litem might directly or indirectly benefit, other than for compensation as guardian ad litem. A guardian ad litem shall take action immediately to resolve any potential conflict or impropriety. A guardian ad litem shall advise the court and the parties of action taken, resign from the matter, or seek court direction as may be necessary to resolve the conflict or impropriety. A guardian ad litem shall not accept or maintain appointment if the performance of the duties of guardian ad litem may be materially limited by the guardian ad litem's

responsibilities to another client or a third person, or by the guardian ad litem's own interests.

Superior Court Guardian ad Litem Rule 2(f) Treat parties with respect. A guardian ad litem is an officer of the court and as such shall at all times treat the parties with respect, courtesy, fairness and good faith.

It is crucial that the GAL maintain fairness and the appearance of fairness in every case. In order to do this, the GAL must remain unbiased in all areas, including their investigation, communication and reporting.

A. FAIRNESS IN INVESTIGATION

In order to be fair and appear fair in an investigation, the GAL must treat both parties in the same fashion. To the extent possible, the GAL investigation of each party should parallel the investigation of the other party. This includes providing both with the same questionnaire at the beginning of the case, interviewing both for about the same amount of time (to the extent possible) and requesting basic information about both parties in the same manner, such as from the police and CPS. The GAL should request the same number of references from each party and, whenever possible, contact the same number of references for each party.

As the investigation progresses, it is normal that the GAL may have to spend more time investigating issues on one side rather than the other. For instance, one parent may have a large number of police or CPS records that must be reviewed while the other has none. In such circumstances, the GAL should be prepared to clearly articulate why the additional time was needed on one side rather than the other.

The GAL may also run into a scenario in which one party tries to communicate with the GAL more frequently than the other. In this situation, the GAL should give both parties parameters regarding routine, non-emergency contacts, such as an opportunity to provide a weekly update, so that both parties feel they are being heard but one party is not allowed to dominate the

There may be cases in which a party does not participate at all or only marginally participates. For instance, a party might not complete a questionnaire or give names of references despite repeated requests. In these cases, the GAL should contact the party, in writing, to explain why it is important for the GAL to have this information and again ask for the missing information. Depending on to what extent information is not provided, the GAL may choose to continue with the investigation as normal to the best of the GAL's ability, noting the absence of information in the report. If the parties are represented by counsel, the GAL should alert counsel, again in writing, of the lack of information. If the lack of information is significant, such as a party refusing to participate at all, the GAL should ask the court, via a Petition for Instructions, how to proceed.

In order for an investigation to be fair, a GAL must separate the concept of the payment of their fees from their investigation and functioning as the GAL. If a GAL begins an investigation, they must begin it on both sides, without consideration of whether one party has or has not paid their fee. This holds true throughout the case, as a GAL must remain unbiased no matter which party has paid what amount. The issue of fees should be a completely separate issue to be taken up with the court directly.

B. FAIRNESS IN COMMUNICATION

The GAL should be fair in their communication to both parties and to counsel. If a Any time an attorney or a party attempts to discuss the case with the GAL, other than a party providing information for the investigation, both attorneys or parties should be given an opportunity to be present. If that is not possible, the communication should be shared with the other party or attorney immediately thereafter. Any communications regarding the case initiated by the GAL should be treated in the same manner: an attempt should be made to involve both parties or attorneys at the same time. If not possible, the GAL should provide the same information to the other side immediately thereafter.

The GAL should not have discussions with the case with any judicial officers involved in the case outside of the presence of the attorneys or parties. Such ex parte communication is a violation of Superior Court Guardian ad Litem Rule 2(m).

The GAL needs to be professional in their conversations with the parties and all other persons involved in the investigation.. A GAL investigation is a professional matter and should be treated as such. The GAL should never attempt to introduce personal discussions, such as their own personal experiences, family life, etc., into conversations with the parties. The GAL should never discuss the opposing party with the other party unless it is to ask specific questions as part of the investigation. Above all, the GAL should remain calm and courteous in their communications, despite hostility from the parties or their attorneys.

The GAL should avoid appearing “friendly” with one of the parties. This would include things such as giving out a home or cellular phone number when the other party does not have it, attending social events with one party, giving gifts to one of the parties, etc. Even an act such as providing a necessity (such as food or diapers) to a party that lacks such a necessity can create a perception in the other party that the GAL is biased. It is especially important not to appear “friendly” with one of the parties when both parties are present, such as in the courthouse. In these situations, it is often best to sit or stand away from both parties and counsel.

C. FAIRNESS IN REPORTING

The GAL should be unbiased in their reporting of information, both orally and in their report. This means reporting everything regarding both parties, both the good and the bad. Being unbiased and fair does not mean the GAL should not form opinions and conclusions, as that is part of the GAL’s job, rather it means that the GAL needs to report all of their information, whether it supports their conclusion and recommendation or not.

VII. FOLLOWING LEADS WHILE AVOIDING DISTRACTIONS

From the beginning of the case, the GAL should have a picture of the steps that need to be done in order to complete their investigation. Throughout the investigation, the GAL should keep in mind the scope of the appointment and any subsequent directions given the court. However, by their very nature, investigations have a way of drawing the GAL in various directions as new, and sometimes very unexpected, information arises.

Petitioning for Instructions

Superior Court Guardian ad Litem Rule 2(1)(j) Limit duties to those ordered by court. A guardian ad litem shall comply with the court's instructions as set out in the order appointing a guardian ad litem, and shall not provide or require services beyond the scope of the court's instruction unless by motion and on adequate notice to the parties, a guardian ad litem obtains additional instruction, clarification or expansion of the scope of such appointment.

A GAL needs to remain within the scope set out in the Order Appointing GAL. However, should information arise that is outside that scope but that the GAL believes needs to be investigated or the investigation may be taking longer than anticipated, the GAL may bring a Petition for Instructions asking the court how to proceed. (May need to meld this paragraph and the next one somehow.)

A timely GAL investigation is crucial to the resolution of any contested matter. However, there are circumstances that will arise beyond the control of the GAL that will effect the timeliness of the investigation. Additionally, during the course of the investigation, issues and questions will arise that the GAL must answer before completing the investigation. In such circumstances, the GAL should timely petition the court for instructions on how to proceed. By doing so, the GAL can stay within the scope of their appointment while still doing a thorough investigation.

IX. UNDERSTANDING, SUMMARIZING, AND INCORPORATING FINDINGS FROM EXPERT REPORTS, INCLUDING DNA EVIDENCE

In the course of an investigation, the GAL will review a significant number of reports from professionals, including substance abuse reports, medical reports, psychological reports, and various educational reports.

When a report is received, the GAL should carefully review it to make sure that they understand all of it. They should make careful note of the date the report was done, who wrote the report, what data was reviewed in order to formulate the report, when the data was collected and any conclusions made. Many reports have various codes in them which will need to be deciphered.

When using reports, in many cases it is advisable to speak with the author of the report rather than simply relying on the report itself. This is especially true if the GAL is unfamiliar with that type of report or the report contains unfamiliar language or data. In addition, it is often necessary to speak with the writer of the report regarding the data that was used. This is especially true if the report is based on self - report, as it would be important to know what questions were asked and what a party reported to the writer in order to gauge how accurate the report is. Lastly, speaking with the writer can often illicit additional information not contained in the report such as impressions of a party or statements made that were not included.

The GAL will summarize and incorporate reports into their oral and written reports. Generally the entire report will not be put in the report verbatim, but it will state that a report was written and was reviewed in its entirety the GAL, and pertinent parts, often which are the summary and/or conclusions, are put into the GAL report.

In an investigation it may sometimes be necessary to request and review DNA information. Due to changes in Washington law regarding establishing paternity, the use of DNA evidence has decreased in family law matters. Whenever the GAL is asked to review a DNA report, the GAL should always contact the testing facility to discuss how the DNA samples were obtained and how the identities of the involved individuals were verified. The GAL should also request that the facility provide verification regarding the chain of custody of the samples provided. Most importantly, the GAL should make sure that the GAL has a complete understanding of all terms within the report.

X. WORKING WITH OTHER PROFESSIONALS

It is rare for a GAL to be investigating a case in which there are no other professionals involved with the family. Invariably, persons such as teachers, daycare providers and counselors are involved with the family on a day to day basis. The GAL will have contact with these individuals throughout the investigation and may have multiple contacts as through updates and additional inquiries. In addition to initiating contact with these professions, the GAL should also provide the GAL's contact information so that if something happens that should be brought to the GAL's attention, the GAL can easily be reached.

Even though there are professionals working with the family, the GAL still must keep all information confidential in regard to their investigation. However, circumstances may arise in which the GAL believes that it is necessary to share information with a professional.

In that event, the GAL should obtain a court order, whether by agreement or hearing, before releasing the information

XI. ADDITIONAL RIGHTS AND POWERS

Superior Court Guardian ad Litem Rule 4(1)(h) Additional rights and powers under RCW 13.34 or RCW 26.26. In every case in which a guardian ad litem is a party to the case

pursuant to RCW 13.34 or RCW 26.26, a guardian ad litem shall have the rights and powers set forth below. These rights and powers are subject to all applicable statutes and court rules.

- (1) File documents and respond to discovery. A guardian ad litem shall have the right to file pleadings, motions, notices memoranda, briefs, and other documents, and may, subject to the trial court's discretion engage in and respond to discovery.
- (2) Note motions and request hearings. A guardian ad litem shall have the right to note motions and request hearings before the court as appropriate to the best interests of the person(s) for whom a guardian ad litem was appointed.
- (3) Introduce exhibits and examine witnesses. A guardian ad litem shall have the right, subject to the trial court's discretion, to introduce exhibits, subpoena witnesses, and conduct direct and cross examination of witnesses.
- (4) Oral argument and submission of reports. A guardian ad litem shall have the right to fully participate in the proceedings through submission of written reports, and, may with the consent of the trial court present oral argument.

CASELAW EXAMPLE

The investigation completed by any guardian ad litem is subject to review not only at the trial level but also at the appellate level. Failure to comply with GALRs and to conduct an appropriate investigation may result not only in discipline of the GAL but also in the reversal or remand of a trial court that relied on the GALs recommendations. The following case is one such example.

Bobbitt v. Bobbitt, 2006 App. Slip - 31997-7, Division II (Citation pending).
www.legalwa.org

Factual History

The mother (Esser) and father (Bobbitt) shared joint residential time with their 11-year-old son (K.B.). The son resided with the mother from Tuesday through Saturday each week and with the father from Saturday to Tuesday each week.

In February 2003, the mother moved to modify the Parenting Plan alleging 1) that the son had been integrated into her family with the father's consent, in substantial deviation from current Parenting Plan; 2) that the current Parenting Plan was detrimental to the son's physical, mental and emotional health; and 3) that the advantages to modifying the Parenting Plan outweighed any harm that may result from modifying the Parenting Plan.

The court appointed the GAL on March 20, 2003. Pursuant to the fee arrangements, the parents were required to equally split the GALs fees, which were set as follows: \$150 per hour for normal working hours, \$175 per hour for after hours; \$50 per hour for the GAL's staff and \$25 for "file set up costs". The local rule in the county in which the order was issued set \$75 per hour as the presumptive hourly rate for GALs. The parties were required to split the initial retainer of \$1,500.00.

The father delayed in scheduling an appointment with the GAL, in providing any written materials to the GAL and delayed paying his share of the GALs retainer due to financial difficulties. On August 7, 2003, the father borrowed funds and paid his share of the retainer. The following month, the father requested an appointment with the GAL.

Initially, the father was scheduled to meet with the GAL in October 2003. The GAL subsequently canceled that appointment, stating that she had to check with the attorneys in the case regarding its status. The GAL stated that a message was left for the father regarding the cancellation. The father appeared for the appointment but the GAL refused to meet with him, stating that the appointment time had already been filled. The GAL filed a declaration in November 2003 setting forth the above and stating that she had still not met with the father and that neither the father, nor his attorney, had signed the “contract requested based on the stipulated order appointing” the GAL. At trial, the GAL testified that she refused to see the father because she had no contact with anyone regarding the case for five months and needed to check with counsel to determine what more she should do, if anything.

Although the GAL conducted 18 interviews with the mother, the mother’s witnesses and other individuals involved with the child between April 29, 2003 and February 2004, the GAL refused to interview the father or his witnesses. On February 18, 2004, the father moved to remove the GAL, alleging that her failure to investigate his side of the case violated the order appointing her as well as Superior Court Guardian ad Litem Rule 2. The motion was denied and fees were assessed against the father.

The modification action proceeded to trial on May 25, 2004. The GAL testified and her report was admitted into evidence over the father’s objection. The trial court found that the child had been integrated into the mother’s home with the father’s consent and that the existing parenting plan was detrimental. The court adopted the GAL’s findings and incorporated her report by reference into the final order. The mother was awarded primary residential placement of the child and the father’s visitation was limited to supervised visits. Back child support and attorneys fees were also assessed against the father.

On November 22, 2004, the GAL filed a motion requesting the unpaid GAL fees from the father. The court entered a judgment against the father in favor of the GAL even though the GAL refused to interview him or his witnesses. The father Bobbitt appealed, arguing that “the trial court abused its discretion in admitting the GAL's report and testimony and by denying his motion to remove the GAL and to appoint a replacement GAL. “

APPELLATE COURT ANALYSIS

Standards of Review

The appellate court ruled that the decision whether or not to remove a guardian ad litem from an action is within the discretion of the trial judge and will not be reversed absent a showing by the appealing party (in this case the father) that the trial court abused its discretion.

Likewise, the appellate court ruled that the admission of evidence is also within the discretion of the trial court and will not be reversed absent a showing the court abused its discretion.

Abuse occurs when the trial court's discretion is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.

Court's Analysis Re: Duties of the Guardian ad Litem

The appellate court analysis on this issue is set forth below, verbatim:

Bobbitt filed a motion to remove the GAL in February 2004. The court denied the motion and did not require that the GAL meet with Bobbitt or his references until he paid the GAL's fees. CP at 524. The court ordered the GAL to observe supervised visitation between Bobbitt and K.B. CP 524. An interview with the GAL was left to the GAL's discretion. But the judge advised that the decision regarding the parenting plan for K.B. would be based on K.B.'s best interests, not on the GAL's report. Ultimately, a different judge heard the trial, admitted the report and incorporated its recommendations into the final ruling.

Bobbitt argues that there were four reasons why the first judge should have removed the GAL and appointed a new one: The GAL (1) failed to report the child's expressed preferences regarding the parenting plan as required by RCW 26.12.175(1)(b) and the order appointing her; (2) did not represent the child's best interests when she refused to interview Bobbitt and his identified collateral contacts; (3) did not maintain independence, objectivity, impartiality and the appearance of fairness; and (4) gave advice to Esser. Bobbitt relies on the GALR, which define the role and manner of performance for GALs, to show that the GAL did not meet the expected standards of impartiality during her investigation.

It has long been a concern of the legislature that GALs, who are appointed in family law matters to investigate and report to superior courts about the best interests of the children, do their important work fairly and impartially. Following public outcry about perceived unfair and improper practices involving GALs, the legislature adopted RCW 26.12.175 to govern the interactions of courts and GALs and our Supreme Court adopted the GALR. These measures are intended to assure that the welfare of the children whose parents are involved in litigation concerning them remains the focus of any investigation and report, and that acrimony and accusations made by the parties are not taken up by an investigator whose only job is to report to the court after an impartial review of the parties and issues.

To that end, GALR 2 articulates the general responsibilities of GALs. As relevant here, it states:

[I]n every case in which a guardian ad litem is appointed, the guardian ad litem shall perform the responsibilities set forth below[:] - . (b) Maintain independence. A guardian ad litem shall maintain independence, objectivity

and the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom. - . (f) Treat parties with respect. A guardian ad litem is an officer of the court and as such shall at all times treat the parties with respect, courtesy, fairness and good faith. (g) Become informed about case. A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. A guardian ad litem shall examine material information and sources of information, taking into account the positions of the parties. - (o) Perform duties in a timely manner. A guardian ad litem shall perform responsibilities in a prompt and timely manner, and, if necessary, request timely court reviews and judicial intervention in writing with notice to parties or affected agencies.

GALR 2 (emphasis added).

The evidence shows that Esser's attorney wrote a letter to the GAL asking her to conceal information from Bobbitt about an upcoming motion. The GAL's failure to share this information with Bobbitt violates the appearance of fairness and she failed to treat Bobbitt with the respect due him as K.B.'s interested parent. GALR 2(b), (f). In addition, the GAL refused to meet with Bobbitt or to interview his references despite continuing the investigation and contact with other witnesses and despite knowing that he wanted to engage in the investigatory process well before trial. The GAL continually focused on payment of her bill rather than an investigation that would allow her to hear both sides of the story about K.B.'s parenting issues. In a letter to Bobbitt in December 2003, she states that she is not "clear on why it is [her] responsibility to call [Bobbitt] to set up an interview." CP at 194. The GAL also wrote that Bobbitt must "bring [his] bill current prior to the interview." CP at 194. This and subsequent letters recited the amount due from Bobbitt for his half of the investigation despite her refusal to interview him or his witnesses. She refused to be deposed by Bobbitt's counsel until Bobbitt paid an outstanding fee of \$1,200 plus \$450 for a deposition. According to the GAL's letters, the amount Bobbitt owed increased from a little over \$600 to over \$1,200 between January 16 and February 4, 2004.

The GAL's refusal to interview Bobbitt violated GALR 2(b), (f), (g), and (o), resulting in Bobbitt's well-founded concerns which he brought to the trial court's attention in his February, 2004 motion. But when the trial court learned of the nature of Ferguson's investigation it reminded the parties that its decision would not depend on the GAL's report but on its considered opinion of what was in K.B.'s best interests after hearing the evidence at trial. The court dismissed Bobbitt's complaints as typical dissatisfaction with a GAL who disagrees with one parent's position. The trial court also imposed CR 11 sanctions of \$750 against Bobbitt for bringing the motion.

The trial court did not err in refusing to remove the GAL, but in failing to order the GAL to conduct a proper investigation according to the GALRs.⁹ Furthermore, had the trial court directed the GAL to comply with GALR 2 to contact all parties and maintain an appearance of fairness, the appearance of partiality toward Esser and Bobbitt's concerns

may have been avoided. But we do not hold that the trial court abused its discretion in refusing to remove the GAL because the court knew that the GAL still had adequate time to contact Bobbitt and his collateral contacts before trial and also knew that the investigation had involved impartial third parties to date.

Following the trial, the court agreed with Bobbitt that "the guardian ad litem probably could have done some things better." RP (6/1/04) at 581-82. The trial court specifically noted that (1) "it would have been important for the guardian ad litem to talk to [K.B.] about his preferences and his feelings regarding residence and where he would like to stay"; (2) "it would have been important for the guardian ad litem to talk to Mr. Bobbitt"; (3) "it would have been important for the guardian ad litem to get a report from the counselor directly to the judge . . . rather than filter what the counselor had said"; and (4) "it would have been important for the guardian ad litem to have more contact and more recent contact with [K.B.] tha[n] I have in the report." RP at 582. Yet the trial court concluded that the GAL reached the right conclusions about what was in K.B.'s best interests.

Bobbitt relies on *In re Guardianship of Stamm v. Crowley*, 121 Wn. App. 830, 91 P.3d 126 (2004), to challenge "the impact [the GAL's] actions and inactions had on the litigation of the case and the resulting influence she had on the trial court." Appellant's Br. at 19. But Stamm is inapposite. Stamm involved a GAL appointed under chapter 11.88 RCW when children petitioned for guardianship of their father and the case was tried before a jury. Stamm, 121 Wn. App. at 832-34. At trial, the GAL described her role as the "eyes and ears of the court," testified about Stamm's alleged incapacity, and stated that she had found certain witnesses "to be credible." Stamm, 121 Wn. App. at 840. Division One of this court held that the GAL had improperly testified about witness credibility and had improperly aligned herself with the trial court to bolster her assessments, which created a substantial likelihood of affecting the jury's verdicts. Stamm, 121 Wn. App. at 840-41, 844.

In contrast, this case involves a GAL appointed under chapter 26.09 RCW to conduct an investigation in a parenting plan modification proceeding, which is heard without a jury. As noted in Stamm, a significant difference exists between a bench trial and a jury trial in that "there would be no occasion for such a description [of the GAL's role] in a bench trial, for a judge has no need to be told the GAL's role, and it has great capacity to mislead a jury." Stamm, 121 Wn. App. at 841. The court further reasoned, "Judges understand that the GAL presents one source of information among many, that credibility is the province of the judge, and can without difficulty separate and differentiate the evidence they hear." Stamm, 121 Wn. App. at 841.

Here, despite the deficient GAL performance, the totality of the record supports the conclusion that the trial judge independently evaluated the evidence. Both judges who heard Bobbitt's concerns about the GAL's performance articulated their independent assessment of the evidence and their proper focus on K.B.'s best interests.

Thus, we hold that despite the GAL's failure to abide by the rules that require (1) contact with all parties; (2) that all parties be treated with respect; (3) timely performance of a parenting investigation; and (4) independence, objectivity and the appearance of fairness, the trial court's findings of fact support its conclusion that the parenting plan was properly modified to make Esser the primary residential parent. And Bobbitt has failed to challenge any of the trial court's findings of fact, thus they are verities on appeal. *Davis v. Dep't of Labor & Indus.*, 94 Wn.2d 119, 123, 615 P.2d 1279 (1980).

Furthermore, although the trial judge admonished the GAL for not asking K.B. about his residential preferences, K.B. had not personally expressed his parenting plan preferences to the GAL. According to the GAL, K.B. mentioned his parenting plan preferences to a counselor after "[h]e had already been primed by his father. He knew my name. He knew what I was supposed to do. And he said, - I want you to tell her that I want to live with my dad.' That is not exactly what I would call an independent process by the child."10 RP (5/25/04) at 120. The GAL further testified that she does not ask children which parent they want to live with because it puts the child "in the middle of a contested situation like this one." RP at 121.

Accordingly, we hold that the trial court did not abuse its discretion in denying Bobbitt's request to remove Ferguson as the GAL and to appoint a new GAL in February 2004.

GAL Fees And Costs

The father also challenged the award of fees and costs to the GAL. The appellate court analysis on that issue is set forth below, verbatim:

Because Bobbitt did not pay one-half the GAL fees at the close of the custody action, the GAL filed a motion and declaration seeking a judgment against him for the remaining \$4,070.74 of her fees. The court granted the motion. Bobbitt appeals the trial court's award of these fees. Esser11 argues that the trial court had no discretion to refuse to award the fees to the GAL, relying on RCW 26.12.175(1)(d) that states, "[t]he court shall enter an order for costs, fees, and disbursements to cover the costs of the guardian ad litem." We disagree with Esser's limited interpretation of the statute and we grant Bobbitt's request for relief from the judgment.

The trial court retains the discretion to evaluate the fees and costs requested by the GAL and enter an appropriate order. In fact, the order appointing the GAL states that the trial court shall make such an award only after considering the GAL's accounting for the time and costs.

The record contains a copy of the GAL's "Contract to Pay Fees and Costs" signed in December 2003. This agreement sets fees and costs considerably in excess of the amount available to GALs without such an agreement. But the order appointing Ferguson states:

PAYMENT OF FEES AND COSTS

The guardian ad litem fee is \$per panel guidelines per hour up to \$_____ (handwritten interlineation as follows: on agreement based on stipulation) the maximum the guardian ad litem may charge without additional court review

and approval.

The fees and costs of the guardian ad litem paid as follows:

[X] 50% by father and 50% by mother.

....

The total amount awarded shall be at the discretion of the court up to the maximum amount allowed after the guardian ad litem files an itemized statement of time with the court, along with a specific request for fees and a proposed Order.

CP at 9-10 (emphasis added).

It appears that the trial court awarded the GAL's requested fees solely based on her itemized statement of time spent investigating this matter and on the signed agreement. But the order appointing the GAL expressly reserves the trial court's discretion over GAL fees. The trial court heard the entire trial and should have considered the total fees charged and the nature of the work performed, including the GAL's failure to meet with, contact, or interview Bobbitt and his collateral sources before it awarded the fees. In fact, although the court expressly acknowledged the shortcomings of the GAL's work, it did not enter findings of fact and conclusions of law addressing Bobbitt's arguments about the GAL's investigatory shortcomings in its award of fees. Instead, it simply imposed 50 percent of the charged fees and costs on Bobbitt. Given the dispute and the evidence of the GAL's violations of GALR 2 such findings were necessary here. The trial court was not bound by the parties' stipulation to fees and we reverse and remand for hearing on the GAL fees.

CHAPTER 5
INTERVIEWING ADULTS AND CHILDREN
IN FAMILY LAW GAL INVESTIGATIONS

INTERVIEWING ADULTS AND CHILDREN IN FAMILY LAW GAL INVESTIGATIONS

Submitted by Joseph Shaub, JD, LMFT and Karin Ballantyne, MSW

With the many tasks attending an effective investigation (review of court documents, meeting with parties, parent child observations, collateral contacts) perhaps the most critical element is the interview with each parent and the child. It is in the course of this process that the GAL can employ all of their skills - analytical, observation and intuitive - to arrive at a more rounded conclusion about the people whose family lives are being evaluated. Not only is information transmitted by what is said in the interview, but also by what is *not* said and *how* it is said and not said (nonverbal clues). Certain skills in the interview process are second nature for the therapist GAL and may require a bit more conscious attention by the attorney GAL. At the same time, the analytical skills which notice inconsistent responses during a lengthy interview may come more easily to the attorney GAL. A comfortable facility with the stages and approaches to adult and child interviewing will afford the GAL with a rich and useful pallet with which to describe a particular family.

THE ADULT INTERVIEW

The investigation usually is commenced by asking the parents to fill out a detailed questionnaire. This questionnaire can provide a volume of background information that will serve as a helpful platform for the interview.

There is a divergence of thought regarding the composition of the parent interview. Some practitioners recommend that, if at all possible, the parents be interviewed together initially. It is thought that the self censorship or heightened stress and emotionality of this approach is outweighed by the valuable information received through observing the parents' interaction. As there will also be individual meetings, this initial interview as the advantage of economizing time in exploration of various historical facts of the marriage and separation (if it has occurred). It should be noted that, while this approach is recommended by Dianne Skafte in her excellent book, *Child Custody Evaluations - A Practical Guide* it is generally not done in this jurisdiction. Should you have the occasion or interest in conducting a conjoint interview, some of the following comments may be helpful (as they will be equally useful when considering individual meetings with each parent).

Of course, to make this approach worth the effort, one must be reasonably aware of the basics of non-verbal communication and process (vs. substance).

A Note on Non-Verbal Communication: Jay Haley, one of the original theorists in the field of family therapy once said, "You cannot *not* communicate." By this, Haley suggested that virtually everything is communication. We may not know precisely *what* is being communicated but everything is a clue to be explored immediately or at a later time. Parents who are participating in an interview as part of a process to determine their future relationship with their children are quite naturally going to be experiencing a good deal of stress. How are they displaying this stress? A number of questions the interviewer may want to consider include:

How does the party dress? Does s/he come late or early to the meeting? Are they either particularly formal or informal in meeting you? Is there stress expressed through a hostile air? Are they able to maintain eye contact with you, or on the flip side, is their eye contact overly long and intense? (Therapists often say that the way you react to a client is diagnostic. This means that if you can sufficiently clear yourself of preconceptions, doubts and your own emotional “baggage” going into a meeting and maintain a position of relaxed curiosity, then your reaction to an interviewee will in some way reflect how this person is presenting themselves to the world. If their presentation makes you uncomfortable, this may be indicative not so much of your anxiety but rather of their affect.) Does s/he speak quickly? Do they describe things with precision or elliptically?

A Note on *How the Subject Responds*: The subject has in all likelihood never undergone an interview like this in their lives - in which they are asked to recount very sensitive and intimate details of their lives in a context in which they are being evaluated by a third party for the purpose of determining a vital interest (their future relationship with their children). Thus, it is to be anticipated that subjects will provide responses that are marked by emotionally loaded shorthand expressions, vague references and/or offhand or brief responses which either deny or minimize a sensitive area. It is critical that you be alert to these less-than-complete or responsive statements.

It will be often notable that subjects will describe their family of origin experience as very good or loving or free of conflict. These rather idyllic descriptions will seem inconsistent with the later events or emotional development of the subject. As will be discussed in a later section, in order to obtain the information essential to your task, you will need to circle back and re-ask a question (perhaps with a different focus) if you have concerns about inconsistent or incomplete history provided by the subject.

A Note on *Process*: Lawyers can often become very focused on the content of people’s statements or complaints. Questions arise: “Is this true or false? What really happened? Whose fault was it?” However, oftentimes, the concentration on the content of an interaction diverts us from the rich information to be gained through observation of process. How do people interact? Does one speak while the other sits back silently, their face tight with stress? Do they look at one another when they speak? Does one exercise more power in the relationship and thereby dominate the exchanges? (If so, the exploration of the source of that power will be a fruitful exercise - is it imposed through physical or emotional intimidation, money, relationship with the children, sex? Sometimes each person attempts to exercise their own power in a relationship with one controlling the money and the other controlling the relationship with the children. If that is the case, what do people say that may give hints into this process?) In a dual session some of the questions may include: Does one person react when the other says something...by a sound or a change in their body posture? Does one continually override or interrupt the other? Does a parent who may appear even tempered in an individual meeting (or be describe as such by collaterals) react explosively in response to comments by their spouse? Does one parent seem to express more anger at the other or is one more consciously concerned with the well-being of the children than the other?

Question Construction: Generally speaking, questions may either be open or closed-ended. Each has its particular function and value in the interviewing process. Open ended questions are those which ask for broad, general information, allowing the subject to organize their response in their own way. “Tell me about how you and your spouse met,” or “What was it like growing up I your home as a child?” are examples of such open ended questions. Closed ended questions are more focused and seek to elicit specific kinds of information. “Did your spouse ever strike you,” or “What residential schedule have you and your spouse followed since the separation?” are examples of closed ended questions. Each has its benefits and limitations.

Try sitting down with someone and asking them about a past event in their lives (an auto accident for example) and ask only open ended questions. Such an exercise will may only last 3 minutes, but it will provide a visceral example of the limitations of such questioning when you want to get down to specific details that are of interest in your inquiry. With open ended questions, the subject of the interview exercises greater control over the subject and direction of the inquiry. You will likely experience considerable frustration as you will want to focus in on certain subjects, but the open ended restriction prevents you from doing this. Now try the same exercise using only closed ended questions. Now the control over the agenda shifts to the questioner. The subject may wish to convey information that he/she believes is important, but with the use of closed ended questions, only, this become difficult, if not impossible. Learning to appropriately utilize and balance these two different questioning styles is an essential skill for the effective interviewer.

As a rule, you will want to begin the interview (and subsequent areas of inquiry) with open ended questions. You can obtain a treasure of information by how these questions are addressed by the subject. How do they organize their thinking? (Do they seem to be organized and sequential in their expression or disjointed and haphazard?) Do they respond appropriately to your question or do they use the inquiry as an invitation to bring up areas of vital interest to them? What is of paramount importance to the subject (i.e., what do they tend to raise early and often in response to open ended questions?)

One hazard of the open ended question is that the interviewer can lose some control over the direction and length of the interview, so care must be taken in reining in the subject at times. This is one area where the closed ended question can be quite valuable. Usually the balance of commencing a subject area with an open ended question and then focusing down on the details with closed ended inquiries is the most useful approach.

It is important in asking an open-ended question that you not follow up your question with a number of suggested responses (eg., “How did you feel when he left? Angry? Frightened? Sad?”). Let the question stand on its own and be aware that the way the subject responds is always information you can use in your assessment.

Attorney GAL’s may have to work to develop their listening skills. Lawyers are educated and trained to be issue spotters. We evolve our theory of a case and then seek the facts which are relevant to this theory. In our search for what we believe is relevant, we may overlook or disregard information that is freely given (or hinted at) by the subject. A good rule for lawyers to be aware of is that you should not cut a subject off if they are responding to a question because

you have the next question ready to go. Let the subject finish what they have to say and be alert to tones of voice, changes of body posture or verbal asides. (Of course, there may well come a time that you have to cut off an answer because you have a particularly long-winded or disorganized subject and the interview needs to be tightened up in order to be completed, but that is a different matter.)

Therapist GAL's will have to be continually aware that this is not a therapeutic setting. Much of what you do quite naturally to convey empathy in the process of constructing a bond with a client must not be utilized in this interviewing arena. The objective nature of your role must be continually borne in mind and communicated to the subject. Empathic feedback, so normal in the therapeutic context, must be avoided. One commentator has recommended that eye contact should be minimized and note-taking emphasized. There is a risk for the therapeutically oriented interviewer that a perceived bond by the subject will result in a serious, adverse reaction and expressions of betrayal if the observations and recommendations are not favorable to that person.

CONDUCTING THE PARENT INTERVIEW

(The remainder of this section will assume that the parents are being interviewed separately.) Each Parent Interview should last about 1 ½ hours. You should commence your session with a brief introduction that sets the context of the meeting. Key elements of your introduction should include:

- Your name and profession;
- The fact that you have been appointed by the Court to conduct an investigation and draft a report providing recommendations for the residential arrangement and other parts of the parenting plan in the action;
- The clear notice that nothing that is said in the interview and nothing that is learned in the course of the investigation will be confidential (coupled with a statement that the party may refuse to answer any question you ask, but that only with full and accurate information can you do your work);
- A brief summary of the process which includes initial interview with each parent; an interview with each child; observation of each parent with the child(ren); contact with others that each parent (or the GAL) believes will provide a fuller picture and drafting of the report.

After the introduction, you will want to address the following general areas in your interview:

Family of Origin: In order to arrive at a rounded, consistent picture of this person before you, you will need to understand their early life experiences. Early life experiences are essential guides to understanding a person's present attitudes and coping mechanisms. Further, we must be aware that any information which a subject may perceive as being less than adulatory is threatening, so you may need to go back over these areas a second or even third time with more specific inquiries if you are to obtain the information. Questioning may proceed along these lines:

- Tell me where you grew up.

- Did you have any siblings? (If so, where were you in the birth order and how much time separated you?)
- How would you describe your mother? How would you describe your father?
- What did your father do for a living? Did your mother work when you were a child? If so, what did she do?
- How would you describe your parents' relationship?
- How did you get along with your siblings?
- Were there any difficulties while you were growing up with your family?
(Note: This is a very important inquiry. The subject may initially deny any problems, even though her father got drunk every night and was horribly abusive (for example). It may take some circling back into this area with more specific questions a little later on (as you will see below)).
- Did your parents stay together? How would you describe the divorce? (Again, be mindful that you don't suggest a menu of answers to questions like these.) What was the residential arrangement? Did either parent remarry? What was your stepmom/stepdad like? How was your life after the divorce?
- What kind of discipline did you get from your mother/father?
- Did any of the siblings get punished less or more than any other?
- Were you spanked? Hit? Yelled at frequently?
- Did either of your parents have a drinking problem? How did you know when you were a kid that they had a drinking problem?
- Did you ever experience physical, emotional or sexual abuse as a child? (If so, ask them to describe it.)
- How was school for you? Do you remember anything particularly fondly about your school experience? Were there things you particularly didn't like about school?
- Would you say that you were the kind of kid that had a lot of friends, or were you more of a loner?
- What sorts of things did you enjoy doing when you were young?
- How would you describe your teenage years?
- What was the greatest benefit of growing up in your particular family?
- What was the most negative thing?
- How would you describe your family's financial circumstances when you were a child?

- What kind of relationship do you have now with each of your parents? Each sibling?

Education and Work History: Outside of our intimate relationships, this is the area we apply ourselves. A brief history in this realm give the interviewer information about the subject's capacity for diligence, drive for achievement and stability, among other things. Questions may include:

- After high school what did you do?
- (If further education) How far did you go in school?
- How would you describe the experience?
- Did you have any special achievements?
- Did you have any particular difficulties?
- What words or phrases would your friends in school use to describe you?
- Did you work during school (high school and after)?
- Did you have extracurricular activities? What were they?
- What was your living situation in school?
- How was school paid for?
- (Turning to employment) What was your first job and how did you get it?
- Briefly trace your employment history. (Note whether periods are omitted or given notable short shrift.) *For each job...* Did you like this job? If so, what did you like about it? If not, why not? Why did you leave?
- What are your career goals?
- Is there some other occupation that you would have liked to get into? What has kept you from that?

Relationship History: The relationship you are exploring for this evaluation is probably not the only one experienced by the subject. Some exploration into the other intimate relationships experienced by this person may reveal patterns and persistent attitudes about intimate relationships that will provide useful information.

- Did you date when you were in high school?
- Did you have a girl/boyfriend? How long did the relationship last? What was he/she like?
- Have you had any significant relationships as an adult before you were married?
- Were you ever engaged?
- Did you have any children before you were married? If “yes” do you maintain contact with the other parent? What is your relationship with him/her?
- For each prior relationship: What sorts of things would you have conflict

about? How did you deal with the conflict? How did he/she deal with the conflict? (Note whether there is a pattern of difficulties in either areas of conflict or how the conflict is dealt with.)

- Why did the relationship end?
- Were there problems in any relationship over drinking or any kind of abuse?
-

Current Marriage: This is where you begin to explore the current relationship. You will want to be particularly sensitive to any distortion occasioned by the emotional reaction to the (ex)spouse.

- Let's talk for a moment about your current marriage. How did you meet your (ex)spouse? (In the actual interview, you will want to use the other person's first name. Since this other person may not yet be an "ex" spouse, for the purpose of these questions the term "spouse" will be utilized.
- When did the two of you meet?
- What first attracted you to him/her?
- How long before you became sexually intimate?
- How long was it before you decided to get married?
- Whose idea was it, first, to get married?
- How did your family feel about your getting married?
- How did his/her family feel?
- What was your wedding like?
- How was your relationship like before you/your spouse became pregnant?
- Was this a planned pregnancy? If not, how did you feel about this? Your spouse?
- How did the pregnancy go? How was the delivery?
- When was the first time you felt that the two of you had serious problems in your relationship? What happened? What did you do about it?
- Have you and your spouse had any kind of counseling? When? With whom? What was the outcome?
- Did your relationship change after the birth of your first child? (Again, it

is good to use the actual names.) How?

- Describe your relationship with your first child. What was he/she like as a baby? As a toddler?
- What is most enjoyable thing about being a parent?
- What is the hardest part?
- How did your spouse take to being a parent?
- Was your next child planned? What was your reaction when you learned that you/your spouse was pregnant? Was your spouse's reaction?
- Did you ever discuss how many children you wanted to have? If you disagreed, how did you deal with the disagreement.
- What was the next child like as a baby? As a toddler?
- Same for the subsequent children. Be sure be clear on when each child was born - the time distance between each child.
- Did you/your spouse ever get pregnant other than these times?
- What is (child's name) like now?
- How is s/he dealing with the divorce?
- Returning to your relationship with your spouse, what have been the issues you have fought about the most? What does he/she say? What do you say?
- How do you fight?
- How do you resolve your differences? (Do you feel you actually resolve your differences?)
- Is there anything that makes your fights worse (looking for drug or alcohol use, involvement of family members, etc.)?
- In the last few years, how has your spouse taken to being a parent? You?
- How have the two of you shared parenting responsibilities?
- Are you happy with your role? Your spouses? What would be different?
- What have the schedules with the children been like?
- How have you and your spouse differed about parenting (diet, bedtime, discipline, etc.)

Separation: These questions explore the problems in the relationship.

- What led to the break-up?
- Usually when a marriage ends, one person withdraws emotionally from the marriage first and the other one feels left. Which are you? Explain why you feel that way. (This is a very important line of inquiry. It is oft-stated in the literature on divorce that one person withdraws emotionally from the marriage before the other and their emotional experiences of this process are dramatically different. One is the “leaver” and their emotional reaction may be expected to be one of relief and/or guilt at breaking up the family. The other is the “left” and they may have been living in a state of denial about problems in the marriage, so when that denial is shattered, they are much more likely to experience deep anger, betrayal and grief over the end of the marriage. These emotional reactions to the separation will likely color each person’s view of the other and their own responses to the process.)

How did you/your spouse convey that the marriage was over?

How did you/your spouse respond?

Are you still living together? If not, when did you separate? Who left? Where did s/he go to live? How was it determined that s/he would be the one to move out? What was the process of their moving out like?

How did you tell the child(ren) you were getting divorced?

Have either of you been involved romantically with someone else? If you, when did this start and what were the circumstances? Does your spouse know? How did he/she find out? If your spouse, how did you find out? When did this relationship start?

What problems have you and your spouse had since the separation?

Post-Divorce Parenting: Here you can explore in greater detail the pattern of parenting since divorce and the desires/expectations of each parent.

- For each child, what kind of person is he/she?
- Were there any problems with the pregnancy?
- Has he/she had any developmental difficulties? What has his/her doctors or teachers said about this?
- What are this child’s strengths? What are this child’s difficulties?

- How does she/he relate to her/his siblings?

INTERVIEWING CHILDREN

Introduction

Interviewing children may be the most challenging and difficult part of conducting a custody evaluation. The evaluator must be educated about the effectiveness of various interview protocols and know which formats are known to provide the most information, cause the least trauma to the child and yield the most reliable information. Interview techniques should vary according to the age, development of the child and the specifics of the case. Some children should not be interviewed by a general practice evaluator particularly if there are allegations or knowledge about acts of sexual or physical abuse and if they have already been or will be interviewed by child expert interviewers. Knowledge of child development is absolutely necessary to conducting interviews of children. Differences in children's cognitive gains, their perceptions about time, their ability to consider abstract thought and their emotional need to protect parents or perform for adults means that the interviewer must carefully craft the way that questions are posed as well as know how to interpret the answers. A different vocabulary should be used for younger children so that the child understands the question; as well, the interviewer should be aware of the child's own vocabulary so that answers are understood and interpreted correctly. Children should be asked if they understand posed questions as they may not tell the interviewer that they don't understand the question.

This section is not meant to be a comprehensive coverage of the subject of child interviewing; it does not include a complete review of pertinent literature regarding interviewing children as there is simply too much to cover. Whole chapters of books have been dedicated to the subject of child interviews as part of child custody evaluations. What is covered in this section are a few research based principles of child interviewing as "the most productive and helpful interviews are likely to be those that integrate information from both forensic practice and research findings" (Daniel J. Hynan, 1998). A suggested list of questions is included for young children (Appendix A) and for adolescents (Appendix B) as well as a useful "Guidelines for Talking with Children", (Appendix C). A review of child interview literature reveals information about cases which require the use of "expert child interviewers" such as police, sexual assault units at hospitals or highly trained mental health professionals. There is a great deal of literature by professionals ranging from family therapists and psychiatrists to child welfare and police department personnel who have written extensively about interviewing traumatized children who are thought or known to be victims of sexual or physical abuse. Specific interview guidelines are necessary when the child has experienced trauma or been sexually abused. A reference at the end of the section lists a few articles about this specialized type of interviewing.

A review of the literature regarding interviewing children can be intimidating in that experts don't necessarily agree on one methodology. Bricklen (1995) goes as far as to say that interviewing children is often iatrogenic because it can inadvertently encourage members of the family to make negative statements that exacerbate conflicts. He suggests a reliance on tests he has developed for custody evaluations. It does not appear from a general literature search that

most professionals agree with Bricklen. Interviews that have been the subject of research regarding the validity of responses and score fairly well are the: Open-ended questions interview, Structured interview, Step-Wise Interview, Cognitive interviews (encompassing four interview techniques), the Allegation Blind interview (reported to yield higher disclosure rates about specific events) and Truth Lie Discussions, to name a few.

In this section the reader will find a consideration of the goals of the interviews and information on the Step-Wise interview, chosen because it is simple to understand, accessible to beginning interviewers and is a safe approach in that there are careful distinctions between open ended versus leading questions. Developed by John Yuillie and his colleagues, it is meant to minimize any trauma the child may experience during the interview, maximize the amount and quality of the information obtained while minimizing any contamination of that information. Difficulties in interpreting children's statements increase the challenges of conducting these interviews and information will be given about how to interpret answers.

Goals of the child interview

Let's first discuss the factors to be considered when focusing on the best interests of children, our goal in formulating custody recommendations. We conduct interviews to establish: the wishes of the parents; the wishes of the child; the interactions of the child with the parents, siblings, and other relevant individuals; the child's adjustment to the home, school and community; the mental and physical health of all involved parties; and other issues that may be seen as important in individual cases. Parental absence and the effect on the child, economic hardship, poor parental adjustment and parenting practices, life stresses and interparental conflict are factors important to consider when formulating interview questions. Put another way, the evaluator wants to know about the child's social functioning, temperament, emotional functioning, mental health, general functioning, their experience of the divorce and how the current situation is working for them. A list of questions is appended (Appendix A and B) that covers these areas of interest.

Protocols for interviewing

Evaluators are encouraged to interview the child during home visits with each parent and after the parent/child observation. If necessary, the child can also be brought to the evaluator's office for follow up interviews or to clarify their perspective or if the evaluator feels the need to get to know the child better. It is important to interview the child alone. The parent might remain in the room for a discrete period of time in order for a child to become comfortable, (usually necessary for young children) but the questions could be limited to neutral questions during that phase of the interview. More critical questions should be asked when the parent is not in the room. A neutral location in the home is best, rather than the child's bedroom. If a child is estranged from a parent, the interview could take place in the evaluator's office or a neutral location such as the children's area at a local library or coffee shop.

Formulating the interview

Most writers agree that it is extremely important to set up the interview so that the child feels comfortable and rapport can develop. The evaluator should begin by asking if the child understands why they are being interviewed. Many children need the distraction of being able to draw or play during the interview. Materials should be available and the room set up so that even small children can sit and draw or play. The better the rapport, the more likely it is that the child will be forthcoming. One way to develop rapport and ease a child into an interview is to begin with neutral questions requiring very short answers such as “What school do you go to? What is your favorite subject? Do you have hobbies? What kinds of things do you like to do on the weekends? With small children in particular, questions that are neutral should be interspersed with questions that are likely to be experienced as more intense so that children don’t tire or become adversely affected by the interview experience.

The focus here will be on the Step-Wise Interview as it is easiest to utilize and has the widest applicability. For a detailed explanation of this technique, see the article, “Forensic Interviews and Child Welfare”, December 2002, found in the reference section. A chart showing application of this type of interview is shown as Appendix D. The Step-Wise interview begins with a “rapport building phase” by asking questions about the child’s interests. The rules for the interview are discussed (e.g., “If you are unsure about an answer, please say so.” The interviewer then introduces a “topic of concern” such as “Do you know why we are here today?” The evaluator then moved to “questioning.” A reliance on open ended questions will serve an evaluator well in that they elicit longer, more detailed and more accurate responses than other types of “interviewer utterances by school age and adolescent children”. Open ended questions are not as helpful for young children who need a bit more specificity or simplicity. In general, questions should begin with questions such as “How do you get along with your daddy/mommy?” Questions begin as open ended; then specific. This technique can be used for topics during an interview that require special care. More neutral questions can be interspersed with use of the Step-Wise interview. Even if the evaluator is aware that there is an issue with one parent, the child should be asked about the issue as it exists with either parent. For example, if the evaluator believed that the children might have seen parent A being aggressive toward Parent B, the interviewer would ask about each parent being aggressive.

Length of the interview

The length of the interview depends on the age of the child, their verbal skills and comfort level. The evaluator can continue with the interview as long as the child feels like talking but should end the interview when the child becomes fidgety, tired, disengaged or say they want to stop. Some general guidelines are:

3-4	10-15 minutes or as long as they are interested
5-7	15-30 minutes
8-11	15-40 minutes
11-15	30-60 minutes
15-18	45-60 minutes

Understanding the answers children give during interviews

The evaluator must be cautious about bold statements made by children, particularly if they are unsolicited, use language that is above the child's developmental level or that mimics the same wording as the parent has used. One expert described a case where a child had spontaneously indicated a desire to maintain the status quo regarding the visitation schedule. The evaluator was criticized for not considering this statement more strongly. However, other experts cautioned that a child who volunteers information "may be subject to parental influence to create an impression for the evaluator that is not based on actual parent-child interactions". (See Daniel J. Hynan's article, "Interviewing Children in Custody Evaluations" found in the October 1998 issue of the Family and Conciliation Courts Review.) An excellent chapter in Dan Saposnek's book, "Mediating Child Custody Disputes" describes the various responses of children to the initiation of divorce and loss of a non-residential parent and how children might become "*innocent and functional contributors*" to the disputes as a part of a dysfunctional family system and to address their needs. Statements then need to be evaluated by reflecting on the "function" of the child's statements. One should consider if child's comments were made in an attempt to bring mom and dad back together or in order to show loyalty to one parent, to be fair to both parents or in order to help one parent.

How to know if a child has been coached (Dr. Naomi Oderberg)

One evaluator tells of a case where she was interviewing a six year old boy in "a two mom family". At the first mom's house the child behaved normally; then at the other mom's house, the first thing he said to the evaluator was, "I want to live with my mom all the time and just visit my mommy." If the child spontaneously tells the evaluator where they want to live and the language and other information suggests that they may be influenced, there are a couple of strategies to determine if that is so:

- Look for developmentally appropriate language
- Descriptions that appear to be from a child's point of view
- Encourage spontaneous disclosures which are more trustworthy.
- Look for the presence of peripheral details when describing an event.
- Look for child language that mirror's the parents. I sometimes hear the same phrase coming out of a child as I did during a parent interview. This usually tells me the child is being exposed to more information than they should be.

When Not to interview a child

Lauren Flick, a psychologist who has completed over 3000 interviews with children, described the problem with multiple interviews of a child as follows: "If the interviewer is the first person to speak with a child about an event, the event is like a design at the bottom of a swimming pool filled with clear water – it is easy to read. Each subsequent interview about an alleged event clouds the water and if a child has spoken to a principal, the police and their parents before the evaluator talks with them, it is very difficult to see the design (event) clearly." (North Carolina Child Welfare Notes). If sex abuse has been alleged, the child should be interviewed by a police expert interviewer who has learned special skills, by Child Protective Services or by a response

team who also has received advanced training. An evaluator who has not been trained for this specialty and/or had supervision in conducting interviews could pollute the information by asking leading questions at the wrong time, misunderstand answers or formulate questions in a manner that is too intense and thus traumatizing for the child. Some psychologists or other professionals by virtue of extensive training and practice can be considered as “expert child interviews”; however, there is no exact certification or standard so one should be cautious about choosing to utilize their services.

Dr. Andy Benjamin writes on page 190 in his book, “Family Evaluation in Custody Litigation”, co-authored by Jackie K. Gollan, “Typically a young child is not interviewed individually or asked about his or her preferences for placement or visitation. This is to protect the child from feeling responsible for any outcome associated with the evaluation.”

Clearly there is a range of thoughts about interviewing children. All of the literature reviewed seemed in agreement that children should never be asked which parent they want to live with. While some professionals believe that only testing can provide accurate information, others believe that proper questioning, after establishing rapport with a child, yields much information necessary to formulating evaluations. Others feel that observing parents and children provides enough data for their evaluations. They don’t want to burden children with believing that something they said during the interviews caused harm to a parent. Loyalty issues and distress about discussing painful family matters often place limits on obtaining accurate information. Evaluators can easily misunderstand children if they are not trained properly or follow the guidelines of research based methodology. Lastly, information given by children must be considered in conjunction with other data in the evaluation.

APPENDIX A
Sample Questions for Children's Interview
(Courtesy of Dr. Naomi Oderberg)

Questions are to be tailored for each family (i.e. two biological parents, adopted parents or sibs, step parents or sibs, grand parents, same sex parents, etc.). To simplify, I'll be using the terms mother and father

Ice Breakers/ Learning about the Child's Life

First questions are neutral, getting a general view of child's life

I'm looking for whether the child has interests, is engaged in their lives, is sociable or are they withdrawn, not finding pleasure in things, under-stimulated. For teens, lack of interests could also be a cue for regular marijuana use.

What school do you go to? What grade are you in? What do you like best/least about school? What is your favorite subject? How are your grades? What's it like to show your parents your report card?

Do you have any hobbies? What kinds of things do you enjoy doing on the weekends? Which chat rooms do you visit? How many hours of TV/computer/text messaging/video games watch/do each day? What's your favorite TV show/video game? Do you have any after school activities? Are you on any sports teams?

Peers

Who do you usually play with/hang out with? Do you have a best friend? Do you see each other outside of school/religious activity/sports team, etc.?

Who do you hang out with at recess? **You get a great feeling for their social situation and how they feel about themselves from bringing recess up. It's one of the most important parts of school for elementary age kids.**

Finding Out About Home

Give me an example of what a normal day would be like with dad/mom? **From morning until night, ask for details and questions about who is in a care giving role. Asking about parts of the day that will tell you about routines and consistency.** Who wakes you up in the morning? Makes breakfast? How do you get to school?

What kind of chores do you have at mom's/dad's? **Are they being given appropriate levels of responsibility.**

What do you talk about at dinner time? What does your family do after dinner? What time do you get ready for bed? Who helps you/puts you to sleep? What are your bedtime routines?

How much homework do you usually have? Who helps you with it? How do you like working with Mom/Dad? What happens if you do an especially good job? What happens when you're not trying very hard? **This is another very telling area for eliciting information about the parent/child relationship. Are there power struggles going on? Can parent and child work cooperatively or collaboratively?**

I ask about Discipline. Is it consistent, benevolent, predictable or rigid, harsh and inconsistent?

What are some of the rules your dad's/ mom's house? What happens if you break a rule? What happens when you get in trouble? What kind of consequences/punishment/discipline do you get from your mom/dad?

Tell me about a time when you think you were unfairly punished.

What's the worst trouble you've ever been in?

Is corporal punishment is used: Who disciplines you? What do they spank you with a hand or an object? On a scale from one to ten, with one being "it's nothing" and ten being "it's really bad," how much does it hurt?

What's something your mom/dad do if they want to give you a special treat or surprise? **End on a more positive note and then go to a more neutral topic after this section.**

Self

Looking for self concept/self esteem. Name three things you like about yourself. If you could change one thing about yourself, what would it be? What kinds of things are you good at?

In general we're looking for anxiety symptoms, ability to regulate affect and manage feelings and sooth oneself. Give me an example of a couple of things that make you happy? Sad? Angry? Excited? Frustrated? How do you get yourself to feel better when you're down? Have you been worried about anything lately? Tell me about that. Who do you talk with about your worries/problems/need help? **This can give you insight into how the child relates to his/her parents.** What's it like to walk into a room full of new people

Siblings

I'm looking for the degree of conflict, what the distribution of power is between sibs, what are patterns in the sibling relationship that may reflect the parental relationship.

I'm particularly interested in finding out if one sibling is being mean, attacking, devaluing of another sibling. If there are conflicts, do the parents intervene or not?

How do you get along with your brother/sister? What do you like about your sister/brother? What annoys you most about him/her? How often do you fight? What happens when you fight? Tell me about a time your bro/sis helped you

Current Parent/Child Relationship

Tell me three words that describe your mom/dad? What is one of your favorite things about him/her? If you could change something about your dad/mom, what would it be? What does your mom/dad do that is most annoying? Nicest thing? What do your friends think about your mom/dad?

What do you like to do with your mom/dad? Do you have family traditions? What are they? Do you feel your mom/dad treats you with respect?

Do you talk to mom/dad when you are at dad/mom's? How often does your mom/dad call you? How often do you call her/him? **You want to try to find out if parent's calls are interfering with visitation or if they are being monitored.** Where is your mom/dad when you're on the phone with dad/mom?

Ask about residential time with each parent. What do you do? Where do you go? Who's usually there? **Is it Disneyland dad/mom or do they have their own normalized routine.** What kinds of things are similar at your mom/dad's house? What kinds of things are different?

If you were having a problem with some kids at school, who would you talk with? If you were upset, angry, sad, scared...who do you like to talk with? **Teens are more likely to say friends but usually don't exclude parents all together. If little kids don't mention parents, I wonder why.** Who do you talk to when you feel sad, angry, upset, scared...? Is s/he helpful? Ever Have nightmares? Who do you ask for when you wake up at night? Who takes care of you when you are sick? Does either of your parents participate at school/sports?

How do you know when your mom/dad is sad/happy/worried/frustrated/angry/excited? What happens when you get mad at your dad/mom? How does your family resolve conflict?

If you were on an island and could only pick one person to be with you, who would it be? What if you could have two people with you? Who else would you want to be there? **It's really interesting. There are times when kids who are in high conflict families only want their friends on the island and no parents, or they leave siblings off the island, or leave one parent off. Then you can explore this further. Another one is:** If you had three wishes what would they be? What would you do with a million dollars? If you had a magic wand and could change anything you wanted, what would you change? What would you change about your family, mom/dad, yourself?

The Divorce

Do you remember what it was like when you were all living together? How old were you when your parents separated/divorced? What has changed since the divorce? Why do you think they separated/divorced? How did they get along before they separated?

Who told you about the separation? What did they say? **What happened the day your mother/father left?** How do you feel about it now? What kinds of things are better since the divorce? Worse?

Parents' Relationship

How do your parents get along now? How does your mom/dad feel about your dad/mom? What gives you that impression? If you could change something about the way they treat each other, what would it be?

What kinds of things does your mom/dad say about your dad/mom? Do you ever hear your dad/mom talking on the phone to someone else about mom/dad? What have you heard?

Transitions can be a really stressful time for children: What is it like when you go from mom's home to dad's home? How do you feel about it? Is there anything that makes you uncomfortable during transitions?

Residential Arrangement

What is your schedule with mom/dad? How is that for you? What is it like going back and forth? What happens if you're at your dad's but you've left something you really need at mom's? Are there any particular things you always take with you? Ask if they can take their stuff back and forth or have to keep toys and games at one home.

If you could change something, what would it be? For older children I'll ask if they have any ideas about how to make the schedule work better, particularly if they have indicated that there are any problems or areas of discomfort.

How is your mom when you're at your dad's? What does your mom do when you are at your dad's? Do you worry about your mom/dad when at your dad's/mom's? If a parent is not regulating their affect well, are depressed, anxious, personality disordered you may get a positive response.

Is the schedule always the same? What kinds of things come up that change the schedule? What happens if it's time to be with your dad but you have a ball game/party/play date to go to?

Closing up the Interview

Try to allow at least 5 or 10 minutes to neutralize the situation and help the child get contained if the interview was difficult for him/her. It's helpful to go back to some general, neutral questions. What is your week going to be like this week? Do you have any special plans? Have you seen any good movies lately? What are you planning to do after you're done here? Talk about pets or other topics you've found the child brightens up about.

Is there anything else you would like me to know (to talk with me about)? **Praise the child and thank them for their participation. Try to leave on a positive note.**

APPENDIX B

The Adolescent Interview **From Appendix H in Dr. Benjamin, Dr. Gollan's book** **Family Evaluation in Custody Litigation**

School History

Where do you go to school? What grade are you in? Who are your teachers? Do you like school? What aspects do you like and dislike of school? How do you do academically in school? What is your GPA? Do you complete homework? In what ways has each parent helped you with your school work and grades? What would people in school who knew you say to describe you? Do you have as many friends as you would like? Extra curricular activities? Do you work after school? Any significant events happen during your time in school? When have your parents met your teachers? What do they say about them? What do they say about you? Have you spoken with other school professionals? What do they say about you? Do you have any learning problems, including difficulties with attention, concentration? Have you had any problems or bad experiences at school? Have you been abused, bullied, or harassed while at school? Do you have any disciplinary problems? Behavioral problems with teachers or peers? How has each parent responded to these problems?

Family Questions

How well are the current living arrangements with your parents working in your view? What works? What doesn't work? What are your specific daily schedule and routine in both of your parents' homes? Does either parent give different attention or guidance in the particular areas of your routine? What do you do for fun? How often do you play with your siblings? Any problems or concerns? How much quiet time do you need in the course of the day? What type? What kind of activities do you do with each parent? How much time do you spend with your parent each day? What kind of play do you engage in with each parent? What kinds of games do you select? How has your relationship changed with each parent since they separated? What works? What doesn't work? Where and when do you make transitions from one house to another? What works? What doesn't work? What kinds of behavior does each parent engage in to make you mad? Sad? Happy? How about your behaviors that make each parent mad? Sad? Happy? What kinds of topics does each parent talk to you about, either in person or by phone? What are the hot issues that usually produce arguments between your parents? Please discuss the worst fight you saw them in? (Use the allegation form in Appendix F) For each of the child-related and adult-related allegations raised by each party, ask the teen to describe two of the worst examples of each allegation he or she may have witnessed or endured.

APPENDIX C

Guidelines for Talking with Children

Phonology

- ❖ Speak to the child using proper pronunciation. Do not use baby talk. Do not guess what a child might have said. If a comment is uninterpretable, ask the child to repeat the comment.
- ❖ Remember that the child may pronounce words differently than an adult would. If there might be another interpretation of what the child said (e.g., *body* or *potty*), clarify the meaning of the target word by asking a follow-up question (e.g., "I'm not sure I understand where he peed. Tell me more about where he peed.").

Vocabulary

- ❖ A word might not mean the same thing to the child and the interviewer. Instead, the child's usage may be more restrictive (bathing suits, shoes, or pajamas may not be *clothes* to the child; only hands may be capable of *touching*); more inclusive (*in* might mean *in* or *between*); or idiosyncratic (i.e., having no counterpart in typical adult speech).
- ❖ Avoid introducing new words, such as the names of specific persons or body parts, until the child first uses those words.
- ❖ The ability to answer questions about the time of an event is very limited before 8 to 10 years of age. Try to narrow down the time of an event by asking about activities or events that children understand, such as whether it was a school day or what the child was doing that day. Even the words *before* and *after* might produce inconsistent answers from children under the age of 7 (e.g., "Did it happen before Christmas?").
- ❖ When the child mentions a specific person, ask follow-up questions to make sure that the identification is unambiguous.
- ❖ Beware of *shifters*, words whose meaning depends on the speaker's context, location, or relationship (e.g., *come/go, here/there, a/the*, kinship terms).
- ❖ Avoid complicated legal terms or other adult jargon.

Syntax

- ❖ Use sentences with subject-verb-object word orders. Avoid the passive voice.
- ❖ Avoid embedding clauses. Place the primary question *before* qualifications. For example, say "What did you do when he hit you?" rather than "When he hit you, what did you do?"
- ❖ Ask about only one concept per question.

- ❖ Avoid negatives, as in "Did you *not* see who it was?"
- ❖ Do not use tag questions, such as "This is a daddy doll, *isn't it?*". Be redundant. Words such as *she, he, that, or it* may be ambiguous. When possible, use the referent rather than a pointing word that refers back to a referent.
- ❖ Children learn to answer *what, who, and where* questions earlier than *when, how, and why* questions.
- ❖ Avoid nominalization. That is, do not convert verbs into nouns (e.g. "the poking").

Pragmatics

- ❖ Different cultural groups have different norms for conversing with authority figures or strangers. Avoid correcting a child's nonverbal behavior unless it is interfering with your ability to hear the child or otherwise impeding the interview.
- ❖ Language diversity includes diversity in the way conversations are structured. Be tolerant of talk that seems off topic and avoiding interrupting children while they are speaking.
- ❖ Children may believe that it is polite to agree with a stranger. It is especially important to avoid leading or yes-no format questions with children who might always be expected to comply even when adults are wrong.

From: Poole, D.A. and Lamb, M.E. (1998). *Investigative Interviews of Children*. Washington, DC: American Psychological Association. PP 1

APPENDIX D

A Continuum of Types of Questions To Be Used in Interviewing Children Alleged to Have Been Sexually Abused			
Kathleen Coulborn Faller, MSW, PhD			
	Question Type	Example	Child Response
<div style="display: flex; align-items: center; justify-content: center;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold; margin-right: 10px;">Open-Ended</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold; margin-right: 10px;">↑</div> </div> <div style="display: flex; align-items: center; justify-content: center; margin-top: 20px;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold; margin-right: 10px;">↓</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold; margin-right: 10px;">Close-Ended</div> </div>	A. General*	Do you know why you came to see me today?	To tell you about my daddy.
	B. Focused	How do you get along with your daddy?	OK, except when he babysits for me.
		What happens when he babysits?	He plays a game with my hole.
		What does he use to play with your hole?	His "wiener."
	C. Multiple Choice	Does he play with your hole with his finger, his "wiener," or something else?	He used his "wiener."
		Did he say anything about telling or not telling?	Don't tell or you'll get punished.
		Did you have your clothes off or on, or some off and some on?	I took my pants off.
	D. Yes-No Questions	Did he tell you not to tell?	Yup.
		Did you have your clothes off?	No, just my panties.
	E. Leading Questions**	He took your clothes off, didn't he?	Yup.
Didn't he stick his "wiener" in your hole?		Yup.	
			<div style="display: flex; align-items: center; justify-content: center;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold; margin-right: 10px;">More Confidence</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold; margin-right: 10px;">↑</div> </div> <div style="display: flex; align-items: center; justify-content: center; margin-top: 20px;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold; margin-right: 10px;">↓</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold; margin-right: 10px;">Less Confidence</div> </div>

*Children usually are not very responsive to general questions. **Not appropriate when interviewing children.

Source: Faller, K. C. (1993). Child sexual abuse: Intervention and treatment issues. Washington, DC: USDHHS Administration for Children and Families. Online <<http://www.calib.com/nccanch/pubs/usermanuals/sexabuse/index.cfm>> .

This report was prepared by the U.S. Department of Justice on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services. 3,400 copies printed at a cost of \$3,874 or \$1.16 per copy.

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Children's Services Practice Notes, North Carolina Division of Social Services and the Family and Children's Resource Program, "Practice Notes", Volume 8, No. 1, December 2002.

Cronch, Lindsay, E., et al, "Forensic interviewing in child sexual abuse cases; Current techniques and future directions," University of Nebraska, www.sciencedirect.com; September 2005.

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CHAPTER 6
REPORT WRITING FOR
FAMILY LAW GUARDIANS AD LITEM

REPORT WRITING FOR FAMILY LAW GUARDIANS AD LITEM

Submitted by Jorene Moore

INTRODUCTION

Your report to the court is one of the most important documents in a court file. Once filed, it becomes a permanent part of the record. Information contained in your report may be used at trial and you may be called to testify about information contained in your report.

Your report should be factually based, with opinions clearly stated as such and support by the facts and your observations. Your report should be written in a respectful manner toward each individual and include a balance of information provided by each party.

Reports need to address the best interests of the child and should focus on the best interest standard.

(PLEASE NOTE: RCW CITES IN THIS SECTION ARE EXCERPTS AND MAY NOT INCLUDE THE CITE IN ITS ENTIRETY – PLEASE REFER TO THE RCW FOR THE FULL TEXT.)

Before beginning your report, review **RCW 26.12.175** paying particular attention to your role as defined in this section: ***(emphasis added)***

(1)(a) The court may appoint a guardian ad litem to represent the interests of a minor or dependent child when the court believes the appointment of a guardian ad litem is necessary to protect the best interests of the child in any proceeding under this chapter. The family court services professionals may also make a recommendation to the court regarding whether a guardian ad litem should be appointed for the child. The court may appoint a guardian ad litem from the court-appointed special advocate program, if that program exists in the county.

(b) Unless otherwise ordered, the guardian ad litem's role is to investigate and report factual information to the court concerning parenting arrangements for the child, and to represent the child's best interests. Guardians ad litem and investigators under this title may make recommendations based upon an independent investigation regarding the best interests of the child, which the court may consider and weigh in conjunction with the recommendations of all of the parties. If a child expresses a preference regarding the parenting plan, the guardian ad litem shall report the preferences to the court, together with the facts relative to whether any preferences are being expressed voluntarily and the degree of the child's understanding. The court may require the guardian ad litem to provide periodic reports to the parties regarding the status of his or her investigation. The guardian ad litem shall file his or her report at least sixty days prior to trial.

BEFORE BEGINNING YOUR REPORT

- Carefully review the order appointing to set the parameters of your report and check with the court about whether or not they wish to have the analysis and recommendation sections included (see below).
- Identify the nature of the case and the statutes applicable to the type of action for which you are being asked to provide services.
- Check with the court about their expectations and any requirements for the report format as major titles may differ (see templates--) and styles may differ slightly
- Practice Tip: Counties may differ in their expectations. Be sure to get advice from an experienced GAL in the county where the report will be filed.

WHAT TO INCLUDE/EXCLUDE IN YOUR REPORT

Your report should have clear and distinct sections to identify information. Ideally, you will use the same format for each type of case. Organization of your report is a key factor in comprehending the totality of the information you present to the court and the parties. Your headings should be clearly identifiable and the information contained in each section should reflect the heading.

Nature of the case

- Include or identify the case type (dissolution, third party custody, etc).
- Include date of appointment, due date for initial or next report, and next court date.
- Include the issues to be investigated per court appointment and requisite statutory requirement.

Background and Current Information

- Include a concise factual summary of the case.
- Describe how the case came to be at the point where it is currently.
- Include all related previous court dates and/or court proceedings.
- Include pivotal events including changes in custody, orders affecting the children and life circumstances significant to the parenting of the children.

Information for the Report

- List all contacts, interviews and meetings including date, time and location.
- List all files and/or documents reviewed and the source of the information.
- List all reports, consultations, and additional media reviewed.
- List all databases reviewed (Judicial Information System, SCOMIS, etc.).
- Practice Tip: Separate party contacts, interviews, etc., from collateral contacts and separate professional collateral contacts from other collateral contacts.
- Practice Tip: If you format this section as a list, you will be able to more easily extract it in the public version of your report as required by GR22 (described in later in this section).

Primary Contacts, Interviews, and Meetings

- Describe each Primary Contact (Primary = contact with the parties & children)

- Include the date, time and place of each contact.
- Practice Tip: It helps to arrange the information into groups (i.e. describe all the contacts with Mother, then all the contacts with Father, then all the contact with the Child, etc.)
- Practice Tip: Include factual observation without interpretation in this section: i.e.: the mother was slurring her words and staggering as she walked instead of mother was drunk—or there were dirty dishes piled high on all kitchen surfaces and roaches running throughout rather than the kitchen was filthy or unfit.

Collateral Contacts, Interviews and Meetings

- Describe each Collateral Contact (Collateral = contact with anyone besides the parties and the children)
- Include the date, time and place of each contact and the relationship of the contact to the parties/children.
- Collateral Contacts should be used to offer information of a professional nature (e.g., doctor, therapist, police officer, etc.) or to offer additional information relevant to the case.
- Practice Tip: It helps to arrange the information into groups (i.e. describe all the contacts with the grandmother, then all the contacts with the uncle, then all the contacts with the teacher etc.)
- Practice Tip: Include factual observation without interpretation in this section-- i.e.: the grandmother reported; the uncle reported, the teacher reported. Try to use quotes when possible.
- Practice Tip: Consider obtaining written information (e.g., reference forms) from non-professional contacts (e.g., family members, friends and neighbors) to review to determine if their information is pertinent and if further contact is warranted.

Analysis of the Information

- Describe your overall interpretation of the events and information related to each primary and collateral contact.
- The facts and your observations must be the basis of your analysis.
- Highlight pivotal interactions, events or documents that stood out as having a particular impact on your recommendation.
- Practice Tip: Good idea to arrange your written analysis by contact, as in previous sections.
- Practice Tip: Most courts want your analysis, but not all. Be sure to check with your county to see if this section should be excluded.

Recommendations

- Based upon the facts discerned by your investigation and observations, list your recommendations in a numerical format.
- Be sure to refer to the facts and observations you have listed above in your analysis.
- Practice Tip: Most courts want you to list your recommendations, but not all. Be sure to check with your county to see if this section should be excluded.

REVIEW OF TEMPLATES FOR FIVE CASES:

You are not required to provide a full legal analysis of each legal element as you are not expected to practice law. However, GALs need to understand the elements the court is required to weigh so you tailor investigations and include information to help the court weigh the necessary factors.

RCW 26.09.002 sets forth policy that is a good foundation for any action: *(emphasis added)*

*“Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. **In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties’ parental responsibilities.** The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child’s best interests. Residential time and financial support are equally important components of parenting arrangements. The best interests of the child are served by a parenting arrangement that best maintains a child’s emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.”*

Basic dissolution (RCW.26.09)

- A basic dissolution case is one in which the parents of the child(ren) file for divorce and are unable to agree on the parenting plan for the child(ren).
- They may have been required to participate in mediation prior to the appointment of a GAL or mediation may have been waived due to other factors such as domestic violence.
- Your report is focused on what is in each child’s best interest given the overall circumstances of the case.
- The court will enter a final parenting plan consistent with the objectives listed below. Your report should carefully examine the objectives and provide clear information to the court as to how you considered each objective.
- Your report should clearly identify allegations made by either parent or revealed by your investigation that would, if founded, create restrictions to the parenting plan under section RCW26.09.191 (excerpt below).
- Your report should identify whether elements founded in your investigation constitute a basis for mandatory or discretionary restrictions and your recommendation as to the nature of the restriction.

RCW 26.09.184 lists the following objectives of a final parenting plan in a dissolution case:

(1) OBJECTIVES. The objectives of the permanent parenting plan are to:

- (a) Provide for the child’s physical care;*
- (b) Maintain the child’s emotional stability;*
- (c) Provide for the child’s changing needs as the child grows and matures, in a way that*

minimizes the need for future modifications to the permanent parenting plan;

(d) Set forth the authority and responsibilities of each parent with respect to the child, consistent with the criteria in RCW 26.09.187 and 26.09.191;

(e) Minimize the child's exposure to harmful parental conflict;

(f) Encourage the parents, where appropriate under RCW 26.09.187 and 26.09.191, to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and

(g) To otherwise protect the best interests of the child consistent with RCW 26.09.002.

RCW 26.09.187 identifies the following areas in a parenting plan: DISPUTE RESOLUTION PROCESS; ALLOCATION OF DECISION-MAKING AUTHORITY; RESIDENTIAL PROVISIONS and provides explanation of the requirements of each area and should be reviewed carefully prior to making recommendations regarding a parenting plan.

RCW 26.09.191 identifies restrictions that are required if certain elements are found:

(1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under: ... (see full text of 26.09.191 for detailed description of offenses and requirements.)

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

(a) A parent's neglect or substantial nonperformance of parenting functions;

(b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;

(c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;

(d) The absence or substantial impairment of emotional ties between the parent and the child;

(e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;

(f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or

(g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(4) In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.

(5) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(6) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

(7) For the purposes of this section, a parent's child means that parent's natural child, adopted child, or stepchild.

Modification (RCW 26.09.260)

- Modification actions are initiated by at least one party indicating their permanent parenting plan is longer effective due to a change in circumstances.
- Prior to filing a modification action, parties should follow the procedures indicated in their parenting plan under the “dispute resolution” section.
- A major modification of a parenting plan must meet certain criteria as listed below before the matter may move forward.
- Your report should reflect your assessment of how the criteria is or is not met if a court determination has not been established prior to your appointment or if specifically requested in your appointment.
- Once it is established that the criteria is met, the legal elements for determining how the parenting plan should be modified are largely the same standard as used in the initial determination under RCW26.09: the best interest of the child standard.

RCW 26.09.260 identifies criteria for modifications of parenting plans:

(1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child.

(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:

- (a) The parents agree to the modification;*
- (b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;*

(c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or

(d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.

(3) A conviction of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial change of circumstances for the purposes of this section.

(4) The court may reduce or restrict contact between the child and the parent with whom the child does not reside a majority of the time if it finds that the reduction or restriction would serve and protect the best interests of the child using the criteria in RCW 26.09.191.

(5) The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in subsection (2) of this section, if the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time and:

(a) Does not exceed twenty-four full days in a calendar year; or

(b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow; or

(c) Does not result in a schedule that exceeds ninety overnights per year in total, if the court finds that, at the time the petition for modification is filed, the decree of dissolution or parenting plan does not provide reasonable time with the parent with whom the child does not reside a majority of the time, and further, the court finds that it is in the best interests of the child to increase residential time with the parent in excess of the residential time period in (a) of this subsection. However, any motion under this subsection (5)(c) is subject to the factors established in subsection (2) of this section if the party bringing the petition has previously been granted a modification under this same subsection within twenty-four months of the current motion. Relief granted under this section shall not be the sole basis for adjusting or modifying child support.

(6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child. The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, including a change of the residence in which the child resides the majority of the time, without a showing of adequate cause other than the proposed relocation itself. A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued. In making a determination of a modification pursuant to relocation of the child, the court shall first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in RCW

26.09.405 through 26.09.560. Following that determination, the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order.

(7) A parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion of residential time under subsection (5)(c) of this section unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation.

(8) If a parent with whom the child does not reside a majority of the time voluntarily fails to exercise residential time for an extended period, that is, one year or longer, the court upon proper motion may make adjustments to the parenting plan in keeping with the best interests of the minor child.

(9) A parent with whom the child does not reside a majority of the time who is required by the existing parenting plan to complete evaluations, treatment, parenting, or other classes may not seek expansion of residential time under subsection (5)(c) of this section unless that parent has fully complied with such requirements.

(10) The court may order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section.

(11) If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party.

Nonparental custody case (RCW 26.10)

- A child custody proceeding is commenced in the court by a person other than a parent, filing a petition seeking custody of the child in the county where the child is permanently resident or where the child is found, but only if the child is not in the physical custody of one of its parents or if the petitioner alleges that neither parent is a suitable custodian.
- In preparing the report concerning a child under this cause of action, you may consult any person who may have information about the child and potential custodian arrangements.
- You may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent.

- The court shall determine custody in accordance with the best interests of the child standard.

RCW 26.10.130 IDENTIFIES THE CIRCUMSTANCES THE INVESTIGATION AND REPORT FOR NON-PARENTAL CUSTODY CASES:

(1) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodian arrangements for the child, or may appoint a guardian ad litem pursuant to RCW 26.12.175, or both. The investigation and report may be made by the guardian ad litem, the staff of the juvenile court, or other professional social service organization experienced in counseling children and families.

Relocation (RCW 26.09.405-26.09.560)

- If the parent with whom the child resides a majority of the time proposes to relocate, they must notify the other parent.
- If the non-residential parent objects to the relocation, they must file an objection with the court, thus commencing this action.
- The statute is clear (as listed below) that there is a rebuttable presumption that the intended relocation of the child will be permitted.
- The eleven (11) factors listed below in RCW 26.09.520 should be reviewed and clearly addressed in any appointment under relocation.
- The factor listed in RCW 26.09.530 below may not be considered as a factor in your report.

RCW 26.09.520 IDENTIFIES THE BASIS FOR DETERMINATION FOR RELOCATIONS:

The person proposing to relocate with the child shall provide his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation of the child will be permitted. A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the following factors. The factors listed in this section are not weighted. No inference is to be drawn from the order in which the following factors are listed:

- (1) The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;*
- (2) Prior agreements of the parties;*
- (3) Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;*

(4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191;

(5) The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation;

(6) The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;

(7) The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;

(8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;

(9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;

(10) The financial impact and logistics of the relocation or its prevention; and

(11) For a temporary order, the amount of time before a final decision can be made at trial.

RCW 26.09.530 STATES THE FACTOR NOT TO BE CONSIDERED IN RELOCATION ACTION:

In determining whether to permit or restrain the relocation of the child, the court may not admit evidence on the issue of whether the person seeking to relocate the child will forego his or her own relocation if the child's relocation is not permitted or whether the person opposing relocation will also relocate if the child's relocation is permitted. The court may admit and consider such evidence after it makes the decision to allow or restrain relocation of the child and other parenting, custody, or visitation issues remain before the court, such as what, if any, modifications to the parenting plan are appropriate and who the child will reside with the majority of the time if the court has denied relocation of the child and the person is relocating without the child.

Paternity (RCW 26.26)

- This action is reserved for determination of paternity. However, on the same basis as provided in RCW 26.09, the court shall make residential provisions with regard to minor children of the parties, except that a parenting plan shall not be required unless requested by a party.
- Paternity may be determined by genetic testing or an acknowledgment of paternity as described in RCW 26.26.300.

- If a report is requested regarding parenting issues, the same provisions as set forth in RCW 26.09 should be used to determine the best interests of the child standard.

RCW 26.26.555 INDICATES ONE WAY A GAL IS APPOINTED IN PATERNITY ACTIONS:

(1) A minor child is a permissible party, but is not a necessary party to a proceeding under RCW 26.26.500 through 26.26.630.

(2) If the child is a party, or if the court finds that the interests of a minor child or incapacitated child are not adequately represented, the court shall appoint a guardian ad litem to represent the child, subject to RCW 74.20.310 neither the child's mother or father may represent the child as guardian or otherwise.

REPORT FORMAT REQUIREMENTS UNDER GENERAL RULE 14

- Reports filed in any court in Washington must comply with the formatting requirements set forth in GR 14.
- Reports may be rejected if they do not meet requirements.

GR 14 states the following regarding format requirements:

(a) Format Requirements. All pleadings, motions, and other papers filed with the court shall be legibly written or printed. The use of letter-size paper (8-1/2 by 11 inches) is mandatory. The writing or printing shall appear on only one side of the page. The top margin of the first page shall be a minimum of three inches, the bottom margin shall be a minimum of one inch and the side margins shall be a minimum of one inch. All subsequent pages shall have a minimum of one inch margins. Papers filed shall not include any colored pages, highlighting or other colored markings.

FILING REQUIREMENTS UNDER GENERAL RULE 22 AND FILING PROCEDURES

- There are specific rules which govern reports filed with the court.
- You must file two reports: The original full report (i.e. the sealed document) and the limited report (i.e. public document).
- The public document as expressed in the rule below shall be a simple listing of *materials or information reviewed; individuals contacted; tests conducted or reviewed; your conclusions and recommendation*. This list may be directly extracted from your report.
- The public document should not include your analysis or details of your investigation.
- The sealed document must be filed with a coversheet designating it is a sealed document. Most courts have a standard coversheet. Check with your court.
- You should check with the court to verify filing procedures and locations. Generally, the Clerk's office handles the official records for the Court.

- Additionally, the Court may require a “working copy” be delivered directly to the judge.
- You should comply with any deadline ordered by the Court for the report, in addition to the statutory requirement of 10 days prior to court appearance or 60 days prior to trial.
- Review GR 22 regarding the filing of GAL reports; specifically section e(2) which governs the specifics of the Public and Sealed Document.

GR 22 states the following regarding GAL reports:

e(2) Reports shall be filed as two separate documents, one public and one sealed.

(A) Public Document. The public portion of any report shall include a simple listing of:

- (i) Materials or information reviewed;*
- (ii) Individuals contacted;*
- (iii) Tests conducted or reviewed; and*
- (iv) Conclusions and recommendation.*

(B) Sealed Document. The sealed portion of the report shall be filed with a coversheet designated:

"Sealed Confidential Report." The material filed with this coversheet shall include:

- (i) Detailed descriptions of material or information gathered or reviewed;*
- (ii) Detailed descriptions of all statements reviewed or taken;*
- (iii) Detailed descriptions of tests conducted or reviewed; and*
- (iv) Any analysis to support the conclusions and recommendations.*

(3) The sealed portion may not be placed in the court file or used as an attachment or exhibit to any other document excerpt under seal.

DISTRIBUTING THE REPORT

- Each party (if pro-se) or their attorney (if represented) get a copy of the report. A copy is filed with the Court through the usual means. Additionally, depending on the court’s request and/or practice, you may be requested to file a copy with an individual judge.
- If CASA or another GAL appointed, they also get a copy.
- No copies are given to anyone besides those listed above without authorization from the court.
- Practice Tip: It is recommended that you not tell parties about your opinions, analysis or recommendation until you release the report.
- Practice Tip: Send the report to all at the same time—don’t send to one party first.

**APPENDIX A
REPORT TEMPLATE FORM FROM
KING COUNTY FAMILY LAW CASA**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

IN RE THE CUSTODY OF::

) Case No.:
)
) REPORT OF GUARDIAN AD
) LITEM
)
) **CASA NO.:**

PERSONS INTERVIEWED REGARDING THE SITUATION:

List all the people interviewed and how they are connected to the case

Bobby Jo Smith	Mother
Bily Bob Smith	Father
Jimmy BoJangles	Teacher

DOCUMENTS REVIEWED:

List all documents

BACKGROUND INFORMATION:

The story goes here, but try to keep it short

CURRENT SITUATION OR ISSUE TO BE INVESTIGATED:

Mention the case type here- Dissolution, Third Party Custody?

Quote the Order Appointing in this Section, as it sets out the current issues for the GAL to investigate.

ASSESSMENTS, OBSERVATIONS, INTERVIEW SUMMARIES:

Observations of the GAL are provided in this section

Use neutral language without judgment-

For example:

Do not write: The parent was drunk.

Write: The parent opened the door, then stumbled several times. The parent's speech was slurred. There were 8-10 empty beer cans on the coffee table and the room smelled of beer. The parent nodded off to sleep twice during the conversation.

CONCLUSIONS OR SUMMARY OF CRUCIAL POINTS

Make sure to facts and incidents described above

For example: The home visit (date) where the parent nodded off twice during the conversation, while the child played in the bedroom, raised concerns about alcohol abuse and safety. A child the age of 3 is not safe when the parent repeatedly falls asleep unaware of the child's activities.

RECOMMENDATIONS:

Bullet points:

Based on the information provided above, the Guardian ad Litem respectfully recommends the following:

1. The parent complete an alcohol assessment
2. Visits be supervised by a family member

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this ____ day of _____, 2008.

FAMILY LAW Guardian ad Litem: _____

QUALIFICATIONS:

Family Law GAL Training
Bachelor of Science Degree, University, 1990
Juris Doctor Degree, University 1995

**APPENDIX B
REPORT TEMPLATE FROM
KING COUNTY FAMILY COURT SERVICES**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING
FAMILY COURT SERVICES

Party Name,)	S.C. No.
)	
Petitioner,)	F.C.S. No.
)	
)	
)	MODIFICATION OF
Party Name,)	PARENTING PLAN
)	Trial Date:
)	Pretrial Conference:
Respondent.)	
)	
_____)	

RE: The Welfare of the
Minor Child:

Child's name and DOB:

I. NATURE OF THE CASE

II. BACKGROUND AND CURRENT INFORMATION

III. INFORMATION FOR THE REPORT

IV. RE: MOTHER (this section is self-reported)

V. RE: FATHER (this section is self-reported)

VI. RE: MINOR CHILDREN

VII. COLLATERAL CONTACTS

VIII. ANALYSIS OF INFORMATION:

IX. RECOMMENDATIONS

Respectfully submitted,

GAL

Date:

CHAPTER 7
CHILD DEVELOPMENT

CHILD DEVELOPMENT

Submitted by Wendy Hutchins-Cook, Ph.D., ABFP/ABPP and
Maureen A. Conroyd, LCSW, BCD

INTRODUCTION

The best interest of a child is, in large part, determined by understanding the developmental needs of the child reflected by their stage of development. Within this context, the quality of the parents' strengths and weaknesses, as well as, their capacity to meet the needs of their child at each stage of development is to be examined.

Using a child developmental framework, this chapter will present the issues that surface due to family disruptions that occur during marital dissolution, paternity, and third party custody cases. Significant issues related to family disruption and the impact on the child are addressed in this chapter. This information may also be applicable to other aspects of family law.

OUTLINE

- Bonding and Attachment
- Developmental Tasks
- Grief and Loss
- Parental Conflict
- Special Needs Children
- Effect of an Absent Parent
- Introduction of New Relationships
- Blended Families
- Child and Family Therapy
- Communication with Children
- Residential Schedule: Developmental Framework

BONDING AND ATTACHMENT

Bonding is a hormonal process that begins at birth. It is the physiological and emotional readiness to become attached. Bonding between father, mother, and infant is developed through touch and social responsiveness.

Secure attachment occurs as the infant's physical, social and emotional needs are consistently met by the parent. The parent is sensitive and responsive to the infant through verbal and non-verbal communication which is provided in a consistent manner.

Insecure attachment occurs when a parent is insensitive or unresponsive to a child's needs. The parent may also be deficient in providing warmth and nurturing to the child. Environmental conditions, such as family instability, high conflict, poor communication, or family violence may distract the parent from attending to the child in a sensitive and responsive way.

COMPETENCY IN DEVELOPMENTAL TASKS

Major developmental theorists, such as ERIK ERIKSON, provide a description of the main tasks that a child must accomplish in order to move forward in their development. Erikson also provides a perspective on culture as it relates to the child's developmental tasks. "Each individual's life cycle unfolds in the context of a specific culture. While physical maturation writes the general time table according to which a particular component of personality matures, culture provides the interpretive tools and the shape of social situation in which the crisis and resolutions must be worked out."

INFANT TO 24 MONTHS: DEVELOPMENT OF SECURE ATTACHMENTS.

In this phase, an infant distinguishes between significant adults who care for them. They learn dependency and stability through their relationships. This is their foundation of learning to trust.

Key factors of this developmental stage are:

Developing trust occurs within a consistent, stable environment.

Developing secure attachments continues through reciprocal and trusting interactions.

For example, as the child cries, coos, or fusses, the parent is attentive and responds to baby's needs by providing affection and physical care.

Emotional attachments are based on continued frequent and appropriate social interactions. Attachment to each parent is formed by the first 6-7 months. Based on the development of primary attachment to parent(s), the infant is capable of forming multiple attachments. Infants with secure attachments have the foundation that enables them to explore their environment, engage in social interactions, and to soothe themselves.

TODDLER 2 YEARS-5 YEARS: DEVELOPMENT OF AUTONOMY

In this phase, the toddler learns to exercise their independence and begins to learn self control. This increases their confidence to function independently.

Key factors of this developmental stage are:

Increased physical mobility and social interaction

Increased independence and self-awareness

Interest in exploring their world

Continued development of attachment

Development of language and motor skills

For example, the child develops competency in crawling, toddling, walking, toilet training, and responding to limits.

Continued availability, sensitivity and responsiveness of the parent(s) is essential to develop these child competencies. The role of each parent is essential to the degree that each parent has been a part of the routine caregiving. The increased challenge of developing these competencies may create stress for the toddler who then seeks comfort and proximity to the parent(s). The security within the parent relationship creates a safe haven, thus begins their ability to self-regulate, develop empathy and self-esteem. These children develop resilience.

When a child has an insecure attachment, they have no safe haven. A parent who is ambivalent, inept, inconsistently responsive, or rejecting of the child creates mistrust in that relationship. If the attachment continues to be impaired, the child responds with confusion and fear. This may affect their ability to form social relationships and to regulate their attention, behavior and emotions.

For example, a parent distracted by chemical dependency, patterns of violence, or untreated mental illness may be unable to attend to or meet the needs of the child.

IMPORTANT CONSIDERATIONS:

- A toddler needs safety, protection, adequate nutrition and a schedule for eating and sleeping.
- A toddler's secure attachment may be affected by parental conflict, lack of continuity of care, inconsistent schedules, interruption of parental contact, frequent change of caregivers or extended travel time between homes.
- Be aware of cultural factors regarding family traditions and expectations.

2 TO 3 YEARS OF AGE: DEVELOPMENT OF AUTONOMY

In this stage there is a continuation of the development of autonomy with special attention to the toddler learning to separate and master separation anxiety.

Normal separation anxiety characteristic of this age includes: temper tantrums, clinging, crying, hiding and refusal to separate. Normal separation anxiety should not be misconstrued as an indicator of a deficient attachment or that something is wrong with the other parent.

Key factors of this developmental stage are:

- Increased sense of autonomy and independence.
- Increased self-assertion. For example, it's the 'I'll do it' stage, i.e., dressing, toilet training, feeding, with frustrations expressed through temper tantrums.
- Increased acquisition of language.
- Increased tolerance for separation from the attachment figures.

IMPORTANT CONSIDERATIONS:

Evaluate each parent's ability to tolerate and manage this stage of development.

3 TO 5 YEARS OF AGE: DEVELOPMENT OF INITIATIVE

During this phase, the child initiates and becomes purposeful in their activities. There is increased tolerance for separation from attachment figures. The child learns to develop peer relationships, and gender and racial identity are becoming established.

Key factors of this developmental stage are:

- Increased need for socialization with peers.
- Beginning of internalization of self-control.
- Increased language skills facilitates independence, social interactions, and expression of the child's feelings and needs.
- Cognition is literal and concrete.

IMPORTANT CONSIDERATIONS:

- Either a "laissez faire" (permissive) style or authoritarian style (overly restrictive) of parenting may impair the child's mastery of these tasks or may affect the self-regulation of their attention, behavior and emotions.

6 TO 11 YEARS OF AGE: DEVELOPMENT OF ACADEMIC SKILLS AND SOCIAL RELATIONSHIPS

During this phase, the child develops competencies in academic skills, peer and social relationships. They have achieved a greater tolerance for separation; can distinguish between reality and fantasy; and develop sexual identity.

Key factors of this developmental stage are:

- Increased independence in their social and physical world which allows separation from the parent for longer periods of time.
- Development of relationships outside of family, e.g., peers, teachers, coaches.
- Mastery of skills learned through social interactions with friends and through extracurricular activities.
- Development of morals and values.
- Learning discipline and co-operation.
- Cognition characterized by black/white thinking, fairness.

IMPORTANT CONSIDERATIONS:

- Self-esteem is a sense of who they are as a competent individual. This is learned and reinforced primarily through parent and peer interaction.
- Extracurricular activities are essential for the child's self-esteem.
- Gender and cultural identification continues to develop.

12 to 18 YEARS: DEVELOPMENT OF SEPARATION AND INDIVIDUATION

During this phase, the adolescent searches for their own autonomy by developing a strong sense of personal identity. During this transition to adulthood, they gradually separate from their parent(s) and family to align themselves with their peers.

Key factors of this developmental stage are:

- Developmental tasks of 6 to 11 years continue to be significant.
- Gender identification.
- Acceptance of physical changes.
- Focus on their sexuality.
- Accepting responsibility and consequences for their own decisions and behavior.
- Preparing to be involved in adult relationships.
- Increased internalization of self-control.

IMPORTANT CONSIDERATIONS:

Younger Adolescents 12-14 Years. There are certain social and behavioral characteristics that are prominent in this stage.

- Self-identity question: Who Am I?
- Frequent changes in social groups.
- Testing authority and limits.
- Contrary, emotionally reactive and moody.
- Wide range of physical development.
- Impulsive behavior and short-term gratification are pervasive.

Older Adolescents 15-18 Years. There are certain characteristics that are prominent in this stage.

- Self-identity question: What Will I Become?
- Acceptance of responsibility in various aspects of their life, including academics, work, volunteer service, and social relationships.
- Increased capacity for decision-making and accepting responsibility for these decisions.
- Increased independence may lead to increased risk to their health and safety.
- Parental involvement shifts from direct control to guidance of the adolescent.

SYMPTOMS OF GRIEF AND LOSS

The symptoms of grief and loss are often present in children when they experience a significant loss of relationship, whether through death, divorce, estrangement, relocation or abandonment. Multiple changes in the child's life also evoke similar reactions. Children experience loss through a change of home, neighborhood, school, daycare, friends, and their community. Although critical decisions need to be made at the time of divorce regarding property, financial assets and lifestyle, it is important to consider the child's adjustment to change and loss. The introduction of a "significant partner" of the parent at this time may also complicate and intensify their grief.

It is normal for children to evidence symptoms of grief and loss during family disruption. Each child's temperament and stage of development will have an impact on how they respond and adapt to loss. Too many changes in a short period of time may overwhelm the child's ability to adapt and cope. The greater the intensity and the longer the duration of grief symptoms may suggest that the child is experiencing undue distress. It is necessary to examine the parents' ability to be flexible and adaptive in their acceptance of their child's symptoms of distress.

SYMPTOMS OF GRIEF IN CHILDREN

Normal symptoms of grief are demonstrated in each phase of development.

Birth to 3 Years of Age:

- Changes in eating or sleeping habits.
- Increased crying, whining, clinginess.
- Increased fears, anxiety, anger.
- Inability to be soothed.

3 to 5 Years of Age:

- Behavioral problems.
- Social withdrawal – non-responsive.
- Physical or verbal aggression.
- Somatic complaints: headache, stomachache, constipation.
- Regression: baby talk, bedwetting.
- Overly compliant: "too good".
- Acting out: destructive behavior, temper tantrums.

6 Years to 12 Years of Age:

- Anxiety.
- Depression.
- Somatic complaints.
- Physical or verbal aggression.

- Change in social or behavior patterns.

13 Years to 18 Years of Age:

- Includes symptoms of distress as previously identified.
- Intensified behavior problems which may place the youth at risk: drug and alcohol, sexual acting out, anti-social activities.

IMPACT OF PARENTAL CONFLICT ON CHILDREN

When the families' equilibrium is disturbed by divorce, remarriage or relocation, it can take as long as two years for the family to stabilize. Often during this period of time, the parents are distracted and the social-emotional needs of the child may be compromised. The history of parental conflict may have preceded the separation/divorce and have negatively impacted the child. The degree of parental hostility and the intensity of anger displayed during the family disruption may be an indicator of the harmful environment within which the child has lived prior to the parental separation. Failure to protect the child from this aggression may suggest to the child that the parent is unavailable to them or out of control.

Parents in distress may not be sensitive to the child's inclination to absorb information containing negative attitudes, derogatory remarks or blaming statements about the other parent. Children have a literal understanding of parents' statements and expressions about the other parent: "we have no money for food", "she/he won't ever be back", "we'll be out on the street", "she's a witch", "he's a jerk." Consider the parents' ability to change this behavior. If a child has a conflict with divided loyalty, is the parent contributing to this issue or helping resolve this issue with the child? This is fertile ground for the child's rejection of one parent.

There are several ways children are exposed to negative information. They may listen to conversations between parents and/or between their parent and a friend or relative. In addition to eavesdropping, children might investigate legal documents that are available to them or that can be accessed on the computer. Although some adolescents may feel "entitled" to this information, it is the parents' responsibility to maintain good boundaries and protect their child/adolescent from this source of negativity.

Destructive parental conflict might be demonstrated in the following manner:

- Family violence.
- Parental threats, excessive control, and intimidation.
- Issues of divided loyalty.
- Aligning with one parent and rejecting the other parent.
- Use of child as message bearer.
- Use of child as parental confidant.
- Volatile behavior during the exchange of the child.
- Spreading gossip and rumors about the parent.
- Parent(s) acting out behavior at the child's extracurricular activities.

- Attempts to create an “alliance” with the caregivers, relatives, coaches and school community. This is detrimental to the other parent’s participation in the child’s life and seriously affects the child.
- Lack of parental communication about their child.
- Lack of sharing pertinent information or lack of shared decision-making regarding medical-dental care, school or extracurricular activities.

The impact of these types of destructive parental conflict will intensify the grief experienced by the child and manifest itself in cognitive, social, emotional and behavioral problems. Characteristic developmental responses of the child to parental conflict may include the following:

Toddler:

- Does not understand the content of conflict.
- Responds to the expressed feelings and the mood of the parent.
- The primary emotional response is fright.

Preschooler:

- Beginning to understand the content of parents’ argument.
- May believe that what they hear is true (“Daddy/Mommy is bad”).
- Typical response is worry.
- May feel responsible for divorce or conflict due to egocentric thinking.

Younger Elementary:

- Often feel in the middle of parents’ conflict (parents may expect child to take sides).
- May be questioned about the other parent and not have the ability to refuse to respond.
- Often will tell each parent what the child thinks he/she wants to hear thereby provoking additional conflict.

Older Elementary:

- Increased interest in determining parental fault.
- May have detailed knowledge of disputed adult issues such as finances, extramarital affairs, etc.
- May actively seek information about disputed adult issues and reach erroneous conclusions.
- May judge parental behavior negatively and refuse to visit the parent, talk to them on the phone, or invite them to their events.

Adolescent:

- Less predictable response to conflict.
- May lead to high risk acting out behavior.
- May show renewed interest in non-primary parent after years of estrangement.
- May be unable to separate from family or may separate from family prematurely.
- May exploit parental conflict for their own purpose.

SPECIAL NEEDS CHILDREN

A comprehensive assessment of a family with a special needs child would include an understanding of the impact of the needs of the child on the parent, as well as the siblings. An evaluation of the financial, physical, social, and emotional impact both short and long term needs to be considered. Often these children require continued medical, dental, educational or therapeutic interventions to maintain their health. Financial or child-care assistance is frequently needed to offset the myriad of demands made upon the parent. This might include, for example, taking time off work for medical/dental or therapy appointments; respite care for the child or babysitters for the sibling(s).

Each parent's knowledge, acceptance and understanding of the medical and/or psychological diagnosis needs to be evaluated. The parent's motivation and ability to implement the designated medical treatment plan or educational plan for the child needs to be addressed. Parental disagreement about the diagnosis or recommended treatment plan may suggest a parent's denial, rejection or misunderstanding of the inherent physical, mental or neurological problems of their child. An assessment of the parents' ability to independently increase their knowledge of the disability is important. Often after a parent has consulted with the pediatric neurologist, family physician, mental health therapist or educational specialist, they are more amenable to implementing a treatment plan.

When there are siblings, consideration might be given to a more flexible residential schedule to accommodate their needs. Such flexibility would allow each parent to spend individual time with either the siblings or the special needs child.

An important aspect of the evaluation is the history of the parents' attitude and behavior toward this child and their capacity to parent a unique and often complex child. Although parenting styles vary, the capacity of a parent to discipline a special needs child effectively is important. Does the parent have the flexibility and adaptability to modify their discipline based on the needs and temperament of this child?

Usually a special needs child is very responsive to a consistent, structured home life. The patterned predictability and physical stability of the home is internalized as social and emotional security.

TYPES OF SPECIAL NEEDS CHILDREN:

Psychological/Biological:

- Mood disorders: depression, anxiety, bipolar, schizophrenia

Neurological:

- Attention Deficit Disorder (ADD) with hyperactivity (ADHD)
- Learning disability: visual, auditory, spatial cognitive processing

Medical:

- Juvenile diabetes
- Allergies – necessitates medication or special diet
- Chronic physical illness, e.g.: asthma, cystic fibrosis, muscular dystrophy
- Physical disability

Developmental:

- Developmental delay
- Pervasive developmental disorder: Asperger Syndrome, Autism, Tourette's

The demands of a special needs child may be life-long, complex and demanding in every aspect of family life. It is important that the parenting plan provide for proportional responsibility for the long-term needs of the special needs child. Referring a parent to appropriate resources specific to the special needs of the child might help the parent to interact effectively with this child. Resources might include professional consultation, parent education, or family counseling.

IMPACT ON THE CHILD OF AN ABSENT PARENT

There are several ways a parent can be absent from their child's life.

- A parent who is physically absent and non-responsive to the needs of the child.
- A parent who has a pattern of sporadic contact with the child.
- A parent who is "physically present" yet by the nature of their own addiction or untreated mental illness, imprisonment and/or severe personality disturbances is inconsistently responsive to the child.

Another type of parental absence could result from prolonged separation to which the child and family has adapted. Such separations may be due to military deployment or extended work assignments. It is important to consider the unique aspects of these family situations, as well as, the child's developmental needs. A child's ability to adapt to these scheduled absences is more likely to be positive than negative.

In some situations, prolonged separation may result from CPS investigations of allegations of child abuse or neglect. Whether these allegations result in legal action or not the child has been affected by the disruption in the family relationships caused by parental absence.

There is also the situation of parental absence resulting from a child's rejection of the parent which may be characterized by the child's denigration of their parent out of proportion to the parent's behavior. This results in the systematic rejection of that parent. These children are considered to be alienated from their parent. A child would not be considered alienated if they reject a parent who has been neglectful or abusive to them or has engaged in family violence.

The impact of an absent parent may create feelings of abandonment and rejection in the child. This is often internalized by the child as feelings of blame, guilt, anger, hurt or confusion. This absence may wound the identity of a child and create a pervasive loss of self-acceptance. The child questions "What is wrong with me? Does he/she remember me?" Personal embarrassment may occur in social situations at school or in the community when questions are asked that can't be answered. For example, a friend asks "where does your parent live? When do you see them? How come . . .? What's the matter with them?" Other examples of acutely painful reminders of parental absence occur with birthdays, holidays or special achievements awarded to the child. The adult's pervasive lack of interest in the child or knowledge of their life is internalized by the child as self-doubt about their value. Some children may idealize or fantasize about the absent parent, as well as, worry about them.

Some factors to consider when evaluating the impact of an absent parent on a child include:

- History of parenting prior to separation.
- Age and developmental level of child.
- Reason and type of absence.
- Responsible parent's adaptation and attitude toward absent parent.
- Economic and social support to the family.
- Absence is re-experienced periodically at different developmental stages.

The degree and intensity of impact of parental absence on the child may be mitigated by the following factors:

- Healthy acceptance by the responsible parent.
- Healthy sibling relationship.
- Supportive gender role models.
- Appropriate participation of extended family members of either parent.
- Nurturing supportive step-parents.
- Child's self-acceptance fostered by their own achievements.
- Availability of adequate social and economic resources.

Even with the consideration of mitigating factors, there may be residual vulnerability within the child which may be manifested by expressions of anger, rage, hurt, and sadness.

When there has been a prolonged absence between the parent and child and the parent requests residential time with the child, it may be necessary to make recommendations to the court regarding re-unification. Consideration may be given to the following factors:

- Reason, frequency and duration of parental absence.
- Intent and motivation of returning parent.
- Current age and developmental stage of the child.
- Age and developmental stage at the time of absence.
- Security of child in their present family and the disruptive impact of reintroduction of the parent.
- Residential parent's capacity to support the re-unification of the parent and child.

Often it is necessary to recommend either supervised visitation, therapeutic visitation, or re-unification therapy. There may be situations where a combination of services are needed.

Supervised visitation offers a safe, secure child-focused re-introduction to an absent parent. It is offered in a home, office or in the community and the visitation supervisor provides written observation of the parent/child interaction. Professional supervision may be recommended if the absent parent is a stranger to the child. In some circumstances, a family or friend might be an appropriate supervisor. It is recommended that an agreement be signed delineating expectations of the supervision process including cost and duration.

Therapeutic visitation is a form of supervised visitation provided by a master's degree or doctoral level therapist. The therapeutic supervisor provides general parenting guidance, models appropriate parenting behavior, and intervenes to correct inappropriate behavior. They may facilitate difficult conversations related to the parental absence. They may also help the child or adolescent express their thoughts, opinions and preferences to their parent.

Reunification counseling offers a therapeutic environment. The mental health counselor facilitates the expression of thoughts, feelings and behavior between the parent and child. The reunification therapist offers to teach the parents, to assess the child's reaction to the parents, and to critically evaluate the potential of the parent/child relationship. Professionals providing these services need to be experienced in the dynamics of complex family matters. Reunification therapists who provide these services have a master's degree or doctoral level degree.

Some factors to be considered when recommending supervised visitation, therapeutic visitation or reintegration therapy include: identify the purpose, the intended outcome, and the length of time of the service. The cost, frequency of service and logistics of transportation also need to be addressed. Selection criteria of an appropriate professional should include their experience in high conflict or complex family situations.

IMPACT OF NEW RELATIONSHIPS

Children are adjusting to the parental separation, divorce and residential schedule, all of which require physical, social and psychological adjustments. Each child's post separation/divorce reaction is influenced by their age, temperament and resilience.

Although parents may feel ready to begin a new relationship, it is important to keep their adult relationships separate from the child. The premature introduction of a new person further complicates the child's adaptation to each reorganized family. There are serious issues that frequently arise when a parent fails to give the child the time they deserve and the result may be that the child's need for their parent's attention is compromised. This might be another situation during which the child experiences divided loyalties between their parents. There may be secrecy and lies surrounding the new relationship which creates unnecessary confusion, hurt and anger. The child 'can't win'—what do they tell or share or deny to the other parent?

Introduction of a parent's new relationship is appropriate when there has been sufficient time to create consistency and stability in their separate family homes. Parents may ask for guidance on how or when to introduce a new relationship to the child. Discussion of the following ideas may be beneficial to this process:

- Inform the child about the person
- Participation in shared activities: a meal, a movie, or ice cream
- Maintain individual parent/child time
- Inform the other parent of the presence and involvement of this person
- Inform the child that the parents have shared this information
- Expressions of neutrality and tacit acceptance offered by the other parent are helpful to the child
- Willingness of parent to listen and respect the child's opinion about the relationship yet the parent needs to be responsible for their own decisions

BLENDED FAMILIES

When the parent remarries, it may take several years to “blend” together as a stepfamily. A stepparent may also have children from a previous relationship and the couple might have their own children. Each family has a particular culture with traditions, communication styles, and history. Some factors to consider when assessing how effectively the stepfamily has been established include the following:

- Awareness of parenting styles
- Family rules and rituals
- Discipline issues – who disciplines whom? How?
- Expectations of the parents

Adults need to be respectful of the child's acceptance of the stepparent. Issues such as divided loyalty, child's protection of the “single” parent, alliance with a disapproving parent may jeopardize this process. If the child feels pressured prematurely to call the adult “Mom” or “Dad” their compliance might mask their confusion. Higher compatibility between the family values regarding academic expectation, socialization, communication, discipline and chores will promote each family's stability. If there is disparity between the parents' values and lifestyles, friction and chaos may result. There are special features of the stepfamily which should be

considered when evaluating the impact of these blended family relationships on the child. The quality of the relationships between the children who are step-siblings or half-siblings depends upon many factors which may impact the child:

- Age and stage of development of child
- Personality and temperament of child
- Birth order of child
- Compatibility of interests in their lifestyle
- Quality of relationship with each parent
- History of relationship between the children

Some children share a stable, consistent sibling relationship with their step- or half-siblings and do not distinguish between these labels. Other children express discontent when they have nothing in common with another child and are “forced” to share their possessions, room or time with their parent. Due to differences in residential schedules, some children do not develop a significant relationship with step- or half-siblings or the age span is too great, e.g., 10 years or more. Often there are latent jealousies and competitions between the adults that impact the children. Whether covert or overt these hostilities create complicated social and emotional problems for the child.

CHILD AND FAMILY THERAPY

During the process of a family law matter it might become necessary to refer the child to mental health counseling or to evaluate the child therapy already being provided. Therefore, it is important to understand a clinician’s approach to working with children or adolescents.

A clinical assessment which is the beginning of therapy must (if possible) include an interview with both parents, either separately or together. A child is seen together with the parents and/or siblings, as well as, individually to enable a clinical treatment plan to be developed. This plan is then discussed with the parents. An assessment typically includes:

- Medical history
- Developmental history
- Educational history
- Social History
- Family History

Since a young child needs cognitive functioning and expressive language to be involved in therapy, child therapy does not usually begin earlier than 3 years of age. Play therapy is employed for young children to engage in imaginative play in a non-directive manner. For children under age 3 years, the focus of therapy is to improve the parenting skills of the adult. Child and family therapy with any age child may also include parent education and training.

Confidentiality in therapy is the clinician’s ethical obligation to maintain the client’s privacy. The privilege of therapy is the right to permit disclosure of therapeutic information. That privilege belongs to the parents of children younger than age 12. Additionally, the consent of

children 12 years and older is required to access clinical records. The person holding the privilege must sign a release that permits disclosure of information. There are limits to confidentiality which include legally mandated reports of harm to self or others, or child abuse or neglect.

Consultation with a therapist might elicit the following information:

- Date of assessment
- Dates of therapy sessions
- Referral question
- Presenting problem/focus of concern
- Diagnosis and treatment plan
- Participation of parents
- Concerns of the therapist
- Treatment recommendations and progress of child

An attorney needs to listen critically in order to analyze and determine the objectivity and professionalism of the therapist. Some indication of the therapist's loss of professional objectivity may include:

- Alignment with one parent.
- Advocacy for the child/adolescent.
- Making recommendations without valid foundations.

The therapist should not be asked for recommendations regarding the parenting plan because such recommendations are outside the scope of child therapy. The information and recommendations by the therapist regarding the child could include:

- Child's attachment to each parent.
- Temperament.
- Adaptability/resilience.
- Coping mechanisms.
- Emotional equilibrium.
- Vulnerability.
- Need for therapy.

INTERVIEWING CHILDREN IN DEVELOPMENTALLY APPROPRIATE WAYS

During the process of a family law matter, it may become necessary to appoint a guardian ad litem, parenting evaluator, or in collaborative law, a parent/child specialist. These professionals should be guided in their child and family interviews by their understanding of child development. They will interview and observe the child and their family. The interviews and observations include each parent/child relationship, sibling relationships, as well as, individual

interviews with each adult and child in the family. In preparation for child interviews, it would be helpful to understand how the age and the child's developmental stage influences their social, emotional, and cognitive presentation. For example, the age of a child determines their understanding of time, dates, places, duration and frequency. The language, attitude, and behavior of a child may also reflect serious issues such as adult coaching, role reversal (child caretaking the parent), alienation, and pseudo adult behaviors.

An effective interview with the child will include the following:

- Reassure the child/adolescent that they are not making the decisions although their ideas and thoughts will be considered.
- Be aware that adolescents might have conflicting agendas.
- Establish rapport with them.
- Explain the purpose of the interview.
- Clarify there is no confidentiality.
- Offer privacy to child (interview child separately from siblings and parents).
- Adapt vocabulary, sentence structure, and content to the developmental level of the child.
- Begin the interview with general, open-ended questions and move toward specific questions if necessary.
- Offer appreciation to the child for participation.

RESEARCH TOPICS RELATED TO DEVELOPMENTAL ISSUES

There are two critical components to be considered when structuring a residential schedule: the developmental needs of the child and the capability of the parent to meet those needs. Developmental research is a primary source of information concerning the needs of children. This research provides information about:

- (1) What constitutes parental competency. The research provides information relating to several areas of parental psychological health.
- (2) The functioning of parents with limitations such as mood disorder, substance abuse, or personality disorders.
- (3) Healthy family functioning and effective parenting.
- (4) Factors that optimize a child's health or put a child at risk.

This general research information must be balanced with each family's unique characteristics.

For example, research strongly supports the benefits of siblings living together, but in certain family situations factors such as significant age spread between siblings may suggest separation of siblings.

The developmental literature, as well as the divorce literature, has presented two concepts worth review. One is that of *psychological parent*. The other is the distinction between *primary* and *secondary attachment figures*.

The definition of psychological parent includes ideas about which parent fulfills the child's psychological need for stability, comfort, affection and security on a day-to-day basis and meets

the child's physical needs. Previously the concept of psychological parent was presented by the clinical work of Goldstein, Freud, and Solnit in 1973. They assumed that a child had only one psychological parent and recommended that this parent have sole custody. It was posited that the child's separation from the psychological parent would disrupt the child's routine, diminish trust, and increase anxiety. Goldstein, Freud, and Solnit did not derive their concept of psychological parent from research, rather they applied theoretical concepts from their clinical experience.

In contrast to this clinical base, the developmental research by Warshak (1986), Lamb (1997), and Parke (1981) indicates that infants develop a close attachment to both parents simultaneously by age 6 months. Furthermore, the child thrives when they are able to establish and maintain these attachments.

While the concept of psychological parent as presented by Goldstein, Freud, and Solnit (1973) is attractive on the surface, there is no empirical evidence upon which an attorney may rely. For example, it does not inform us how the definition of psychological parent reflects the realities of that parent-child relationship. It also does not provide a basis for decision-making for parenting plans when the child experiences both parents as psychological parents. Therefore, we rely on research based behaviors that suggest the quality of the parent/child relationship.

As for the distinction between primary and secondary parental roles, this does not so much refer to quality of care provided by each parent, as in primary is better than secondary, rather it refers to the differences between what is typically being provided to the child by each of the two parents. Each parent provides unique and essential components for child development and the child comes to rely on each parent for what they provide.

Another area of interest in research is overnights for young children. The current thinking suggests that both parents be considered for overnight time *if* both parents have been a frequent and consistent presence for the child, as well as, informed and attentive as caregivers. The frequency and duration of parental contact, as well as overnight stays, serve to enhance the attachment between parent and child. The presence of the parent provides sufficient emotional security to allow the infant or toddler to separate from the other parent. During a divorce, the child is doing exactly this: taking their leave from one attachment figure to be in the care of the other parent.

Research shows that children do best when they maintain good, close relationships with both parents following divorce. Barring restrictions, if both parents are capable of providing care there is not, at this time, basis in research to automatically restrict the infant or toddler's overnight time with the parent.

In the past, clinical experience and conceptualization of attachment and parent-child separation, presented by Goldstein, Freud and Solnit (1973), has supported the view that infants and toddlers should not spend overnights away from their primary parent figure. The research from attachment studies, child development, and divorce literature, as opposed to clinical experience and conceptualization, offers contrasting opinions about how infants and toddlers fare with overnight residential time.

Kelly and Lamb's (2000) research supports the view that infants become attached to both parents at six to seven months. They also point out that infants and toddlers develop their attachments to caregivers depending on the infant/toddler need and the particular capacities of each caregiver. They add that it is not so much the amount of residential time spent together, as it is the kind of interaction that comes with longer stays and overnights.

The contrasting opinion comes from research by Solomon and George (1999). They argue against Kelly and Lamb's conclusion that the kinds of activities experienced by the infant and toddler during overnights serve to enhance attachment. They found that infants appeared disorganized in their attachment to one or both parents.

There are important limitations to the Solomon research. For example, many of the infants had never lived with their fathers previously. Furthermore, some of the infants had had repeated and prolonged separations from their fathers.

DEVELOPMENTALLY BASED RESIDENTIAL SCHEDULES

Residential schedules are most supportive of children and families if they are developmentally based and if they take into consideration the unique characteristics of each child and their parents. In all families there are dynamics which present the unique signature of the family.

Parents who create a stable, healthy family may have children who are resilient and adaptable to change. Parents who create a family with marked instability which is caused by violent, unpredictable or inconsistent behavior have an adverse effect on their children.

Therefore, the residential schedules for relatively healthy families may follow the guidelines presented below. In unhealthy or high conflict families the developmentally based guidelines may need to be adjusted according to the child and family situation.

There are many characteristics of parents and children described in this section which may affect the frequency and duration of parent-child contact. Although presented within one developmental age group, these characteristics are relevant to all age groups.

The ages presented in these developmentally based residential schedules are estimates. Children's normal development may vary by 6 to 9 months.

Residential schedules may be subject to statutory limitations and restrictions.

INFANT THROUGH 2 YEARS:

The infant and toddler should have consistent, frequent and predictable access to both parents to build and maintain secure attachments. This is likely to mean that access for the infant and parent with whom they are spending less time should include three or four times a week for a

few hours at a time. This could be accommodated at child care, the parent's home or a relative's home.

Previously recommendations for overnights for young children infant through 2 years were based on the premise that the 'primary' residential parent afforded the child stability, consistency and structure needed for their early development. The 'secondary' residential parent was offered frequent brief visitations, longer periods of time on weekends, and no overnights.

Historically, family organization and parental roles have changed. The current generational influences evidence an increase in both parents working, an increase in use of child care for infants and toddlers, and an increase in the father's involvement in the physical, social, and emotional care of infants/toddlers. The challenge presented is how to create a balance between the infant/toddler's need for a safe, secure environment and each parent's ability to provide frequent physical and social interactions.

The decision about overnights for infant/toddlers may be considered if each parent has been a frequent, consistent presence for the child, as well as, an informed and attentive caregiver. Other important factors that might influence a decision about overnights include: physical health, child's temperament, geographical proximity, parental cooperation, and effective communication.

If the adults have little or no history of a parenting relationship, then the adult's maturity, temperament, social support system and ability to learn parenting skills may be considered. Parents with a limited history of relationship with each other may present complicating factors:

- Immaturity
- Intense volatile relationship
- Antagonistic family relationships
- Lack of contact between parent and infant

For these parents who have had a limited relationship with each other, it may be difficult to formulate a residential plan. The parent's sense of responsibility toward the child and their potential for committing to a gradually changing child centered plan should be assessed. The infant/toddler will not be able to maintain their attachment to a parent who is an infrequent presence, such as those parents who are geographically distant or physically absent.

RECOMMENDATIONS FOR INFANT THROUGH 2 YEARS:

- Consistent, frequent, predictable access to each parent.
- Access 3-4 times weekly for a few hours at a time.
- Single, non-consecutive overnights once or twice a week.

PRESCHOOL: 3 YEARS THROUGH 5 YEARS:

The toddler's security within the parental relationship creates a safe haven which contributes to their ability to self soothe, develop empathy, and self-worth. Normal separation anxiety

characteristic of this age includes: temper tantrums, clinging, crying, hiding and refusal to go with the other parent. When there is secure attachment to both parents separation anxiety is lessened. Additional factors for consideration in the decision about frequency and duration of extended residential care include:

- Child's temperament
- Child's adaptability to change
- Strength of child's relationship to parent
- Parents' capabilities
- Parent's ability to cooperate
- Effective parental communication
- Consistency of schedule
- Number of siblings
- Geographic distance

Frequency of parental contact continues to be important at this young age. Each parent needs to be cognizant of the child's schedule for eating, sleeping and play and follow a similar schedule.

Between ages 3 and 4 years, consider up to two consecutive overnights on alternate weekends with a weekly mid-week visit. In some situations, the mid-week visit opposite the weekend may be an overnight.

Parental participation at the child's preschool/school is an additional way to provide the opportunity for child and parent contact. Exchange of the child at preschool minimizes the transitions and decreases the opportunity for negative interaction between the parents. For situations where the child is cared for at home transitions will likely occur at the parental home.

Between ages 4 and 5, consider up to two or three consecutive overnights on alternate weekends, as well as, a weekly evening visit. The opposite alternating week the evening visit may be extended to an overnight. The relationship between child and parent depends on frequency, which in turn is a function of proximity. The relationship will not be maintained solely by vacation or holiday get-togethers.

RECOMMENDATIONS FOR 3 YEARS THROUGH 5 YEARS:

- Age 3 years: up to 2 consecutive overnights on alternate weekends.
- Ages 4 and 5 years: 2 to 3 consecutive overnights on alternate weekends.
- Evening visit may include an overnight on alternating weeks.
- Weekly evening visit.
- Exchanges may take place at child care.
- Parents' participation in pre-school/school may increase contact.
- Parents follow a similar schedule for meals, naps, bedtimes.

ELEMENTARY SCHOOL: 6 YEARS THROUGH 11 YEARS:

These children can extend the time of separation from their parents, yet still need frequent contact with them. The developmental needs of the child for independence and social interaction are met through school, as well as at home. Each parent needs to commit to maintain the agreed-upon extracurricular activities.

These children can accommodate to a variety of residential schedules which reflect extended time and shared parenting. The schedule in this age range may take the form of alternating extended weekends from Thursday or Friday to Monday delivery to school or alternating extended weekends of Thursday through Sunday with one evening or overnight on the week opposite the extended weekend. In some families, a residential schedule of alternating and near equal time in both homes may be appropriate.

This residential schedule reflects a co-parenting situation which is an arrangement in which both parents are actively involved in their child's life, share in child activities, and problem-solve the normal challenges of parenting. Parents need to demonstrate cooperation with each other, effective communication, and both households should have somewhat similar and therefore predictable schedules.

Parents who have a moderate degree of difficulty cooperating and communicating with each other can be successful in parallel parenting. This arrangement is structured to minimize contact between the parents. There is limited flexibility and a structured detailed residential schedule is needed.

At this age, the child's participation in outside activities must be supported, as it is essential to the child's development. Additionally, these activities provide frequent opportunities for parents to be involved with their child outside the residential schedule.

RECOMMENDATIONS FOR 6 YEARS THROUGH 11 YEARS:

- Alternating weekends: Friday to Sunday.
- Alternating extended weekends: Thursday to Sunday or Monday.
- One evening or overnight on the week opposite of the alternating weekend.
- Alternate week or near equal time in both homes.

MIDDLE SCHOOL: 12 YEARS THROUGH 14 YEARS:

The residential schedule may be structured around extended weekends with flexibility to accommodate the young adolescent's increased social needs. For the young adolescent between 12 and 14 years, their friendships and activities must be given priority because of the importance of these activities in the mastery of their developmental tasks. Parenting plans need to be structured so that the agreed-upon activities are maintained in each home. The parents' relationship with the young adolescent develops as they participate with the adolescent by

transporting them to and from activities, participating directly with them through extracurricular activities and volunteering to assist with parties, sports, music and drama.

RECOMMENDATIONS FOR 12 YEARS THROUGH 14 YEARS:

- Extended weekends with flexibility to adapt to young adolescent's needs and activities.
- Extended shared residential plans: 3 to 4 overnights on alternate weekends; week on/week off schedule.
- Mid-week visits may include an overnight.

HIGH SCHOOL: 15 TO 18 YEARS:

From age 15 to 18 years, adolescents are increasingly involved outside the home. In addition to the aforementioned activities, they are more involved in their social lives, working and volunteering. Increased autonomy is associated with the increased responsibilities they assume as they continue to develop their identity. Parents support this developmental stage by considering the preferences of the adolescent and adapting a schedule compatible with their needs. This does not mean that the adolescent goes between homes solely at their discretion. There continues to be a need for parents to support the adolescent's independence while monitoring their whereabouts. The consistency of rules and curfews between homes and the consistency of contact is important at this stage.

RECOMMENDATIONS FOR 15 TO 18 YEARS:

- May want increased involvement with the parent with whom they have spent less residential time.
- May want increased time with same gender parent.
- May prefer one home to avoid confusing their friends.
- May prefer evenings or weekends with the other parent.
- May increase or decrease frequency of weekend residential time.
- May prefer flexibility for mid-week visits.
-

HOLIDAYS, SCHOOL BREAKS AND SUMMER VACATIONS:

School vacations include winter, spring and sometimes mid-winter break. Summer vacation is typically 8-10 weeks. Holidays are designated legal holidays and special occasions might include religious observances. The schedule for school breaks and vacations may digress from the child's usual schedule to include longer vacation periods. It is important that this exception to the usual residential schedule is still related to the developmental needs of the child. For example, preschool age children may be able to accommodate 5-7 days for a vacation period. An elementary age child might accommodate longer periods of uninterrupted time. An adolescent may accommodate extended time during the summer.

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CHAPTER 8
WHAT A GUARDIAN AD LITEM SHOULD KNOW
ABOUT CHEMICAL ABUSE/DEPENDENCY

WHAT A GUARDIAN AD LITEM SHOULD KNOW ABOUT CHEMICAL ABUSE/DEPENDENCY

Submitted by Robert S. Geissinger, BS, CCDCIII, CDP

INTRODUCTION

This chapter will assist the Guardian Ad Litem with:

- Defining chemical abuse/dependency assessment and treatment terminology
- Defining and identifying basic common indicators of chemical dependency
- Identifying how and when to get chemical dependency professionals involved
- Identifying the impact on children of parent's specific behavior as affected by chemical dependency or chemical abuse
- Identifying dangers presented to children
- Locating local and state resources for chemical abuse/dependency assessment and treatment
- What to expect from chemical abuse/dependency assessment and treatment professionals
- How to overcome confidentiality barriers and access information related to chemical abuse/dependency assessment and treatment
- Funding for chemical abuse/dependency assessment and treatment
- An understanding of parent/child participation in support groups
- The utilization of working agreements with chemical abuse/dependency assessment and treatment professionals
- Awareness of conflicting responsibilities between the Guardian Ad Litem and chemical abuse/dependency assessment and treatment professional

I. DEFINING CHEMICAL ABUSE/DEPENDENCY ASSESSMENT AND TREATMENT TERMINOLOGY:

As defined in Washington Administrative Code (WAC) 388-805-005 pertaining to certification requirements for chemical dependency service providers, effective June 17, 2006:

"Administrator" means the person designated responsible for the operation of the certified treatment service.

"Adult" means a person eighteen years of age or older.

"Alcoholic" means a person who has the disease of alcoholism.

"Alcoholism" means a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. It is characterized by impaired control over drinking, preoccupation with the drug alcohol, use of alcohol despite adverse consequences, and distortions in thinking, most notably denial. Each of these symptoms may be continuous or periodic.

"Approved supervisor" means a person who meets the education and experience requirements described in WAC 246-811-030 and 246-811-045 through 246-811-049 and who is available to the person being supervised.

"Certified treatment service" means a discrete program of chemical dependency treatment offered by a service provider who has a certificate of approval from the department of social and health services, as evidence the provider meets the standards of WAC 388-805.

"Chemical dependency" means a person's alcoholism or drug addiction or both.

"Chemical dependency counseling" means face-to-face individual or group contact using therapeutic techniques that are:

- (1) Led by a chemical dependency professional (CDP), or CDP trainee under supervision of a CDP;
- (2) Directed toward patients and others who are harmfully affected by the use of mood-altering chemicals or are chemically dependent; and,
- (3) Directed toward a goal of abstinence for chemically dependent persons.

"Chemical dependency professional" means a person certified as a chemical dependency professional by the Washington state department of health under chapter 18.205 RCW.

"Child" means a person less than eighteen years of age, also known as adolescent, juvenile, or minor.

"Clinical indicators" include, but are not limited to, inability to maintain abstinence from alcohol or other non-prescribed drugs, positive drug screens, patient report of a subsequent alcohol/drug arrest, patient leaves program against program advice, unexcused absences from treatment, lack of participation in self-help groups, and lack of patient progress in any part of the treatment plan.

Author's note: The misuse (other than as prescribed) of prescription drugs can also be a clinical indicator.

"County coordinator" means the person designated by the legislative authority of a county to carry out administrative and oversight responsibilities of the county chemical dependency program.

Author's note: Each county in the state of Washington has appointed a County Alcohol/Drug Coordinator. The County Coordinator is responsible for the disbursement of funds for the purchase of substance abuse and dependency treatment in his or her respective county. The Coordinator usually works with a County Citizens Advisory Group to make service decisions. The Directory of Certified Chemical Dependency Services in Washington State (also known as the "Greenbook") includes the name and contact information for alcohol/drug coordinator for

each county.

"Danger to self or others," for purposes of WAC 388-805-520, means a youth who resides in a chemical dependency treatment agency and creates a risk of serious harm to the health, safety, or welfare to self or others. Behaviors considered a danger to self or others include:

- (1) Suicide threat or attempt;
- (2) Assault or threat of assault; or
- (3) Attempt to run from treatment, potentially resulting in a dangerous or life-threatening situation.

"Detoxification" or "detox" means care and treatment of a person while the person recovers from the transitory effects of acute or chronic intoxication or withdrawal from alcohol or other drugs.

"Discrete treatment service" means a chemical dependency treatment service that:

- (1) Provides distinct chemical dependency supervision and treatment separate from any other services provided within the facility;
- (2) Provides a separate treatment area for ensuring confidentiality of chemical dependency treatment services; and
- (3) Has separate accounting records and documents identifying the provider's funding sources and expenditures of all funds received for the provision of chemical dependency treatment services.

"Drug addiction" means a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. Drug addiction is characterized by impaired control over use of drugs, preoccupation with drugs, use of a drug despite adverse consequences, and distortions in thinking, most notably denial. Each of these symptoms may be continuous or periodic.

"Governing body" means the legal entity responsible for the operation of the chemical dependency treatment service.

"Opiate substitution treatment program" means an organization that administers or dispenses an approved medication as specified in 212 CFR Part 291 for treatment or detoxification of opiate dependence. The agency is:

- (1) Certified as an opioid treatment program by the federal Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration;
- (2) Licensed by the federal Drug Enforcement Administration;

- (3) Registered by the state board of pharmacy;
- (4) Accredited by an opioid treatment program accreditation body approved by the federal Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration; and

Authors note: The state of Washington Division of Alcohol and Substance Abuse is a federally approved accreditation body.

- (5) Certified as an opiate substitution treatment program by the department.

"Patient" is a person receiving chemical dependency treatment services from a certified program.

"Patient contact" means time spent with a patient to do assessments, individual or group counseling, or education.

"Patient placement criteria (PPC)" means admission, continued service, and discharge criteria found in the patient placement criteria for the treatment of substance-related disorders as published by the American Society of Addiction Medicine (ASAM).

"Probation assessment officer (PAO)" means a person employed at a certified district or municipal court probation assessment service that meets the PAO requirements of WAC 388-805-220.

"Probation assessment service" means a certified assessment service offered by a misdemeanor probation department or unit within a county or municipality.

"Qualified personnel" means trained, qualified staff, consultants, trainees, and volunteers who meet appropriate legal, licensing, certification, and registration requirements.

"Registered counselor" means a person registered by the state department of health as required by chapter 18.19 RCW.

"Self-help group" means community based support groups that address chemical dependency.

"Service provider" or "provider" means a legally operated entity certified by the department to provide chemical dependency services. The components of a service provider are:

- (1) Legal entity/owner;
- (2) Facility; and
- (3) Staff and services.

"Substance abuse" means a recurring pattern of alcohol or other drug use that substantially impairs a person's functioning in one or more important life areas, such as familial, vocational, psychological, physical, or social.

"Supervision" means:

- (1) Regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give directions and require change; and
- (2) **"Direct supervision"** means the supervisor is on the premises and available for immediate consultation.

"Treatment plan review" means a review of active problems on the patient's individualized treatment plan, the need to address new problems, and patient placement.

"Treatment services" means the broad range of emergency, detoxification, residential, and outpatient services and care. Treatment services include diagnostic evaluation, chemical dependency education, individual and group counseling, medical, psychiatric, psychological, and social services, vocational rehabilitation and career counseling that may be extended to alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other drugs, and intoxicated persons.

"Urinalysis" means analysis of a patient's urine sample for the presence of alcohol or controlled substances by a licensed laboratory or a provider who is exempted from licensure by the department of health:

- (1) **"Negative urine"** is a urine sample in which the lab does not detect specific levels of alcohol or other specified drugs; and
- (2) **"Positive urine"** is a urine sample in which the lab confirms specific levels of alcohol or other specified drugs.

"Youth" means a person seventeen years of age or younger.

ADDITIONAL DEFINITIONS:

As defined in Revised Code of Washington (RCW) 70.96A.020 pertaining to Treatment for alcoholism, intoxication, and drug addiction, current as of December 9, 2007.

"Designated chemical dependency specialist" or "specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.

"Gravely disabled by alcohol or other psychoactive chemicals" or "gravely disabled"

means that a person, as a result of the use of alcohol or other psychoactive chemicals: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by a repeated and escalating loss of cognition or volitional control over his or her actions and is not receiving care as essential for his or her health or safety.

"Incapacitated by alcohol or other psychoactive chemicals" means that a person, as a result of the use of alcohol or other psychoactive chemicals, is gravely disabled or presents a likelihood of serious harm to himself or herself, to any other person, or to property.

"Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

"Professional person in charge" or "professional person" means a physician or chemical dependency counselor as defined in rule by the department, who is empowered by a certified treatment program with authority to make assessment, admission, continuing care, and discharge decisions on behalf of the certified program.

"Treatment" means the broad range of emergency, detoxification, residential, and outpatient services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

"Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of alcoholics or other drug addicts.

AUTHOR DEFINITIONS:

Established recovery (from chemical dependency) means a chemically dependent person has:

- Remained abstinent from alcohol or other non-prescribed chemicals for a minimum of 60 days;
- Recognized their use of chemicals has resulted in life consequences; and,
- Regularly participates in chemical dependency and other support groups.

"Greenbook" means the *Directory of Certified Chemical Dependency Services in Washington State* published about every six months by the state of Washington Division of Alcohol and Substance Abuse.

"Relapse" means a series of behavior and thinking patterns that may lead the return of alcohol or drug use by a person with an established recovery from chemical dependency. A chemically

dependent person with an established recovery can be in relapse without having used alcohol or other drugs.

“Toxic state” means the state a person is in while under the toxic effects of a chemical (the term intoxicated means a person in a toxic state).

“Withdrawal state” means the state a person is in while experiencing withdrawal symptoms associated with the discontinuation of a chemical or group of chemicals. Some withdrawal states can be fatal such as withdrawal from alcohol while others such as withdrawal from heroin may not necessarily be fatal but can cause serious discomfort.

II. DEFINING AND IDENTIFYING BASIC COMMON INDICATORS OF CHEMICAL DEPENDENCY:

The Guardian Ad Litem should not try to diagnose chemical dependency even when qualified to do so. By obtaining an outside professional opinion, the Guardian Ad Litem can be provided with supportive information from someone more vested in the individual parent or parents needs.

Common indicators of chemical dependency are:

Alcohol/other drug use

Use of alcohol or other drugs by itself does not constitute abuse or dependency. Generally, there are five elements of use that can affect whether or not a person has a problem with his or her use of chemicals. The five elements are the:

- Age of onset of use which is the age of the person first used for each chemical of indicated use
- Date of last use (important for establishing the possibility of withdrawal) for each chemical of indicated use
- Frequency of use which is how often the person has used each chemical of indicated use
- Route of administration which is the usual method or methods (taken orally, by inhalation of the substance, by smoking the substance, by intravenous injection, by intramuscular injection) the person used to take for each chemical of indicated use
- Amount of substance usually taken on each occurrence for each chemical of indicated use

Preoccupation with alcohol or other drug use

Preoccupation means that considerable time, energy, and effort is used by the person to obtain and maintain sufficient quantity of the chemical for personal use. The person many talk frequently about use, feel anxious if supplies are low, and threatened if someone jeopardizes the source of their supply. A person may exhibit preoccupation in many different ways.

Loss of control when using alcohol or other drugs

Loss of control means the loss of the ability to predict what will happen when a person starts using a substance. A person may lose control over how they behave, how much they use, when the use, or in other ways. They may do things they would not do when not under the influence, or in attempts to secure a supply of a chemical.

Adverse consequences resulting from alcohol or other drug use

This could mean legal problems, child custodial issues, family, and work problems. Indications the persons use or abuse of chemicals has resulted in adverse consequences for themselves or others.

Continued use despite life contraindications

This usually means use despite legal contraindications such as use of a substance when on probation or parole and therefore risking the return to jail or prison. Continued use despite medical contraindications such as continuing to smoke marijuana or tobacco after being diagnosed with emphysema.

Problem recognition

Chemical dependency is chronic, progressive, and relapsing. It usually develops over a period of time and the adaptation to use of a chemical can be subtle. Persons with a chemical dependency have an over-developed defense system that interferes with their ability to acknowledge how their use of chemicals has impacted their life. Some may minimize, discount, dismiss, divert, excuse or otherwise deny the impact of the use of chemicals has had on their life and others. Generally speaking, persons with chemical dependencies need help to identify and accept the impact chemical use may have had in their life.

Tolerance and withdrawal

Increase in tolerance is when it takes more of a particular chemical to obtain a particular effect. Increases in tolerance to a particular chemical can indicate abuse when combined with other indicators. Withdrawal usually indicated physical dependence to a drug. Some drug craving and preoccupation is seated in withdrawal or fear of withdrawal. Withdrawal syndromes vary from chemical type to chemical type. Withdrawal from alcohol and other depressants is more dangerous than withdrawal from opiates.

Relief use

Many persons who abuse alcohol and other drugs may use them to relieve stress and deal with difficult situations. It can be a form of self-medication that becomes self-perpetuating. The more a person uses and a problem with use becomes progressively worse, the more a person feels compelled to use. Medications may be prescribed by medical and mental health

professionals for the same purposes, but are usually temporary solutions for transitory stress or anxiety.

III. IDENTIFYING HOW AND WHEN TO GET CHEMICAL DEPENDENCY PROFESSIONALS INVOLVED:

Alcohol and Other Drug Screening Instrument

The following information has been taken from Simple Screening Instruments for Outreach for Alcohol and Other Drugs and Infectious Diseases. (Rockville: U.S. Department of Health and Human Services, 1994):

The Alcohol and Other Drug Screening Instrument found in the appendices can be administered test to individuals who may be at risk of having an alcohol or other drug abuse problem. Use of the screening instrument should be accompanied by a careful explanation of the subject's rights to confidentiality, as well as any limits on confidentiality. The interviewer should also be clear about the instrument's purpose

Ideally, the screening test should be administered in its entirety. Situations may arise, however, in which there is inadequate time to administer the entire test. In such situations, a subset of the screening instrument can be administered.

The four boldfaced questions—1, 2, 3, and 16—constitute the short form of the screening instrument. These items were selected because they represent the prominent signs and symptoms covered by the full screening instrument. Although this abbreviated version of the instrument will not identify the variety of dimensions tapped by the full instrument and is more prone to error, it may serve as a starting point for the screening process.

A preliminary scoring mechanism for the screening instrument is provided with the screening tool. Until an empirical evaluation of this scoring protocol is complete, however, it should be considered only as a guideline to interpreting responses to the instrument.

Questions 1 and 15 are not scored, because affirmative responses to these questions may provide important background information about the respondent but are too general for use in scoring.

The observational items are also not intended to be scored, but the presence of most of these signs and symptoms may indicate an alcohol or other drug problem.

It is expected that people with an alcohol or other drug problem will probably score 4 or more on the screening instrument. A score of less than 4, however, does not necessarily indicate the absence of an alcohol or other drug problem. A low score may reflect a high degree of denial or lack of truthfulness in the subject's responses.

Authors note:

The screening instrument is intended to assist the Guardian Ad Litem to either screen in or screen out possible alcohol or other drug abuse. The results should be viewed as preliminary and not conclusive. The Guardian Ad Litem should always use his or her own judgment on whether or not to refer a person for a chemical dependency assessment or treatment.

I recommend the Guardian Ad Litem share any observations, information, or indications that gave cause for the referral with the assessing chemical dependency professional. Additional information may lead to a more accurate assessment outcome.

I also included a couple of guides to assist in distinguishing between mental states found in a variety of medical conditions. About 10-25% of persons with a chemical dependency also have co-occurring mental health issues. The guides assist the professional in making distinctions between toxic (chemical related) and other medical conditions. Toxic and withdrawal states can be managed through abstinence and detoxification processes.

Chemically induced syndromes is another tool to help consider if certain conditions may be the result of the use of a chemical. In one case, an individual blacked out for three days, and first remembered coming around in a tree in the woods. He was hallucinating that a state patrol Special Weapons and Tactics team was raping and killing a friend, and then hung the dead body from a limb on the tree where he was hiding. He then jumped from the tree, ran into a street, rolled off the hood of a car that hit him, tumbled down and embankment and burst through the front door of an elderly couples home and begged them to call the local police. He was transported to the county jail and while he was lying in his bunk, he hallucinated that spiders were dropping from the ceiling and immobilizing him. He was transported to Western State Hospital for evaluation and observation. He was 37 years old and father of three children. While this is an extreme case, it does describe a bizarre toxic and withdrawal state that was result of his chemical dependence on alcohol. All the symptoms dissipated after about 10 days.

(See Mental States Found In Various Medical Conditions located in the appendix).

(See Chemical Induced Syndromes located in the appendix).

IV. IDENTIFYING THE IMPACT ON CHILDREN OF A PARENT'S SPECIFIC BEHAVIOR AS AFFECTED BY CHEMICAL DEPENDENCY OR CHEMICAL ABUSE:

A family system made up of one or more parent figures and one or more children will become dysfunctional as a result of the progression of chemical abuse or dependency within the family. Dysfunction may also occur within a family system as a result of other issues, however, it is estimated there are about 20 million persons in the United States who have a chemical dependency and in turn directly or indirectly impact the lives of an average of four persons.

Therefore, the lives of about 100 million persons in the country are affected by the chemical dependency of a significant other.

Family members (including children) in a dysfunctional family will develop identifiable survivor behaviors in order to make sense of their lives. The survival roles can influence the lives of those affected well into and throughout adulthood. The survival behaviors are coping mechanisms to deal with a tremendous amount emotional tension and stress that result from the dysfunction. Many children who grow up in dysfunctional families suffer from post-traumatic stress disorder. While the primary purpose of the survival behaviors are to keep the torrent of emotions (guilt, shame, fear, anger, isolation, sadness, hurt, etc.) within the person, the survival behaviors also keep others at a distance. The roles also meet familial needs. Roles may result in giving other family members something to be proud of, or someone to blame for the families troubles.

Three unwritten laws of a dysfunctional family

Don't talk:

Children in dysfunctional families often learn from an early age that one does not talk about what is happening within the family. In one case, a six-year old came home from school to find his father passed out naked on the living room floor. He looked around and his mother and two sisters were acting as though his father wasn't really there. The family never talked about what happened. Three years later, when the boy was receiving some counseling, the boy disclosed the incident to the counselor. The boy thought maybe he had imagined it. The counselor called in the mother and two sisters and asked them about the event and the three of them acknowledged it did happen. When asked why they never talked about it with the young boy, they replied they had hoped he wouldn't have noticed.

Don't trust:

Children learn early on that dysfunctional parents cannot be trusted. Routines are irregular. Children may be abused or neglected, may go hungry, may have had strings of broken promises, or feel safe. They make efforts to tell others about what is going on, only to have others minimize, discount, or dismiss their claims. One seven-year old boy tried to tell his mother that his father raped him in their basement only to have the mother become hysterical and scream that his father would never have done such a thing. The young boy learned that he could not trust either parent to protect him and keep him safe. Some unspoken messages to not trust are more subtle, but many children from a dysfunctional family will have great difficulties establishing trust with others.

Don't feel:

Children in dysfunctional families are often afraid of their feelings. The intensity is so overwhelming at times they may become physically ill. They may have difficulty identifying feelings, or understanding the feelings other may have. They may become over engaged with another's feelings they lose all site and contact with their own. As indicated earlier, survival

behaviors are established in order to contain intense negative feelings about ones own self and life.

The following 12 characteristics of children of dysfunctional families has been adapted from
Woititz, Janet Geringer Ed D " *Adult Children of Alcoholics : Expanded Edition* "
(1983/1990). Health Communications, Inc.

Twelve Characteristics Of Children Of Dysfunctional Families:

1. Children of dysfunctional families guess at what normal is. Children of dysfunctional families have little or no experience with what is normal.
2. Children of dysfunctional families have difficulty in following a project through from beginning to end.
3. Children of dysfunctional families lie when it would be just as easy to tell the truth. Lying is basic to the family system affected by alcohol or other drugs. It masquerades in part as over denial of unpleasant realities, cover ups, broken promises, and inconsistencies.
4. Children of dysfunctional families judge themselves without mercy. While growing up, children of dysfunctional families were never good enough. They may have been constantly criticized. They may feel the family would be better off without them. They may have internalized these criticisms as negative self-feelings.
5. Children of dysfunctional families have difficulty having fun.
6. Children of dysfunctional families take themselves very seriously. Children of dysfunctional families didn't have much fun growing up. The spontaneous child within may have been squashed. They may even disapprove of others who act silly. But, in a little place inside of them, they really wish they could do that too.
7. Children of dysfunctional families have difficulty with intimate relationships. They have no frame of reference for a healthy, intimate relationship because they most likely have never seen one. They also carry with them the experience of come close, go away, the inconsistency of a loving parent to child relationship. They feel loved one day and rejected the next.
8. Children of dysfunctional families overreact to changes over which they have no control. The young child of a chemically dependent parent was not in control. They have a need of being in control of their lives, since aren't within their family. They may often be seen as being controlling, rigid, and lacking in spontaneity.
9. Children of dysfunctional families may constantly seek approval and affirmation. The messages receive at home about love are sometimes very confusing.

10. Children of dysfunctional families can't feel they are different from other people. They may not have had an opportunity to be children. They have difficulty feeling comfortable playing with other children. Their concern about their home problems can cloud everything else in their lives.
11. Children of dysfunctional families are either super responsible or super irresponsible. They take all the responsibility on or give it all up. There is little middle ground. They may not have a sense of being a part of a project, of how to cooperate with other people and let all parts come together and become a whole, they either do all of it or do none of it. They also don't have a good sense of their own limitations.
12. Children of dysfunctional families are extremely loyal, even in the face of evidence that the loyalty is undeserved. Family members hang in long after reasons dictate that they should leave. The so-called 'loyalty' is more the result of fear and insecurity than anything else. Nevertheless the behavior that is modeled is one where no one walks away just because the going gets rough.

The degree of impact of chemical abuse or dependency will have on children will depend on the progression of the abuse or dependency in family members.

Chemical abuse or dependency can impact family over the course of multiple generations. It has been suggested a family may be impacted for as many as three subsequent generations beyond the one with an active chemical dependency.

The behavior of non-chemical abusing family members can contribute to the families dysfunctional as much or sometimes more than the chemically dependent member of a family. Many family members may develop what has been called as "co-dependency." Persons can become obsessed with a family members chemical dependence to the point they lose themselves in that persons dependency. While co-dependent behavior is intended to control the chemically dependent person, the behavior actually has the reverse effect and enables the dependence to become progressively worse. That does not mean a co-dependent person is responsible for the dependence, but he or she does have influence on the ability of the person to come to terms with the addiction.

Most chemical dependency treatment in this state focuses on the person with the chemical dependency. In the author's opinion, there are minimal services provided to a non-dependent spouse or children. Entire families can and will recover if provided with the proper help and support. To simply treat the dependence without addressing the needs of other family members is similar to having a car with four flat tires, fixing one tire, and then wondering why the car doesn't run properly. Non-using family members deserve help and support in their own right. Even if a chemically dependent parent leaves the home and has their parental rights restricted or terminated, a non-using spouse and children may need help to sort through how the impact of the dependency affected their lives.

V. IDENTIFYING DANGERS PRESENTED TO CHILDREN:

There can be no doubt that parental chemical abuse or dependency issues can and does often represent a danger to children within a family system. While issues such as domestic violence, sexual abuse, child abuse, or neglect do not occur only within a family with chemical abuse or dependency issues, the likelihood significantly increases with the progression of a problem with chemicals. There is such a high prevalence of various types of abuse that occur within such families (70-80%), that one should rule out such issues once a chemical abuse or dependency problem has been established.

A rule of thumb is that if domestic violence, sexual abuse, child abuse, or neglect AND a chemical abuse or dependency has been established within a particular family system, then toxic and withdrawal states associated with various chemicals may increase the likelihood of reoccurrence of abuse events. (See Child Abuse/Neglect (CA/N) Risk By Drug Category located in the appendix).

Persons may have difficulty responding to legal, medical, or therapeutic interventions to abusive behavior without first establishing recovery from a chemical abuse or dependency problem. The use of alcohol and some other drugs of abuse and dependence affect a persons reasoning, judgment, and emotional control that are necessary to respond to the interventions. This does not mean that chemical abuse or dependency causes abusive behaviors, but does mean it will most likely make it more likely to reoccur. Therefore, chemical abuse and dependency issues should be addressed in order to better enable a person's response to various interventions. Stress reduction, and parental education techniques can be helpful, but can be rendered all but useless in the presence of an active chemical abuse or dependence problem.

Also, children may be at greater risks from associates of the parents who may have chemical abuse or dependency issues and access to children. Parents may be intoxicated to the point of being unable to provide a safe environment for a child. Children can become more vulnerable.

There may be an increase in the number of accidents as the result of the chemical abuse or dependence of a parent with a higher risk for injury or death, such as fires, or driving motor vehicles while under the influence of alcohol or other drugs.

Another problem presented to children in homes where chemical abuse or dependency is an issue is the accessibility to alcohol or other drugs, including prescription medication. The chemicals may not be stored in child proof containers, or substances may fall to the ground when a parent may be using. Many adults with chemical abuse or dependence problems had their first experiences with alcohol or other drugs in their home. Some parents may use alcohol to quiet infants during the night by giving it to the infants in baby bottles. Other parents may find it amusing to observe a young child under the influence of alcohol or other drugs.

In some homes, parents may be involved in the manufacture of substance such as methamphetamine, methadone, or LSD. The process to manufacturing some substances involves the use of toxic chemicals that can be harmful to children.

The parent or guardian may model abuse or dependency behaviors that could encourage children to use chemicals to cope or pleasure.

As suggested by the before mentioned information, the dangers can range from minimal to the extreme, dependent upon the extent of the chemical abuse or dependence within a parent or guardian. Some of the behaviors may be abhorrent to the outside observer, however, do in fact occur in some families in this country.

VI. LOCATING LOCAL AND STATE RESOURCES FOR CHEMICAL ABUSE/DEPENDENCY ASSESSMENT AND TREATMENT:

There are three sources for information to locate local and state resources for chemical abuse/dependency assessment and treatment. The first is entitled the *Directory of Certified Chemical Dependency Services in Washington State* also known as the Greenbook. The directory is published about every six months by the state of Washington Division of Alcohol and Substance Abuse (DASA). The Greenbook is available for download in pdf format on the internet on the DASA website at:

<http://www1.dshs.wa.gov/dasa/services/certification/GB.shtml>.

The Greenbook contains a list of all DASA certified chemical dependency assessment/treatment programs in the state of Washington arranged alphabetically by county.

The Greenbook also includes the following information:

ALCOHOL/DRUG 24-HOUR HELP LINE

CRISIS LINE: (206) 722-3700
TOLL FREE: 1-800-562-1240 (from within Washington State only)
TEEN LINE: (206) 722-4222
BUSINESS LINE: (206) 722-3703

E-Mail: staff@adhl.org

Web site: <http://www.adhl.org>

WASHINGTON STATE ALCOHOL/DRUG CLEARINGHOUSE

Street Address:
6535 5th Place South
Seattle, WA 98108-0243

TOLL FREE: 1-800-662-9111 (from within Washington State only)
SEATTLE AREA: (206) 725-9696

E-Mail: clearinghouse@adhl.org

Web site: <http://clearinghouse.adhl.org>

Who can use the Clearinghouse?

Anyone is welcome to use services, including prevention and community organizations, parents, treatment professionals, preschool-through-college students and educators, health care practitioners and hospitals, libraries, state and government agencies, business and individuals.

What kind of information is available?

They provide a continually updated substance abuse resource room; information on programs, personnel and referral; networking; educational videos; hundreds of complimentary copies of printed materials. Information is available in a variety of format including books, posters, pamphlets, curricula, videos, journal, and periodical articles.

Also available are copies of:

- The Directory of certified Chemical Dependency Treatment Services in Washington State (*The Greenbook*)
- Chapter 388-805, Washington Administrative Code (WAC) (*Chemical Dependency Service Providers*)
- WAC Implementation Guide (*WIG*) for WAC 388-805
- Forms to reorder the state of Washington Department of Licensing DUI/PC Assessment Report forms
- Purchase of *American Society of Addiction Medicine (ASAM) Patient Placement Criteria 2-R* manuals

Appendix A includes the name and contact information of the Alcohol/Drug Coordinator for each county in Washington State. The County Coordinator would have knowledge of outpatient chemical dependency services within their respective counties and may be a resource on developing resources to meet special needs in the county. County Coordinators usually manage outpatient chemical assessment/dependency services in their counties. There are other appendices that provide other information on various chemical abuse or dependency and prevention services throughout the state of Washington.

The inside front cover includes the names and contact information of the DASA Regional Administrators. The DASA Regional Administrator works with the County Coordinators for the counties in their region and usually manages residential and group-care contracts provided in

their regions. The inside back cover includes contact information and working titles of all DASA employees.

VII. WHAT TO EXPECT FROM CHEMICAL ABUSE/DEPENDENCY ASSESSMENT AND TREATMENT PROFESSIONALS

Authors note: While the following material addresses issues between chemical dependency professionals and professionals within the child protective service system, the issues and roles are very similar. The primary role of the Guardian Ad Litem is to represent the best interests of a child or children, while the primary role of the chemical dependency professional is most often to represent the best interests of a parent or legal guardian. The two roles are not necessarily in conflict, but can be a source of misunderstanding between professionals in either role.

Keep in mind that chemical abuse/dependency assessments are subject to misinformation and misdirection. Conclusions and treatment recommendations will be based on the evaluator's skill and available information. I once refused to admit a person into treatment because the evaluator honestly indicated to me the assessment outcome was based on a "gut feeling." I advised the evaluator that we could not treat "a gut feeling." Any information that may suggest a person to be assessed has a problem with alcohol or other drugs should be provided to the evaluator before the assessment. An experienced evaluator should be able to consider the information during the course of the assessment and whether or not it should influence the assessment outcome.

The following information is an excerpt from Substance Abuse Treatment for Persons with Child Abuse and Neglect Issues. (Rockville: U.S. Department of Health and Human Services, 2000):

Organizational Roles and the Need for Collaboration

In treating adults with substance abuse disorders who are suspected of abusing or neglecting their children or who are already involved in the CPS system, counselors must communicate and collaborate with representatives from CPS agencies, all while keeping the best interests and confidentiality of clients and their families in mind. Counselors also must understand the role of juvenile, family, and criminal courts in prosecuting cases of child abuse and neglect. Every system attempts to accomplish a specific set of goals to help further the well-being of clients and family members. However, the philosophies and processes used may be very different, and the potential for conflict (expressed or unexpressed) among agency representatives is great. It is important to find ways to collaborate with other agencies in a manner that builds and maintains trust--while continuing to adhere to Federal confidentiality laws.

Core Functions of a Child Protection System

- Respond to reports of child abuse and neglect, identify children who are experiencing or at risk of maltreatment.
- Assess what is happening with those children and their families--the safety of the children, the risk of continued maltreatment, the resources and needs of the parents and extended families, and their willingness and motivation to receive help.
- Assemble the resources and services needed to support the family and protect the children.
- Provide settings for alternative or substitute care for children who cannot safely remain at home.
- Evaluate progress of the case during service provision and assess the need for continuing child protective services.

Source: The Center for the Future of Children (Schene, 1998, p. 36).

Role of Chemical Dependency Treatment Providers

The main focus of the treatment provider is to provide interventions and support to help clients with their substance abuse and dependence issues and recover from the physical, psychological, emotional, social, and spiritual harm that their substance abuse has caused themselves and others. However, once child abuse or neglect is known or suspected, legal constraints take precedence because counselors are mandated to report cases to CPS agencies. It is not the role of the treatment provider to investigate child abuse; once the report is made, the provider's clinical attention should shift back to and remain with the client.

It is important for counselors to let clients know from the beginning that counselors must report suspected abuse and neglect because the law requires them to do so. However, the accompanying message to the client should be that even if a report is made, the counselor will continue to work with the client, providing treatment and support. (Counselors should emphasize that it is in a client's best interest to address abuse issues before a child is harmed and before a client has jeopardized her parental rights.) For clients who have been reported, an extra measure of support may be necessary. For example, although counselors' large caseloads would preclude them from routinely accompanying clients to court, exceptions could be made for some clients.

Even when accompanying clients to court is not possible, the counselor can create strategies to address the upcoming court date and related issues in treatment. For example, clients who abuse their children often have their own abuse histories and may have painful memories of having to appear in court as children to be placed in foster care. Discussing such memories with clients may prove valuable to the treatment process. Helping clients understand the court system and procedures may also strengthen the therapeutic bond. The role of the alcohol and drug counselor often involves teaching clients self-advocacy and communications skills--that is, helping them learn to approach various systems in ways that will produce fruitful results that meet their individual needs.

Role of CPS Agencies

Every State has a CPS system to investigate reports of child abuse and neglect to determine whether the child in question is in danger and to intervene if necessary. The CPS agency initiates a comprehensive assessment of a child's safety and well-being in the family. The assessment can involve interviews with the child, the parents, and other family members; visits to the home to

evaluate the environment and family dynamics; contacts with schools and other service providers who are or have been involved with the family; and testing to assess the child's health and development (see [Kropenske and Howard, 1994](#)). CPS investigations, foster care placement, and adoption services are different aspects of child welfare services, but these functions are organized and titled differently in various States and municipalities; in smaller (i.e., local) jurisdictions, roles and responsibilities may often overlap.

If the CPS agency determines that a child is (or is at risk of being) neglected or abused, it can initiate family preservation services to remedy the problems (see [Figure 5-3](#)). The CPS worker is responsible for developing a service plan to help the family improve in those areas the assessment found lacking. The service plan can cover housing, day care, transportation, clothing, food stamps, parenting training, individual or group counseling (including substance abuse treatment), and teaching the parent basic household skills. These services may be provided while the child remains in the home if the child's safety can be assured, or the child may be removed to foster care while services are provided.

When it is determined that a child is not safe in the home, the CPS agency has the authority to remove a child temporarily and place the child in another living situation, such as foster care or with relatives (i.e., kinship care). Relatively few children are actually removed from their homes (in 1996, children placed in foster care represented 16 percent of CPS cases), and most of those removed are returned to the parents' custody fairly quickly once their safety has been assured ([DHHS, 1999](#); [Goerge et al., 1996](#)).

Children who are placed in out-of-home arrangements must wait for the legal system's procedures to take place before a final plan of family reunification or other permanent placement is completed. This plan generally focuses on reuniting the family while ensuring the child's safety and may include substance abuse treatment for parents, as well as other services. The plan and progress toward it are reviewed periodically by the court, and it must be demonstrated to the judge that efforts are being made toward the achievement of the planned goals. Recent Federal legislation mandates that permanency plans be determined quickly and that a permanency hearing be held within 12 months of adjudication of the abuse or neglect. If the child remains in foster care for 15 of the most recent 22 months, the jurisdiction must start the process of terminating parental rights and developing a plan for adoption or kinship care for the child.

CPS agencies are required to investigate all reports of child abuse or neglect within a short time--generally a week. Unlike other public service agencies, they cannot generate a waiting list when service needs outstrip resources. With increasing reports of maltreatment in recent years, backlogs of uninvestigated cases have grown, and CPS agency caseloads have soared. Many workers are assigned more than 50 families even though standards developed by the Child Welfare League of America (CWLA) call for caseloads of no more than 12 to 17 families ([CWLA, 1989](#); [Daro and McCurdy, 1991](#); [Reid et al., 1999](#)).

Role of the Courts

The juvenile or family court judge has several placement options, which vary slightly by State. These are reunification with parents, adoption, or guardianship (often with a relative). Children aged 16 and above might enter an independent living program. After reasonable efforts are made

at reunifying the child with the family within the timeframe stipulated by law, the court can terminate parental rights and free the child for adoption. Juvenile and family courts have heavy caseloads, and judges sometimes hear a new case every 15 minutes (General Accounting Office, 1999).

Some child abuse perpetrators are charged in the criminal court, which is generally more crowded and slower than the family court system. In some cases, families may be involved with both courts. In those cases, the juvenile or family court judge may decide to delay a decision about a child placement case until the criminal court acts.

To make the courts more responsive to families' needs, the Center for Innovative Courtrooms has begun to establish juvenile and family courts that offer a whole range of services. The Center's court in Brooklyn, for example, offers drug treatment as an alternative to incarceration, as well as welfare, domestic violence services, general equivalency diploma programs, and other services to prepare offenders to become productive citizens.

In Hawaii, the West Hawaii Counseling and Supportive Living Project has been designed to assist individuals and families in providing safe and nurturing homes for children. A core team of professionals consists of a clinical social worker, a substance abuse treatment professional, a clinical nurse specialist, a service coordinator, and an agency director. They are the primary service providers who conduct a service needs assessment, provide service coordination, and make referrals to other programs and providers in the community. The goal is to provide families and children with individualized treatment planning and services that are flexible and are delivered in a manner that respects the family and their cultural heritage. The target clientele includes:

- Families threatened by their own inability to cope with the current stress in their lives.
- Pregnant women and mothers with children at risk of child abuse or neglect due to mental health or substance abuse factors.
- Families who require service assessment or counseling to provide a safe, drug-free environment for their children.
- Pregnant women and mothers with children seeking a recovery program that may include a supportive living environment.
- Pregnant women, mothers, parents, or adults with caretaking responsibilities for children.
- Parents whose children may be temporarily living outside the home.
- Parents whose parental rights have been terminated and who no longer have custody of their children.

Role of the Community:

The effects of substance abuse and child abuse are felt by the entire community. Thus planners, policymakers, and administrators are developing collaborative community responses that involve community education and prevention efforts, as well as pooling community resources that support clients' treatment. For example, over the past decade, community leaders in Albuquerque, New Mexico, focused on the growing problem of homeless and "throwaway" youths. Local schools, churches, and neighborhood associations joined together to provide

physical space and staff for emerging service programs. Outreach teams were created to work on the streets with youths, and clean and sober drop-in centers and shelters were established. In Connecticut, the Department of Children and Families is facilitating connection among social workers, schools, and hospitals. San Antonio, Texas, has created the Alamo Area Prevention and Treatment Providers (AAPTP) Association. This is a consortium of prevention and treatment providers whose mission is to (1) promote accessible and comprehensive prevention, intervention, and treatment services to individuals and families in the surrounding counties; (2) implement a seamless continuum of care that includes prevention, intervention, and treatment services; and (3) facilitate access to care through advocacy, positive community relations, and ongoing systems development.

Importance of Collaboration

Because of the chronic and relapsing nature of substance abuse disorders, ensuring a child's ongoing safety in a home with a substance abuser, or working toward reunification of a family in that home, can be extremely difficult. Even when the parent seeks help or is ordered by the court to seek help, the parent's treatment needs and the family functioning issues related to child safety are rarely addressed simultaneously (CWLA, 1992; Young et al., 1998). The intertwined problems of substance abuse disorder and child abuse require that systems collaborate if they are to break the intergenerational cycle that has resulted in so much damage to society. However, historically, there have been barriers to such collaboration.

Different perspectives on dependency

Alcohol and drug counselors and CPS workers are both involved with clients with substance abuse disorders, but generally their perspectives on addiction are quite different (see DHHS, 1999). This difference is at the heart of the conflicts that historically have characterized relationships between these two groups of professionals and prevented closer cooperation. Much of the substance abuse treatment community views the alcohol- or drug-using parent who neglects or abuses a child as having a chronic and often progressive disease that cannot be cured but can be treated. However, much of the rest of society, including some CPS workers and judges, view this parent as having made an irresponsible choice that has endangered a child. In addition, the CPS worker may perceive the counselor as willing to overlook unsafe situations for children to avoid alienating the parent and disrupting treatment. The treatment provider, however, may see the CPS agency worker as unwilling to give the parent's treatment a chance to work.

Different clients, different goals

Another barrier to collaboration between the two fields is that the organizations have different clients and different goals. Although the CPS agency worker will seek to ensure the child's safety, the alcohol and drug counselor is focused on treating the parent.

Different timeframes

For the treatment provider, relapse is an expected part of recovery from a condition that has taken years to develop and will take years to resolve. CPS agency workers and the courts are accustomed to working within shorter and more well-defined time frames (usually 18 months) because of their desire to prevent children from remaining for long periods in out-of-home placements and to ensure that permanency plans are made for the child.

A related factor is the overburdened public system and the frustration that professionals in both fields often experience, not only within their own agencies but also in dealing with other systems. For example, CPS agency workers who refer parents to a substance abuse treatment program often find that the program has a long waiting list and that no help is immediately available. Similarly, alcohol and drug counselors who report suspected child maltreatment often complain that their reports go unheeded or are dismissed for lack of evidence in a system where workers have time to focus attention on only the most egregious cases ([Reid et al., 1999](#)).

Improving collaboration

Treatment providers and CPS agencies differ in their priorities and approaches to parents with substance abuse disorders. To improve their working relationship, these agencies do not need to lessen their commitments to their different missions; instead, they must recognize that both sets of goals are compatible and can best be achieved through joint efforts ([Feig, 1998](#)).

VIII. HOW TO OVERCOME CONFIDENTIALITY BARRIERS AND ACCESS INFORMATION RELATED TO CHEMICAL ABUSE/DEPENDENCY ASSESSMENT AND TREATMENT

Confidentiality Issues Can Present a Barrier to Collaboration

One of the most common frustrations that will be experienced between a Guardian Ad Litem and chemical dependency treatment professionals has to do with confidentiality of chemical dependency assessment treatment information.

A chemical dependency professional is required to protect the confidentiality of persons under his or her care.

Failure to protect the patient confidentiality can result in monetary fines of up to \$5,000 per occurrence and loss of organizational and personal certification or licensures.

Confidentiality is vital to the therapeutic relationship.

Chemical dependency professionals are required by RCW 26.44 to report any instance of suspected child abuse or neglect. When making the initial report, he or she is not required to have written consent from the patient. Alcohol or other drug use by itself does not constitute child abuse or neglect.

Most chemical dependency professionals would like to provide information and work cooperatively with a Guardian Ad Litem, but all must have a valid consent for the release of information in order to do so.

A Guardian Ad Litem can obtain the cooperation of chemical dependency professionals if he or she provides the chemical dependency professional with a properly completed written consent for the release of confidential information that authorizes that professional to make the disclosure.

There are sample releases of information located in the appendix. The first is a blank form the Guardian Ad Litem can use to communicate the patient's written consent to the chemical dependency professional. The second is a sample release of information, completed on a hypothetical patient for use as an example. The highlighted or shaded areas on the sample form identify the essential parts of a valid release of confidential information.

IX. FUNDING FOR CHEMICAL ABUSE/DEPENDENCY ASSESSMENT AND TREATMENT:

Funding for chemical abuse or dependency assessment and treatment can come from a variety of sources, both private and public.

Private Sources:

Certain insurance plans issued in the state of Washington are required to include coverage for chemical abuse or dependency assessment and treatment services. Some plans may allow covered persons to elect to include or not include the coverage for such services. Costs for services can vary widely, and is not regulated. Cheaper does not always mean better.

Some agencies or professionals may require higher fees for assessments due to the unique requirements for Guardian Ad Litem purposes. Fees could be included in the working agreement in order to better predict costs for persons requiring the services.

Cost for treatment services should remain relatively consistent within an organization regardless of the circumstances that brings an individual into treatment.

Some counties do have faith-based and other charitable organizations that may also provide some services. These services may or may not be certified by the Division of Alcohol and Substance Abuse.

Public Sources:

County Funded Sources

Each county in Washington State is provided funds from federal, state, and county sources to purchase chemical abuse and dependency assessment and treatment services. The services are usually based on a sliding scale, and set according to a persons ability to pay. Some counties

may authorize service providers to collect a small co-pay for each counseling session. County funds are usually used to purchase a variety of outpatient, detoxification, and involuntary committal services.

Each county has a citizen's advisory group that meets regularly to make recommendations to county officials on what services to purchase. The counties have some flexibility with the purchase of services and have authorized expenditures for special needs and projects.

Each county also has a county alcohol/drug coordinator who is responsible for the issuance of contracts for services, contract monitoring, and working with state officials regarding the distribution of funds. There are federal and state requirements that may impact or influence how funds are used. The county alcohol/drug coordinator is usually the best source for determining local resources for chemical abuse/dependency assessment and treatment services.

Additionally, there are chemical abuse/dependency assessment systems included in most public schools, juvenile courts, misdemeanor courts, city and county jails, the state prisons and community supervision, some emergency rooms, and some Department of Social and Health Services Child Protective Service, and Community Service Offices. These systems may be able to provide services to appropriate persons.

The Division of Alcohol and Substance Abuse purchases many residential and some outpatient chemical abuse/dependency assessment and treatment services across the state. Most of the residential services for adults are provided through a funding program called Alcohol and Drug Assessment and Treatment Act (ADATSA). Persons must meet certain financial requirements in order to qualify for the services. Persons can usually access these services through their local DSHS Community Service Office.

Most persons can access chemical abuse/dependency assessment and treatment services in Washington State.

X. AN UNDERSTANDING OF PARENT/CHILD PARTICIPATION IN SUPPORT GROUPS

Support groups such as Alcoholics Anonymous, and Al-Anon can be of vital support to persons who are attempting to recover from a chemical dependency or the impact of sharing a life with someone who is chemically dependent. While they do not necessarily meet the needs of all persons, they are very valuable to those whose needs are met. Persons with a chemical dependency or living with someone with a chemical dependency should be encouraged to participate in support groups. Some communities have Ala-teen and Ala-tot support groups for children of one or more alcoholic parents. Some times, a non-using parent's involvement in support groups such as Ala-Anon can provide the children in the family with at least one parent in recovery and stability whether the chemically dependent parent recovers or not.

XI. THE UTILIZATION OF WORKING AGREEMENTS WITH CHEMICAL ABUSE/DEPENDENCY ASSESSMENT AND TREATMENT PROFESSIONALS

Importance a Working Agreement

The establishment of a written working agreement between Guardian Ad Litem and a chemical dependency treatment providers can:

- Enhance communication, while reducing misunderstanding between the two groups;
- Help define the roles and boundaries of the two professional disciplines in response to issues related to substance abuse and child welfare;
- Facilitate the collaboration between the two systems for the good of the chemically dependent family system; and,
- Allow new line staff in either system understand the collaborative relationship without having to experience the difficulties that often occur when establishing their different roles while dealing with a common family system (parents and children).

Recommendations:

- First determine whether or not a working agreement currently exists between you and the chemical dependency assessment/treatment provider.
- If a working agreement currently exists, then review it and obtain any clarification that may be necessary for its implementation in your work with the chemical dependency assessment/treatment provider.
- If a working agreement does not exist, then recommend to a chemical dependency assessment/treatment provider that they consider the development of working agreement between you and their organization. A sample agreement is located in the appendix.
- Although you may want to enter into an agreement with an individual from the other organization, it is recommended the agreement be established between you and the organization rather than individuals. The chemical dependency assessment/treatment field has a relatively high staff turnover rates. Therefore, an agreement with the organization can be sustained for longer periods of time.

Components of an agreement between a chemical dependency assessment/treatment provider and a Guardian Ad Litem

- A description of the range of intervention methods that will be used and the level of treatment that will accompany the intervention methods.
- Information about the duration of the various child welfare intervention methods and the duration of treatment; a description of the content of treatment: what the treatment will entail.
- A description of information that will be shared by the treatment program and the child welfare agencies.
- A specific description of circumstances (such as aborting treatment) when it will be the treatment program's responsibility to notify the child welfare agency.

- Definition of a regular period of reevaluation and identification of the system that will conduct and document the reevaluation.
- Identification of which agency will supply ancillary services to the client group.
- A description of responses to compliance with treatment and/or intervention methods and identification of which agency will decide the consequences of each noncompliant behavior.
- A description of the consequences of noncompliant behavior such as:
 - Unwillingness to commit to treatment and/or participate in the treatment program;
 - Drug-positive results;
 - Aborting treatment; or,
 - Other issues: violence, sex, etc.
- Identification of the agency that will decide the consequences of each noncompliant behavior.
- The list is not exhaustive, and should be augmented or modified according to locality.

APPENDICIES

CHILD ABUSE/NEGLECT (CA/N) RISK BY DRUG CATEGORY

DRUG CLASS	<i>TOXIC STATE</i>		WITHDRAWAL STATE	
	ABUSE	NEGLECT	ABUSE	NEGLECT
DEPRESSANTS	MORE	MORE	MORE	MORE
OPIATES	LESS	MORE	MORE	MORE
HALLUCINOGENS	MORE	NO CHG	NO CHG	NO CHG
STIMULANTS	MORE	MORE/LESS	MORE	MORE
CANNABIS	LESS	MORE	MORE	LESS

CHILD ABUSE/NEGLECT (CA/N) RISK BY DRUG CATEGORY

- **More** means increased risk
- **Less** means decreased risk
- **More/Less** means it could go either way
- **No chg** means that no change in risk is anticipated in that state

This is a subjective guide for the Guardian Ad Litem, intended to provide some basic information as to whether or not one can anticipate there to be any changes to risk of CA/N associated with the toxic or withdrawal effects of various drug categories.

This information alone should not be used as sole criteria in decision-making. The information provided is not conclusive. Also, keep in mind that the toxic and withdrawal states are transitory. Intoxicated or withdrawal state today, does not mean intoxicated or withdrawal state tomorrow.

There is greater risk for CA/N in cases where CA/N has already occurred and when the caretaker is in certain indicated states.

Risk in certain states exists regardless of whether or not previous CA/N has occurred.

The more severe the chemical dependency, the higher the risk in indicated states. For example: A severely dependent alcoholic would present a greater risk of CA/N when in a toxic state than a moderately dependent alcoholic. A severely dependent opiate addict would have a higher risk of child neglect than a moderately dependent opiate addict.

This may be more appropriate for assisting the Guardian Ad Litem in deciding whether or not to recommend child custody or visitation of a parent/guardian with a child based on that person's current state.

MENTAL STATES FOUND IN VARIOUS MEDICAL CONDITIONS

MENTAL STATUS	TOXIC STATE	PSYCHOSIS	DELERIUM	AMNESTIC	DEMENTIA
General appearance	Very Ill Comatose	Alert, frightened, bizarre	Confused, obtunded	Normal, alert	Normal, alert
Verbal	Usually Can't test	Rapid talking, loose association	Talkative, may be bizarre	Normal	Not abnormal
Emotional Expression (mood)	Usually Can't test	Inappropriate	Fluctuates up and down	Inappropriate or normal	Normal
Perception	Normal if able to test	Hallucinations, delusions	Hallucinations, illusions, delusions, fluctuations	Normal	Abnormal
Cognition	Usually Can't test	Normal	Abnormal	Abnormal	Abnormal
Orientation	Usually Can't test	Normal	Abnormal	Normal	Abnormal
Memory	Usually Can't test	Normal	Poor	Abnormal	Abnormal
Intelligence	Usually Can't test	Normal	Poor	Normal	Abnormal
Concentration	Usually Can't test	Normal	Poor Fluctuates	Normal	Abnormal
Calculations	Usually Can't test	Normal	Poor Fluctuates	Normal	Abnormal
Judgment	Usually Can't test	Normal	Poor	Often poor	Abnormal
Medical	Respiration down, heart rate up, blood pressure down	May be normal	Usually signs of withdrawals, Delirium Tremens	Signs of long-term drug use, remote and recent memory, Immediate recall, new learning	May be normal Global damage, remote and recent recall will be affected

CHEMICAL INDUCED SYNDROMES

Drug	Panic	Flashbacks	Overdose	Intoxication	Alcoholic Paranoia Alcoholic Hallucinations Psychosis	Amnesia	Delirium	Dementia
Alcohol	(-)	(-)	(+)	(+)	(+)	(+)	W	(+)
Barbiturates	(-)	(-)	(+)	(+)	(-)	(+)	W	(-)
Tranquilizers	(-)	(-)	(+)	(+)	(-)	(+)	W	(-)
Opiates	(-)	(-)	(+)	(+)	(-)	(-)	W	(-)
Cocaine	Some	(-)	(+)	(+)	(+)	(-)	(+)	(-)
Amphetamines	(+)	(-)	(+)	(+)	(+)	(-)	(+)	(-)
Hallucinogens	(+)	(+)	(-)	(-)	(+)	(-)	(-)	(-)
Marijuana	(+)	(+)	(+)	(+)	(+)	(+)	(-)	(+)
PCP	(+)	(+)	(+)	(+)	(+)	(-)	(+)	(+)
W = Withdrawal (+) = Does (-) = Doesn't						Result Of Brain Damage		

**Simple Screening Instrument for AOD Abuse
Interview Form**

Name:

Date: / /

Location of Interview:

Note: **Boldfaced** questions constitute a short version of the screening instrument that can be administered in situations that are not conducive to administering the entire test. Such situations may occur because of time limitations or other conditions.

Introductory statement:

I am going to ask you a few questions about your use of alcohol and other drugs during the past 6 months. Based on your answers to these questions, I may recommend you get a more complete assessment.

During the past 6 months:

1.	Have you used alcohol or other drugs? (Such as wine, beer, hard liquor, pot, coke, heroin or other opiates, uppers, downers, hallucinogens, or inhalants.)	YES <input type="checkbox"/>	NO <input type="checkbox"/>
2.	Have you felt that you use too much alcohol or other drugs?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
3.	Have you tried to cut down or quit drinking or using drugs?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
4.	Have you gone to anyone for help because of your drinking or drug use? (Such as Alcoholics Anonymous, Narcotics Anonymous, Cocaine Anonymous, counselors, or a treatment program.)	YES <input type="checkbox"/>	NO <input type="checkbox"/>
5.	Have you had any of the following?	YES	NO
	• Blackouts or other periods of memory loss	<input type="checkbox"/>	<input type="checkbox"/>
	• Injury to your head after drinking or using drugs	<input type="checkbox"/>	<input type="checkbox"/>
	• Convulsions, or delirium tremens (“DTs”)	<input type="checkbox"/>	<input type="checkbox"/>
	• Hepatitis or other liver problems	<input type="checkbox"/>	<input type="checkbox"/>
	• Feeling sick, shaky, or depressed when you stopped drinking or using drugs	<input type="checkbox"/>	<input type="checkbox"/>
	• Feeling coke bugs,’ or a crawling feeling under the skin, after you stopped using drugs	<input type="checkbox"/>	<input type="checkbox"/>
	• Injury after drinking or using drugs	<input type="checkbox"/>	<input type="checkbox"/>
	• Using needles to shoot drugs	<input type="checkbox"/>	<input type="checkbox"/>
6.	Has drinking or other drug use caused problems between you and your family or friends?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
7.	Has your drinking or other drug use caused problems at school or at work?	YES	NO

		<input type="checkbox"/>	<input type="checkbox"/>
8.	Have you been arrested or had other legal problems? (Such as bouncing bad checks, driving while intoxicated, theft, or drug possession.)	YES <input type="checkbox"/>	NO <input type="checkbox"/>
9.	Have you lost your temper or gotten into arguments or fights while drinking or using drugs?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
10.	Are you needing to drink or use drugs more and more to get the effect you want?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
11.	Do you spend a lot of time thinking about or trying to get alcohol or other drugs	YES <input type="checkbox"/>	NO <input type="checkbox"/>
12.	When drinking or using drugs, are you more likely to do something you wouldn't normally do, such as break rules, break the law, sell things that are important to you, or have unprotected sex with someone?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
13.	Do you feel bad or guilty about your drinking or drug use?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
The following questions are not limited to the past six months:			
14.	Have you ever had a drinking or other drug problem?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
15.	Have any of your family members ever had a drinking or drug problem?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
16.	Do you feel that you have a drinking or drug problem now?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
Closing statement:			
Thank you for answering the questions. Do you have any questions for me? Is there something I can do to help you?			
Interviewer Observation Checklist:			
The following signs and symptoms may indicate an alcohol or other drug abuse problem in the individual being screened:			
Check all that appear present			Present
• Needle track marks			<input type="checkbox"/>
• Skin abscesses, cigarette burns, or nicotine stains			<input type="checkbox"/>
• Tremors (shaking and twitching of hands and eyelids)			<input type="checkbox"/>
• Unclear speech: slurred, incoherent, or too rapid			<input type="checkbox"/>
• Unsteady gait: staggering, off balance			<input type="checkbox"/>
• Dilated (enlarged) or constricted (pinpoint) pupils			<input type="checkbox"/>
• Scratching			<input type="checkbox"/>
• Swollen hands or feet			<input type="checkbox"/>
• Smell of alcohol or marijuana on breath			<input type="checkbox"/>
• Drug paraphernalia such as pipes, paper, needles, or roach clips			<input type="checkbox"/>
• "Nodding out" (dozing or falling asleep)			<input type="checkbox"/>
• Agitation			<input type="checkbox"/>
• Inability to focus			<input type="checkbox"/>
• Burns on the inside of the lips (from freebasing cocaine)			<input type="checkbox"/>
Interviewer Notes:			

Preliminary Scoring and Interpretation

Items 1 and 15 are not scored.

The following items are scored as 1 (for yes) or 0 (for no):

Item #	Score	Item #	Score	Item #	Score
2		7		12	
3		8		13	
4		9		14	
5*		10		15	
6		11		Total Score	

*Score 1 if one or more items listed under item 5 has been checked yes
Score range is 1-14

Score	Degree of Risk for Alcohol or Other Drug Abuse
0-1	None to low risk
2-3	Minimal risk
4 or more	Moderate to high risk and suggests need for further assessment

SAMPLE AGREEMENT BETWEEN INDIVIDUALS

Memorandum of Understanding Between

_____, Social Worker

and

_____, Chemical Dependency Professional

This agreement is made and entered into by and between _____ hereinafter referred to SW, and _____ hereinafter referred to as CDP.

It is therefore, mutually agreed that:

I. Purpose of Memorandum of Understanding:

The purpose of this agreement is to foster the collaboration necessary to address the substance abuse and child welfare issues in family units (care taking adults and children) of mutual interest.

II. Basic Agreement:

Referral for Substance Abuse/Dependency Evaluation:

SW agrees to make referrals to CDP for substance abuse evaluation and treatment recommendations when indicated. SW also agrees to provide the CDP with a written summary of the reason for referral, and any information that may assist the CDP in determining the evaluation outcome. SW will provide the CDP with Consent for the Release of Confidential Information signed and dated by the person being referred. SW will determine the funding source for the cost of the evaluation, and refer only those persons for whom funding has been established.

Upon referent (person referred for evaluation) contact, and receipt of the referral information, CDP agrees to schedule the referent for an evaluation at the earliest possible time, taking into account the needs of both the referent and SW. CDP agrees to give cases involving child abuse or neglect the highest priority in the scheduling of appointments.

CDP acknowledges his/her responsibility to make an initial report of any instances of suspected child abuse or neglect to SW under RCW 26.44.030 and allowed under 42 CFR, Part 2 regardless of status of referent consent at the time of the required report.

Substance Abuse/Dependency Evaluation:

CDP agrees to establish that a proper Consent for the Release of Confidential Information has been signed by the referent that authorizes CDP to disclose the outcome of the evaluation and any treatment recommendations when indicated. CDP also agrees to ensure that funding for the evaluation has been established. CDP agrees to conduct a complete substance abuse evaluation of the referent and to ensure the evaluation meets all the requirements of state and federal regulations and the needs of the SW and referent.

CDP agrees to verbally advise SW of the results (when proper consent has been obtained by the referent) of the evaluation within three working days and in writing within five working days of the end of the evaluation. The evaluation will include:

CDP determination of whether or not there was sufficient evidence demonstrating the referent suffered from substance abuse or dependency.

If CDP determines the referent is experiencing a substance abuse or dependency, the CDP agrees to make initial treatment recommendations in accordance with patient placement criteria and to issue a prognosis of the referent's likelihood of establishing a recovery from his or her substance related problems at the conclusion of the evaluation.

CDP agrees to take whatever steps necessary to refer the referent to appropriate treatment and care.

SW agrees to provide CDP with any new information that comes to his/her attention that could have an impact of the CDP evaluation outcome, treatment recommendations, and prognosis while the referent is considering to participate in or waiting for substance abuse or dependency treatment.

Substance Abuse/Dependency Treatment and Monitoring:

Whether providing a course of substance abuse/dependency treatment or referring the referent, the CDP agrees to notify the SW of referent admission within three working days of admission to treatment.

CDP agrees to make every effort to maintain referent cooperation in authorizing on-going consent for the exchange of confidential information

The SW agrees to provide CDP with any new information that comes to his/her attention that could have an impact of the referent treatment while the referent is participating in substance abuse or dependency treatment.

CDP agrees to provide SW with a monthly status report that includes the following information:

Referent's name;

Month and year covered;

Referent's current level of treatment;

Summary of patient progress in treatment, including adjustments to referents last reported level of care (higher or lower level of care) as indicated by last CDP patient placement criteria continuing care review;

CDP determines the referent has unexcused absences or failed to report support group attendance with specific recommendations on the part of the CDP in response to the determination;

CDP determines the referent has failed to make acceptable progress in any part of the treatment plan with specific recommendations on the part of the CDP in response to the determination; and,

Current prognosis for recovery from substance related problems.

In addition, CDP agrees to report emergent instances of non-compliance, along with specific recommendations on the part of the CDP in response to the determination, to SW within three-working days of making the determination the referent has:

Failed to maintain abstinence from alcohol and other non-prescribed substances as verified by referent self-report, third-party report that is verified by CDP, or blood alcohol content, urinalysis, or other laboratory test;

Referent reports subsequent arrest or conviction;

CDP obtains information that could impact the welfare of any children under the care of the referent.

Referent leaves treatment against staff advice; or,

Is discharged for a rule violation.

The SW agrees to provide CDP with a summary of any actions taken by SW in reliance on the information reported by CDP that could have an impact of the current or future referent substance abuse or dependency treatment.

Discharge from Substance Abuse/Dependency Treatment

In cases of referent transfer to another substance abuse/dependency treatment program, within five working days of the transfer, CDP agrees to provide the SW the name, address, and phone of the organization agreeing to admit the referent for treatment, the date of transfer, a summary of the reason for transfer, and any recommendations made to the referent at the time of transfer.

In cases of referent discharge, within three working days of the date of discharge, the CDP agrees to provide the SW with the reason for discharge, date of discharge, a summary of the referent progress towards treatment goals, any recommendations for the continuing care of the referent, and the CDP prognosis for recovery from his/her substance abuse/dependency at the time of discharge.

CDP agrees to make every effort to obtain written referent consent for the release of information for a period of not less than 90 days from the date of discharge, at the time of referent discharge.

CDP agrees to maintain records of all activities for a period of five years from the date the referent was last seen by the CDP. Subsequent SW access to information may be limited by expiration or events indicated on the consent forms at the time of discharge.

III. PERIOD OF AGREEMENT:

This agreement shall commence upon the date of signature by both parties and continue until either party terminates the agreement pursuant to Section VII.

IV. INDEMNIFICATION:

Each party shall defend, protect and hold harmless the other party from and against all claims, suits and/or actions arising from any negligent or intentional act or omission of the other party while performing under this memorandum.

V. MEMORANDUM ALTERATIONS AND AMENDMENTS:

SW and CDP may mutually amend this memorandum. Such amendments shall not be binding unless they are in writing and signed by both parties.

VI. TERMINATION:

Either party may terminate this agreement upon sixty (60) days written notification. Notification shall be mailed to the other party and signed and dated by the other party.

VII. ALL WRITINGS CONTAINED HEREIN:

This agreement contains the conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind either of the parties herein.

In witness whereof, the undersigned have affixed their signatures in execution thereof:

SW Printed Name:	Title:
Signature:	Date:

CDP Printed Name:	Title:
Signature:	Date:

SAMPLE AGREEMENT BETWEEN organizations

Memorandum of Understanding Between
Everett Children's Administration Office
And
CD Recovery Center

This agreement is made and entered into by and between Everett Children's Administration Office hereinafter referred to Agency A, and CD Recovery Center hereinafter referred to as Agency B.

It is therefore, mutually agreed that:

I. Purpose of Memorandum of Understanding:

The purpose of this agreement is to foster the collaboration necessary to address the substance abuse and child welfare issues in family units (care taking adults and children) of mutual interest.

II. Basic Agreement:

Referral for Substance Abuse/Dependency Evaluation:

AGENCY A agrees to make referrals to AGENCY B for substance abuse evaluation and treatment recommendations when indicated. AGENCY A also agrees to provide AGENCY B with a written summary of the reason for referral, and any information that may assist AGENCY B in determining the evaluation outcome. AGENCY A will provide AGENCY B with a Consent for the Release of Confidential Information signed and dated by the person being referred. AGENCY A will determine the funding source for the cost of the evaluation, and refer only those persons for whom funding has been established.

Upon referent (person referred for evaluation) contact, and receipt of the referral information, AGENCY B agrees to schedule the referent for an evaluation at the earliest possible time, taking into account the needs of both the referent and AGENCY A. AGENCY B agrees to give cases involving child abuse or neglect the highest priority in the scheduling of appointments.

AGENCY B acknowledges his/her responsibility to make an initial report of any instances of suspected child abuse or neglect to AGENCY A under RCW 26.44.030 and allowed under 42 CFR, Part 2 regardless of status of referent consent at the time of the required report.

Substance Abuse/Dependency Evaluation:

AGENCY B agrees to establish that a proper Consent for the Release of Confidential Information has been signed by the referent that authorizes AGENCY B to disclose the outcome of the evaluation and any treatment recommendations when indicated. AGENCY B also agrees to ensure that funding for the evaluation has been established. AGENCY B agrees conduct a complete substance abuse evaluation of the referent and to ensure the evaluation meets all the requirements of state and federal regulations and the needs of AGENCY A and referent.

AGENCY B agrees to verbally advise AGENCY A of the results (when proper consent has been obtained by the referent) of the evaluation within three working days and in writing within five working days of the end of the evaluation. The evaluation will include:

AGENCY B determination of whether or not there was sufficient evidence demonstrating the referent suffered from substance abuse or dependency.

If AGENCY B determines the referent is experiencing a substance abuse or dependency, AGENCY B agrees to make initial treatment recommendations in accordance with patient placement criteria and to issue a prognosis of the referent's likelihood of establishing a recovery from his or her substance related problems at the conclusion of the evaluation.

AGENCY B agrees to take whatever steps necessary to refer the referent to appropriate treatment and care.

AGENCY A agrees to provide AGENCY B with any new information that comes to his/her attention that could have an impact on AGENCY B evaluation outcome, treatment recommendations, and prognosis while the referent is considering to participate in or waiting for substance abuse or dependency treatment.

Substance Abuse/Dependency Treatment and Monitoring:

Whether providing a course of substance abuse/dependency treatment or referring the referent, AGENCY B agrees to notify AGENCY A of referent admission within three working days of admission to treatment.

AGENCY B agrees to make every effort to maintain referent cooperation in authorizing on-going consent for the exchange of confidential information

AGENCY A agrees to provide AGENCY B with any new information that comes to his/her attention that could have an impact on the referent treatment while the referent is participating in substance abuse or dependency treatment.

AGENCY B agrees to provide AGENCY A with a monthly status report that includes the following information:

Referent's name;

Month and year covered;

Referent's current level of treatment;

Summary of patient progress in treatment, including adjustments to referent's last reported level of care (higher or lower level of care) as indicated by last AGENCY B patient placement criteria continuing care review;

If AGENCY B determines the referent has unexcused absences or failed to report support group attendance with specific recommendations on the part of AGENCY B in response to the determination;

If AGENCY B determines the referent has failed to make acceptable progress in any part of the treatment plan with specific recommendations on the part of the AGENCY B in response to the determination; and,

Current prognosis for recovery from substance related problems.

In addition, AGENCY B agrees to report emergent instances of non-compliance, along with specific recommendations on the part of AGENCY B in response to the determination, to AGENCY A within three-working days of making the determination the referent has:

Failed to maintain abstinence from alcohol and other non-prescribed substances as verified by referent self-report, third-party report that is verified by AGENCY B, or blood alcohol content, urinalysis, or other laboratory test;

Referent reports subsequent arrest or conviction;

AGENCY B obtains information that could impact the welfare of any children under the care of the referent.

Referent leaves treatment against staff advice; or,

Is discharged for a rule violation.

AGENCY A agrees to provide AGENCY B with a summary of any actions taken by AGENCY A in reliance on the information reported by AGENCY B that could have an impact of the current or future referent substance abuse or dependency treatment.

Discharge from Substance Abuse/Dependency Treatment

In cases of referent transfer to another substance abuse/dependency treatment program, within five working days of the transfer, AGENCY B agrees to provide the AGENCY A the name, address, and phone of the organization agreeing to admit the referent for treatment, the date of transfer, a summary of the reason for transfer, and any recommendations made to the referent at the time of transfer.

In cases of referent discharge, within three working days of the date of discharge, AGENCY B agrees to provide the AGENCY A with the reason for discharge, date of discharge, a summary of the referent progress towards treatment goals, any recommendations for the continuing care of the referent, and the AGENCY B prognosis for recovery from his/her substance abuse/dependency at the time of discharge.

AGENCY B agrees to make every effort to obtain written referent consent for the release of information for a period of not less than ninety (90) days from the date of discharge, at the time of referent discharge.

AGENCY B agrees to maintain records of all activities for a period of five years from the date the referent was last seen by AGENCY B. Subsequent AGENCY A access to information may be limited by expiration or events indicated on the consent forms at the time of discharge.

III. PERIOD OF AGREEMENT:

This agreement shall commence upon the date of signature by both parties and continue until either party terminates the agreement pursuant to Section VII.

IV. INDEMNIFICATION:

Each party shall defend, protect and hold harmless the other party from and against all claims, suits and/or actions arising from any negligent or intentional act or omission of the other party while performing under this memorandum.

V. MEMORANDUM ALTERATIONS AND AMENDMENTS:

AGENCY A and AGENCY B may mutually amend this memorandum. Such amendments shall not be binding unless they are in writing and signed by both parties.

VI. TERMINATION:

Either party may terminate this agreement upon sixty (60) days written notification. Notification shall be mailed to the other party and signed and dated by the other party.

VII. ALL WRITINGS CONTAINED HEREIN:

This agreement contains the conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind either of the parties herein.

In witness whereof, the undersigned have affixed their signatures in execution thereof:

Agency A Representative Printed Name:	Title:
Signature:	Date:

Agency B Representative Printed Name:	Title:
Signature:	Date:

CHAPTER 9
CHILD ABUSE AND NEGLECT

CHILD ABUSE AND NEGLECT

Submitted by Naomi Oderberg, Ph.D. and
Margo Waldroup, MSW

INTRODUCTION

As a Guardian Ad Litem, most of your cases will include allegations of physical, sexual, or emotional abuse, neglect, exposure to domestic violence, or the abusive use of conflict by one or both parents. This first part of this chapter will review the basic indicators of abuse and neglect, and provide guidelines for when and how to report to Child Protective Services. The second part of this chapter will explore the abusive use of conflict, high conflict families and the effects of conflict on the children. Finally, we will discuss possible recommendations to address these allegations in your investigations and reports.

Incidence of Child Abuse and Neglect

The United States Department of Health and Human Services, Administration for Children and Families (2007), collect data on child abuse and neglect reports across the US. They use this data to estimate national incidence rates of child abuse and neglect. During Federal Fiscal Year 2005⁴⁰:

- An estimated 899,000 children were victims of maltreatment;
- Nearly 3.6 million children received a CPS investigation or assessment.
- Of the children who received an investigation, approximately one quarter were determined to have been abused or neglected.

This figure reflects a maltreatment rate of 12.1 per 1000 children as follows:

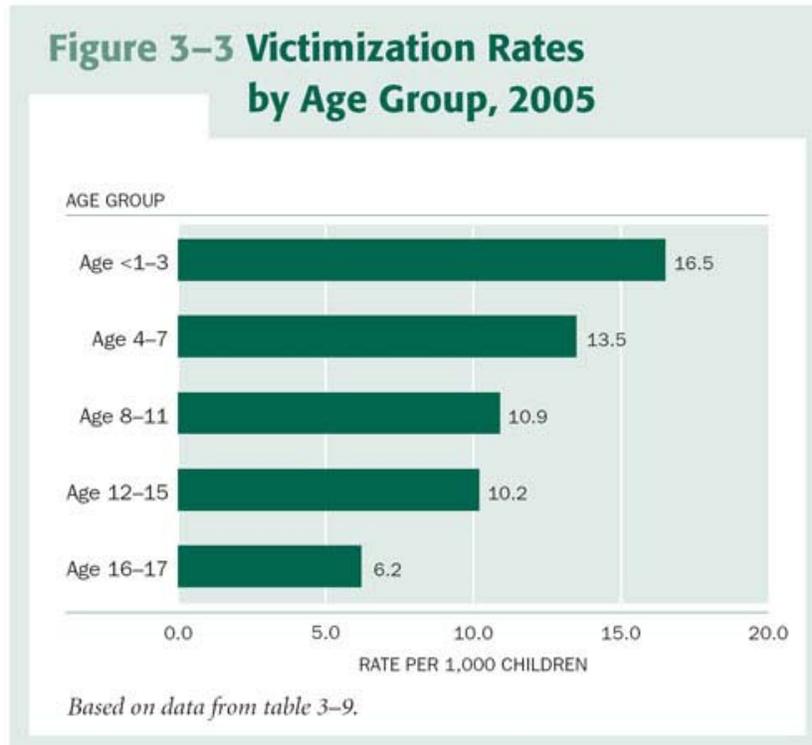
62.8%	⁴¹ Neglect	7.1%	Emotional or psychological maltreatment
16.6%	Physical abuse	2.0%	Medical neglect
9.3%	Sexual abuse	14.3%	Other

Other types of maltreatment included abandonment, threats of harm, and congenital drug addiction. Some children were victims of more than one type of maltreatment.

⁴⁰ The full report can be viewed at <http://www.acf.hhs.gov/programs/cb/pubs/cm05/index.htm>

⁴¹ These percentages add up to more than 100 percent because children who were victims of more than one type of maltreatment were counted for each form of abuse or neglect.

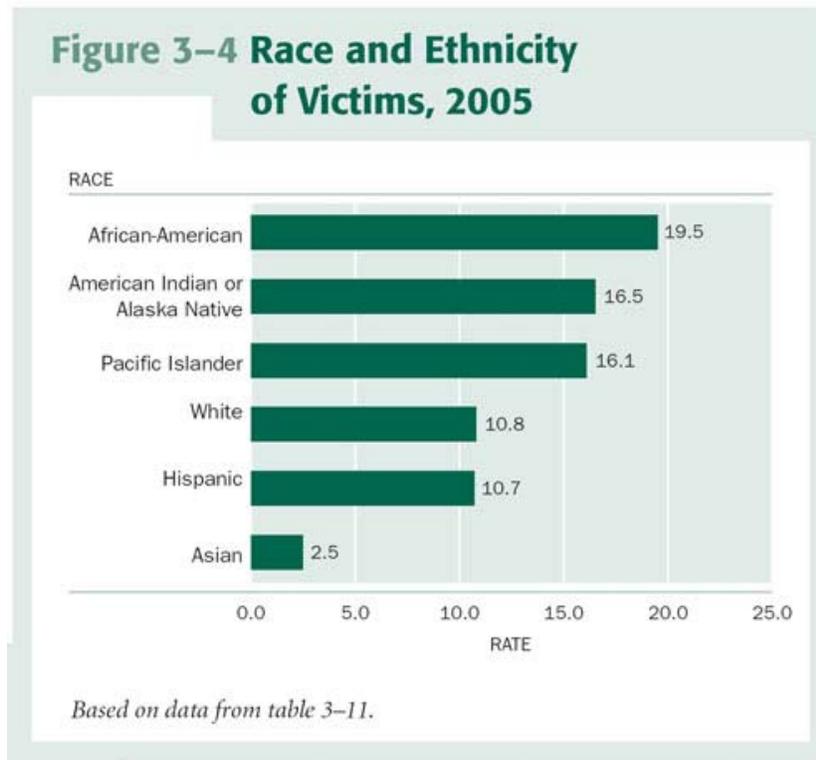
**US Dept. of Social and Health Services *Child Maltreatment 2005*
Victimization Rates by Age Group**



This graph shows that the youngest children were victimized at the highest rate.

Parents were by far the most likely abusers with forty percent of child victims being maltreated by their mothers; another 18.3% were maltreated by their fathers; and 17.3% were abused by both parents. Only 10.7% of child victims were abused by others including a caregiver who was not a parent such as a foster parent, childcare worker, unmarried partner of a parent, legal guardian, or residential facility staff.

US Dept of Social and Health Services *Child Maltreatment 2005* Race and Ethnicity of Victims



Children who were African-American, American Indian or Alaska Native, and Pacific Islanders had the highest rates of victimization.

WASHINGTON LAW

REVISED CODE OF WASHINGTON (RCW) AND THE WASHINGTON ADMINISTRATIVE CODE (WAC)

RCW 26.44 is the Washington state law that defines child abuse and neglect and describes mandatory reporting practices. The Complete RCW can be viewed at <http://apps.leg.wa.gov/RCW/default.aspx?cite=26.44>

The WACs are current administrative regulations created by state agencies to carry out the laws. They provide more detailed definitions of child abuse and neglect and Child Protective Service procedure. The full WAC explaining child abuse and neglect reporting can be found at <http://apps.leg.wa.gov/WAC/default.aspx?cite=388-15-009>.

Both the RCW and the WAC are included below in our discussion of the definitions and indicators of child abuse and neglect.

RCW 26.44.010 Declaration of purpose

“The Washington state legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian; however, instances of non-accidental injury, neglect, death, sexual abuse and cruelty to children by their parents, custodians or guardians have occurred, and in the instance where a child is deprived of his or her right to conditions of minimal nurture, health, and safety, the state is justified in emergency intervention based upon verified information; and therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities. It is the intent of the legislature that, as a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of such children: PROVIDED, That such reports shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious or erroneous information or actions: PROVIDED FURTHER, That this chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare and safety.

Definitions (Effective January 1, 2007)

RCW 26.44 Definitions (12)"Abuse or neglect" means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

It is necessary to make distinctions between the various forms of abuse and neglect. Definitions for each type of abuse are described below.

WAC 388-15-009 provides the following definitions:

(1) Physical abuse means the non-accidental infliction of physical injury or physical mistreatment on a child. Physical abuse includes, but is not limited to, such actions as:

- (a) Throwing, kicking, burning, or cutting a child;
- (b) Striking a child with a closed fist;
- (c) Shaking a child under age three;
- (d) Interfering with a child's breathing;
- (e) Threatening a child with a deadly weapon;
- (f) Doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks or which is injurious to the child's health, welfare and safety.

WAC 388-15-009 (2) Physical discipline of a child, including the reasonable use of corporal punishment, is not considered abuse when it is reasonable and moderate and is inflicted by a parent or guardian for the purposes of restraining or correcting the child. The age, size, and condition of the child and the location of any inflicted injury shall be considered in determining whether the bodily harm is reasonable or moderate. Other factors may include the developmental level of the child and the nature of the child's misconduct. A parent's belief that it is necessary to punish a child does not justify or permit the use of excessive, immoderate or unreasonable force against the child.

When considering an allegation of abuse or neglect, a single sign or symptom in a child may not provide sufficient evidence to draw a conclusion. With an accumulation of indicators we can be more confident in a determination that abuse or neglect has taken place. While considering the possibility of abuse it is important to keep in mind that potential indicators of abuse may look the same as reactions to the stress of separation and divorce in non-abused children. Such responses may include, sleep disturbance, clinginess, difficulties transitioning from one parent to the other, regression in developmental tasks, changes in school performance, anger toward one or both parents, problematic peer and sibling relationships or unusually compliant behavior. In screening for abuse, these behaviors need to be evaluated in terms of the date of onset, frequency, severity and each parent's interpretation and response to the child's behavior being examined.

Abuse and neglect are unlikely to occur in isolation. Physical abuse and neglect frequently occur in combination with emotional abuse and when sexual abuse is present, physical and emotional abuse are often present as well.

Indicators in the child:

Unexplained burns, broken bones, bruises or bites
Flinches when a parent or caretaker makes sudden movements
Discloses injury
Frightened of parent or caretaker
Fading bruises or marks identifiable after an absence from school
Crying or other protests when it is time to go home

Indicators in the parent or caretaker:

Keeps the child home from school or daycare when child isn't sick
Offers unconvincing or inconsistent explanations for the child's injury
Describes the child in a negative way and may even see them as evil
Has a history of abuse as a child
Apparent attachment problems between parent and child

WAC 388-15-009 (3) Sexual Abuse means committing or allowing to be committed any sexual offense against a child as defined in the criminal code. The intentional touching, either directly or through the clothing, of the sexual or other intimate parts of a child or allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in touching the sexual or

other intimate parts of another for the purpose of gratifying the sexual desire of the person touching the child, the child, or a third party. A parent or guardian of a child, a person authorized by the parent or guardian to provide childcare for the child, or a person providing medically recognized services for the child, may touch a child in the sexual or other intimate parts for the purposes of providing hygiene, child care, and medical treatment or diagnosis.

Sexual abuse includes incidents which involve touching and those which do not involve touching. Both types of abuse exist on a continuum of violence and emotional trauma.

Touching offenses may include:

Penile penetration into the children's oral, anal and genital cavities
Oral and anal digital penetration
Genital contact without intrusion
Fondling of a child's breasts or buttocks

Non-touching offenses may involve:

Indecent exposure
Inappropriate supervision of a child's voluntary sexual activities
Sexual exploitation

WAC 388-15-009 (4) Sexual exploitation includes, but is not limited to, such actions as allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in:

- (a) Prostitution;
- (b) Sexually explicit, obscene or pornographic activity to be photographed, filmed, or electronically reproduced or transmitted; or
- (c) Sexually explicit, obscene or pornographic activity as part of a live performance, or for the benefit or sexual gratification of another person.

Possible indicators of sexual abuse or exploitation in a child:

Nightmares
Sexual acting out with adults or children
Bedwetting
Change in appetite
Difficulty walking or sitting
Verbal disclosure
Demonstrates unusual or sophisticated sexual knowledge or behavior
Contracting a venereal disease
In teens: running away or pregnancy

Possible Indicators in the Parent:

Unduly protective of the child or severely limits the child's contact with other children
Secretive and isolated
Jealous and controlling with family members
Has created an emotional wedge between the child and non-offending parent

May also be physically abusive toward the child
The offender may use force, coercion or threats with the victim to enforce silence

In a large scale study for DSHS, Goldman, Salus, Wolcott and Kennedy (2003), found that the most commonly reported cases of sexual abuse involved indecent exposure or sexual abuse occurring among family members (incest). Father-daughter incest has received the most attention from researchers and clinicians but recent data suggests that sibling incest may be more common (Cyr, Wright, McDuff & Perron, 2002). Incest perpetrated by mothers and by fathers against sons is also beginning to come to the attention of those working with and evaluating families.

Initial data regarding maternal incest suggests that it tends to be more subtle and involves behaviors that may be difficult to distinguish from normal care giving (e.g., genital touching), but still lead to potentially serious long-term consequences. In all types of sexual abuse, the victims are in a position of less power or authority than the perpetrator. He or she may not disclose the abuse for fear of what would happen to the offender or family, or out of fear that the family will not believe them.

In recent years, several large studies have examined sibling incest and have helped to identify important aspects of the experience for individuals and families. In a survey of the childhood experiences of 2,869 18-24 year olds, Flanagan & Hayman-White (2000) found that 43% of their sample of nonadjudicated⁴² youth reported offending against a sibling. This was about twice the number of respondents than those reporting father-child abuse. Some features of sibling incest that have emerged are:

- 1) Sibling incest usually involves individuals between the ages of 4 to 9 years of age.
- 2) The average age difference between siblings is 4 to 5 years
- 3) The majority of perpetrators are male
- 4) The preponderance of the sexual acts involve fondling and touching genitals
- 5) There is a higher rate of oral and vaginal penetration than in father/stepfather incest
- 6) The sexual contact is unwanted by the target child
- 7) There is usually concomitant physical or emotional abuse by the sibling
- 8) The rate of abuse contacts occur at a higher rate than in other types of abuse
- 9) A high frequency of verbal threats are used to maintain secrecy
- 10) The duration of the abuse is often two years or longer

Research indicates that there are specific qualities in the family environments which increase the risk of sibling incest including:

- Distant, inaccessible parents; (Smith and Israel 2002; Owen, 1998)
- The children have greater feelings of parental rejection
- Significant emotional neglect or poorly supervised children (Adler and Schutz)
- The home environment is highly sexualized. There may be exposure to inappropriate nudity, parental sexual behavior or pornography (Smith and Israel 2002; Worling, 1995)
- There tends to be a culture of family secrets (Smith and Israel, 2002)

⁴² "Nonadjudicated" means that the Juvenile Court has **not** entered an order declaring that a child is neglected, abused, dependent, a minor requiring authoritative intervention, a delinquent minor or an addicted minor.

- Families use more physical punishment, physical and emotional abuse
- There is heightened marital discord (Worling, 1995)
- A parent was a victim of childhood sexual abuse (Cyr, et al, 2002; Worling, 1995)
- There is a pattern of parental denial (Rayment-McHugh & Nisbet, 2003)
- Parents may feel they are being forced to choose between the victim and the offender in responding to the victim’s disclosure. This can be very difficult for parents who continue to feel love and affection for both their children
- Non-offending family members may collude with the offender, reinforcing denial or minimization

Effects

Survivors of sibling sexual abuse evidenced symptoms similar to those seen in parent-child incest (Cyr, et al 2002; Rayment-McHugh & Nisbet, 2003; Wiehe, 1990; O'Brien, 1991; and, Laviola, 1992). Some of the symptoms noted are:

1. lowered self-esteem
2. re-victimization in later life
3. sexual dysfunction as adults
4. difficulties with intimacy and trust

Emotional Abuse (also known as psychological maltreatment):

Goldman and Salus (et al, 2003) define emotional abuse as: “a repeated pattern of caregiver behavior or extreme incident(s) that conveys to the child that they are unwanted, worthless, flawed, unloved or only of value in meeting another’s needs.” In marital relationships a common form of parent to parent emotional or psychological abuse is the systematic undermining of a partner’s sense of self as an intelligent, competent, or attractive person. Putdowns, ridicule, constant criticism, and complaints are all standard forms of interaction (Dalton, Carbon & Oleson, 2003).

Summarizing research literature and expert opinion, Stuart Hart PhD, and Marla Brassard, PhD (1995), present the following categories of psychological maltreatment:

Categories of Psychological Maltreatment

Spurning	Belittling, hostile rejecting, ridiculing
Terrorizing	Threatening violence against a child, placing a child in a recognizably dangerous situation
Isolating	Confining the child, placing unreasonable limitations on the child’s freedom of movement; restricting the child from social interactions
Exploiting or Corrupting	Modeling antisocial behavior such as criminal activities, encouraging prostitution, permitting substance abuse
Denying Emotional Responsiveness	Ignoring the child’s attempts to interact, failing to express affection

Possible indicators in the child:

Extremes in behavior: overly compliant or demanding, extreme passivity or aggression
Infantile, regressed behavior – rocking or head-banging
Delays in physical or emotional development
Has attempted suicide
Lack of attachment to the parent
Low self esteem as evidenced by the child’s inability to describe positive qualities in themselves
Self-critical talk

Possible indicators in the adult:

Blaming, belittling or berating the child
Is unconcerned about the child’s feelings
Refuses to consider offers of help for the child’s problems
Overtly rejects the child
Focus on own needs to the exclusion of the child’s needs

Negligent treatment or maltreatment means an act or a failure to act on the part of a child's parent, legal custodian, guardian, or caregiver that shows a serious disregard of the consequences to the child of such magnitude that it creates a clear and present danger to the child's health, welfare, and safety. A child does not have to suffer actual damage or physical or emotional harm to be in circumstances which create a clear and present danger to the child's health, welfare, and safety. Negligent treatment or maltreatment includes, but is not limited, to:

(a) Failure to provide adequate food, shelter, clothing, supervision, or health care necessary for a child's health, welfare, and safety. Poverty and/or homelessness do not constitute negligent treatment or maltreatment in and of themselves;

(b) Actions, failures to act, or omissions that result in injury to or which create a substantial risk of injury to the physical, emotional, and/or cognitive development of a child; or

(c) The cumulative effects of consistent inaction or behavior by a parent or guardian in providing for the physical, emotional and developmental needs of a child's, or the effects of chronic failure on the part of a parent or guardian to perform basic parental functions, obligations, and duties, when the result is to cause injury or create a substantial risk of injury to the physical, emotional, and/or cognitive development of a child.

Physical Neglect

Physical Neglect includes refusal of health care, failure to allow or provide timely needed care in accordance with recommendations of a competent health-care professional for a physical injury, illness, medical condition, or impairment. It may also include inadequate supervision such as leaving a child unsupervised or inadequately supervised for an extended period of time, or allowing the child to remain away from home overnight without knowing or attempting to determine the child’s whereabouts. Permanent or indefinite expulsion from home without

adequate arrangements for care or refusal to accept custody of a returned runaway may also be considered neglect.

Physical neglect also includes inadequate nutrition, clothing or hygiene; conspicuous inattention to avoidable hazards in the home; and other forms of reckless disregard for the child's safety and welfare (e.g., driving with the child while intoxicated, leaving a young child in a car unattended).

Prenatal Exposure to Drugs

Prenatal exposure to drugs is another behavior that may be considered neglectful. Approximately two thirds of women between the ages of 12 to 34 years have used alcohol some time during their pregnancy. There are significant developmental consequences to fetal exposure to alcohol and other drugs with an estimated 1.9 per 1000 infants diagnosed with fetal alcohol syndrome (FAS) and an additional 500,000 to 740,000 drug exposed infants in the United States (Arizona Supreme Court, 2007).

Failure to Thrive/Malnutrition

When a children's physical development falls below the third percentile in height and or weight for no known medical reason, they are designated as malnourished. Failure to thrive (FTT) is a term that is usually used to refer to infants and occurs when they have not been provided adequate nutrition or emotional care. Intensive medical treatment usually leads to significant improvements in weight gain and development. With intervention, many of these children continue to thrive when returned to their parents. In homes with positive outcomes, the FTT is generally less chronic and parents respond to parent training. In other cases, children with FTT show deficits in attachment and may continue to show significant developmental delays. Parental depression or other mental health difficulties, lack of knowledge about child care, poverty, and other sources of social stress have been identified as contributing causes of non-organic failure to thrive.

Educational Neglect includes permitting chronic truancy or habitual absenteeism from school, particularly if the parent or guardian is informed of the problem and does not attempt to intervene. Other forms of educational neglect include failure to register or enroll a child of mandatory school age, or a pattern of keeping a school-aged child home without valid reasons. It may also include refusal to allow or failure to obtain recommended remedial education services or neglecting to following through with treatment for a child's diagnosed learning disorder or other special education need.

Emotional neglect occurs when there is marked inattention to the child's needs for affection, emotional support, or attention. Exposure to chronic or extreme spouse abuse or other domestic violence is also categorized as emotional neglect in some states. Other types of emotional neglect may involve encouraging or permitting a child to use drugs or alcohol or to engage in other maladaptive behavior (e.g. chronic delinquency, severe assault), refusal or delay in allowing needed and available psychological treatment for emotional or behavioral problems when recommended by a competent professional, or inattention to a child's emotional and developmental needs such as markedly overprotective restrictions which foster emotional

overdependence or chronically applying significantly inappropriate expectations based on a child's age and level of development.

Possible indicators in the child:

No one at home to provide care
Forced to care for siblings in the absence of a parent or guardian
Begs or steals food or money
Poor hygiene
Clothing insufficient for the weather
Lacks needed medical, dental or vision care
Frequent absences from school
Running away
Abuse of alcohol and drugs

Possible indicators in the parent:

Mental Health Disorder
Violent, irrational or bizarre behavior
Depression
Abuse of alcohol or other drugs
Difficulties with emotional attachment which presents as indifference to the child
Apathy, helplessness, hopelessness

MANDATORY REPORTING

Now that abuse and neglect and its indicators have been defined, the question arises: Who needs to report abuse and neglect? How do you report? What information is reported? Answers to these questions are given below.

Who Is Mandated to Report Suspected Child Abuse or Neglect?

RCW 26.44.030 Those required to report include (but are not limited to) the following individuals:

Medical practitioners; school personnel and daycare providers; social services counselors including mental health, drug and alcohol treatment, and domestic violence providers; and, an adult living in a home where abuse or neglect are occurring.

Under Washington state law, mandated reporters who knowingly fail to make a report, or cause a report to be made, shall be guilty of a gross misdemeanor (RCW 26.44.080).

How soon after discovery does a report have to be made?

RCW 26.44.030 (1) (e) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect.

Who do I call?

State of Washington Child Protective Services 24 hour reporting:

1-866-ENDHARM (1-866-363-4276)

Voice/TTY Accessible: 1-800-737-7931 <http://www1.dshs.wa.gov/>

For a brochure on mandatory reporting go to:

<http://www1.dshs.wa.gov/ca/safety/abuseStates.asp?2>

What information has to be reported?

RCW 26.44.040 Reports must be made by telephone or other manner to the proper law enforcement agency or the department of social and health services and, if requested, must be followed by a report in writing. The reports must contain the following information, if known:

- 1) The identity of the perpetrator if known;
- 2) The name, address, and age of the child;
- 3) The name and address of the child's parents, stepparents, guardians, or other persons having custody of the child;
- 4) The nature and extent of the alleged injury or injuries;
- 5) The nature and extent of the alleged neglect;
- 6) The nature and extent of the alleged sexual abuse;
- 7) Any evidence of previous injuries, including their nature and extent;
- 8) Any other information that may be helpful in establishing the cause of the child's death, injury, or the identity of the alleged perpetrator or perpetrators.

In your role as GAL, you don't necessarily seek to substantiate abuse and neglect because that is the role of CPS. It is up to the court to make a finding of whether or not the abuse occurred. However, the GAL has to recommend whether further evaluation is necessary and whether there needs to be either short term or long term restrictions in access as part of the parenting plan. Even though each family needs to be examined on a case by case basis, statistical information about allegations need to be kept in mind. For in depth sexual abuse evaluations contact:

Center for Sexual Assault and Traumatic Stress

Harborview Medical Center

General Contact (TTD): (206) 744-1616

General Contact (Fax): (206) 744-1614

General Contact (Phone): (206) 744-1600

Address:

Jefferson Professional Building
400 (4th Floor)
1401 East Jefferson Street
Seattle, WA 98122

Children's Response Center

1120 112th Ave NE, Suite 130
Bellevue, WA 98004
(425) 688-5130
(425) 688-5762 (TDD)
(425) 454-1583 (FAX)

ALLEGATIONS OF ABUSE DURING DIVORCE

There is a common misperception that allegations of abuse and neglect that arise during custody disputes have a high likelihood of being fabrications. These allegations are seen as a parent's (usually a mother's) attempt to disrupt a father's relationship with their child, to manipulate the custody determination, or to seek revenge. Overall, data suggests that allegations of physical and sexual abuse that arise during divorce are actually quite rare (Thoeness and Tjaden, 1990, 2002; Trocme and Bala, 1998).

First, examining all types of abuse, intentionally false allegations appear to be unusual. Trocme and Bala (2005) described the 1998 national incidence study in which 7,672 reports of abuse were investigated by 51 social welfare agencies across Canada. In their study, Trocme and Bala defined *unsubstantiated* allegations of abuse and neglect as ones which investigators judged to be untrue. *Intentionally false allegations* were defined as intentional fabrications "made with the hope of manipulating the legal system, or are made to seek revenge against an estranged former partner, or may be the product of the emotional disturbance of the reporter." Trocme and Bala distinguished these first two types of abuse and neglect reports from others they called "suspicious." In these cases, there was not enough evidence to make a determination that abuse or neglect had occurred but investigators maintained a strong suspicion that it had.

Forty-two percent of all child abuse and neglect allegations in Trocme and Bala's sample proved to be substantiated by investigators. An additional 23% of the allegations remained suspicious. Thirty five percent of the sample was made up of unsubstantiated cases in which 4% were determined to have been intentionally false and 31% were considered to be "the result of well-intentioned reports triggered by a suspicious injury or concerning behavior or a misunderstood story."

When looking the subgroup of allegations that were made during custody or access disputes, the rate of substantiated cases was 40% and in 14% investigators found the report suspicious. The rate of intentionally false allegations was somewhat higher with approximately 12% of reports falling into this category. Thirty-four percent of the allegations were judged to be unsubstantiated but made in good faith. Results of this analysis showed that neglect was the most

common form of intentionally fabricated maltreatment. Custodial parents (usually mothers) and children were least likely to fabricate reports of abuse or neglect. Non-custodial parents (usually fathers) and anonymous reporters made the most intentionally false reports. Fathers have also been found to be more likely to make intentionally false reports in other studies (Bala & Schuman, 2000).

Intentionally false allegations of child sexual abuse in the context of custody disputes also appear to occur relatively rarely. Marilyn McDonald (1997) reviewed several large incident studies carried out in the United States, Australia and Canada regarding false allegations of sexual abuse during custody disputes. She estimated that all types of sexual abuse allegations are raised in only about 2% of disputed custody or visitation cases. One to eight percent of those cases were determined to be *intentionally* false allegations. Factors motivating a significant portion of allegations that were considered to be unfounded (judged to be untrue) or unsubstantiated (she defines as unable to determine if true or not), were a faulty perception or confused interpretation of events by the accuser. McDonald noted two difficulties in determining the rate of false accusations. First, since sexual abuse is underreported in general, this is likely true in custody cases as well. Secondly, there is a high rate of allegations which end up being unsubstantiated, some of which are seriously suspicious.

ASSESSING THE CREDIBILITY OF ABUSE AND NEGLECT ALLEGATIONS

Mary-Ann Burkhart (2000) outlined a number of factors to be considered when trying to determine the credibility of a child's report of sexual abuse. Many of these can generalize to any form of abuse or neglect that has been reported. Some of her suggestions include:

Detail: Accurate knowledge of sexual anatomy and functioning in a young child may indicate sexual abuse. When a disclosure is accompanied by sensory details such as taste or odor, it suggests the child did not receive the sexual information from another source.

Words Used: When a child uses words which are not age appropriate, coaching may be indicated. For example, we would expect a five-year-old to describe an act of sexual abuse as "My daddy peed on my tummy" rather than as "My daddy sexually assaulted me."

Child's Manner and Emotional Response: When a child discloses abuse accompanied by a spontaneous show of emotion, such as crying or shaking, it may signify a truthful disclosure. However, at times children are emotionally flat or laugh inappropriately and this does not indicate a false report but may be a manifestation of the child's coping mechanisms.

Content of Statement: Does the child's allegation make sense? Is she telling you something that is physically impossible? A description of a number of events over time, a progression of increasingly serious sexual activity over time and elements of secrecy may also be indicative of credibility.

Existence of a Motive to Fabricate: What motives does the child have to fabricate a disclosure of abuse or neglect? Remember, when children lie it is usually to avoid trouble rather than to initiate it.

Adult receiving disclosure: This is particularly important in the context of a custody dispute. Although not indicative of a false report, when a child only discloses to one parent and is reluctant to discuss the abuse with anyone else, it may suggest coaching.

On the other hand, general statements with vague details are not as well accepted as detailed information about specific incidents. Below is a list of areas to consider when trying assessing the accuracy of abuse or neglect allegations.

1. What happened?
2. Were strategies used to keep the abuse secret?
3. Where did the event occur?
4. When did event occur?
5. Were there more than one event and if so what was the frequency?
6. What was the duration of overall abuse or neglect?
7. How severe was the incident?
8. Is there a history of prior incidents?
9. Did the perpetrator have access to the child (time alone)?

Other areas that may be assessed when an allegation of abuse or neglect has been made include:

- History of abuse or neglect in the parents family of origin
- Quality of the parents relationship while married
- Quality of the parents post separation relationship
- What does a parent have to gain by making an allegation? Does the alleging parent want the child to have a relationship with the other parent if that relationship is safe for the child or does the parent want to cut off contact completely?
- Quality of parent child relationship
- History of grooming behaviors
- Rules and discipline practices
- A parent's ability to protect the child in the future
- Presence of abuse in the sibling relationship
- Sexual boundaries in the home
- Coercive strategies used to control the child or other parent
- Parent and child roles
- Time elapsed between separation and allegations of divorce

CONCLUSION:

As a Guardian Ad Litem, your role will be to prescreen allegations of abuse or neglect. If the evidence you uncover suggests the probability that abuse or neglect occurred, it is then up to you to refer the family for further assessment by professionals expert in forensic evaluations of abuse such as CPS, police, sexual assault center, substance abuse evaluator, domestic violence

assessment or private evaluator. If a case comes to you in which abuse or neglect has been substantiated or is strongly suspected, your recommendations regarding custody, access and interventions will need to consider the impact of the abuse or neglect on the child and whether the events are likely to repeat. In making these recommendations, the effects of the abuse or neglect needs to be weighed against what the perpetrator has to offer the child and how that parent may provide benefits that the other parent cannot provide.

ABUSIVE USE OF CONFLICT

Parental conflict consistently emerges in divorce research as one of the principal factors negatively affecting children's pre-divorce and post-divorce adjustment. The courts recognize that when one parent continuously initiates or propagates conflict, when children are consistently exposed to ongoing high levels of conflict over long periods of time or when parents involve their children in interparental hostility, the use of conflict may become abusive. Many of the children living through these types of family dynamics begin to show a myriad of emotional and behavioral symptoms including depression, anxiety and aggression. This section attempts to outline the features of high conflict families, describe the harmful effects of this range of behaviors on children and suggest recommendations that Guardians Ad Litem may include in their reports to the court when evaluating these families.

Defining High Conflict

The term “abusive use of conflict” is a legal term found in the Revised Codes of Washington (RCW) chapter 26. Section 191 (3) of this chapter describes situations under which the court may limit or prohibit parent-child contact due to parental behavior that has "an adverse effect on the child's best interests" including:

"(a) A parent's neglect or substantial nonperformance of parenting functions; (b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions...; (c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions; (d) The absence or substantial impairment of emotional ties between the parent and the child; (e) *The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development*; (f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or (g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child."

When making a recommendation that the court consider a limitation in parent-child contact, it is important to describe specific behavioral anchors to support your recommendation. Although neither the RCW nor the professional literature defines the term “abusive use of conflict,” there is a growing body of clinical reports and research that describes specific characteristics commonly seen in families where a high level of post-divorce conflict exists. In their 1992 book *Caught in the Middle*, Barris and Garrity described conflict from the child’s point of view:

For children, conflict is any situation that places them between their parents or that forces them to choose between them. Being in the middle means anything from hearing one

parent belittle the other's values to vicious verbal attacks; from threats of violence to actual violence; from implicit appeals for exclusive loyalty to explicit demands that children side openly with one parent. Whatever forum it takes, all conflict hurts. The more intense, pervasive and open the hostility is, the greater is the damage to the children. And the longer it lasts, the greater the toll it takes."

As Baris and Garrity (1988) suggest, the level of conflict, the degree to which it pervades a child's life and the amount of open hostility provide a framework for describing parental conflict. The authors developed a *Conflict Assessment Scale* in which they defined mild to severe conflict. Parents who have Minimal Conflict in their relationship are able to parent cooperatively, separate the children's needs from their own, validate the importance and competence of the other parent, resolve conflict between the adults using only occasional expressions of anger and are able to bring negative emotions under control quickly. Mild Conflict included a relationship in which there was occasional berating of the other parent and quarreling in front of the child, questioning the child about personal matters in the other parent's life and occasional attempts to form a coalition with the child against the other parent.

In a parental relationship with Moderate Conflict, there is verbal abuse, loud quarreling, denigration of the other parent, threats of litigation and ongoing attempts to form a coalition with the child against the other parent around isolated issues. However there has not been a threat or history of physical violence. In Moderately Severe Conflict a child is not directly endangered by parental violence but the parents are endangering to each other. In addition there is a threat of violence, slamming of doors and throwing objects, verbal threats of harm or kidnapping, continual litigation, attempts to form a permanent coalition or alienate a child against the other parent and the child is experiencing emotional endangerment. Severe Conflict was identified as the presence of endangerment by physical or sexual abuse, use of drugs or alcohol to the point of impairment, and severe psychological pathology.

The Spectrum of High Conflict

Janet Johnston's 1995 article, *Children's Adjustment in Sole Custody Compared to Joint Custody Families and Principles for Custody Decision Making* (1995), outlines a number of common high conflict behaviors:

"Ongoing high conflict is identified by multiple criteria, a combination of factors that tend to be, but are not always, associated with each other: intractable legal disputes, ongoing disagreement over day-to-day parenting practices, expressed hostility, verbal abuse, physical threats, and intermittent violence."

High conflict cases often remain in the courts for two to three years or more without being resolved. There may be frequent changes in lawyers and usually have high levels of attorney involvement over day-to-day parenting practices. Visitation is seen as a parental right no matter how the schedule affects the children. When there is joint decision making, every child related decision is an opportunity for parental polarization and conflict. In general, there is a high level of overt hostility which takes place in front of the children and often leaks out into the child's school, sports and social environments. There are often frequent parenting plan and boundary

violations such as when one parent schedules an activity or vacation during the other parent's time without prior consent.

Those working in the area of divorce consistently find that for most high-conflict families, one or both parents exhibit the features or meet diagnostic criteria for a personality disorder. Characteristics of narcissistic, obsessive-compulsive, histrionic, paranoid, or borderline personality disorders are most common in high conflict cases.

How Personality Disorder Leads to High Conflict

Parents with personality disorders may become rigid in their perception of the other and tend to deal with situations that arise with extreme strategies. Many parents are polarized, viewing themselves as all good and the other as all bad. These parents focus on the traits within the other parent that reinforce their view of that parent, and they approach each new conflict as verification of how difficult the other parent is. These parents experience chronic externalization of blame, possessing little insight into their own contributions to the high conflict dynamic.

Parents with personality disorders may have a variety of strengths as parents. However, when focused on the conflict with the other parent they usually have little awareness or empathy for the impact their behavior has on their children. They routinely feel self-justified, believing that their actions or decisions are best for the children and no alternatives will suffice. No matter how much helping professionals try to keep the focus on the children, these parents remain focused on their own experience and on the conflict.

Some other manifestations of parental personality disorder observed in high conflict divorce are:

- A High degree of distrust;
- A poor sense of boundaries;
- A lack of differentiation between the parent's and the child's thoughts and feelings in a manner that discourages the child's autonomy;
- The parent may openly express their own emotional distress regarding ongoing disputes with the other parent or the absence of the children.
- Parent relies on their children for emotional support and sustenance leading to parentification of the child;
- Rigid and inflexible thinking about child development and parenting practices;
- Feelings of intense bitterness;
- Intense feelings of fear, anger, upset and powerlessness;
- Rewriting the history of the marital relationship in a manner that highlights the negative features and dismisses the positive ones as a way to defend against feeling deeply hurt by the other parent's decision to separate or developing a super-idealized view of the marriage and its memories;
- Uses conflict to defend against a deep feeling of rejection that is damaging to the parent and affects their core sense of themselves;
- Uses conflict as a defense against helplessness and guilt;
- Distrust of the other person as a parent;

- An overwhelming sense of unresolvable loss;
- Generalized anger toward life and members of the opposite sex; and
- A high degree of competitiveness in the marriage and in the separation.

Impact on Children

Also characteristic of high conflict custody cases is a tendency toward involving the children in disputes, denigrating or vilifying a parent in front of the children, and devaluing or sabotaging the other parent's relationship with the child. For example, a conflict generating parent often has a history of denying the other parent access to the child and often interferes with visitation and telephone contacts. Children of high conflict parents may be regularly asked to carry messages about provocative or conflictual issues (e.g. changes in child support or a remarriage) to the other parent. The children may be used to spy on the other parent's household indirectly through the use of intrusive questions or directly with requests that the child report on activities in the other household. High conflict parents often encourage their child to align with them and at extreme levels attempt to alienate the child from the other parent.

Children in high conflict families usually feel torn between their parents or resolve the loyalty conflict by aligning with one parent. Children frequently tell each parent what they want to hear in order to avoid rejection or disappointing the parent. In order to seek favor or reassurance from a conflict inducing parent, a child might volunteer information about the other home, focusing on or magnifying the negative aspects and leaving out or denying the positive ones. In some cases, a child's previously warm and positive relationship with a parent becomes awkward or estranged. Appendix One provides a comprehensive list of behaviors one might find in high conflict families.

High Conflict and Domestic Violence

Although not all divorcing high conflict parental relationships involve violence, data suggests that between fifty and seventy-five percent of them involve some type of domestic abuse or evidence of ongoing control in the parental relationship (Jaffe, Crooks, and Poisson, 2003). In some families where a pattern of domestic violence exists but has not been visible, signs of conflict emerge around the time of separation or divorce when the abused partner begins to emancipate from the batterer. The presence of domestic violence in custody disputes is addressed elsewhere in this manual and will not be discussed here but we will review characteristics that differentiate high conflict families from those in which domestic violence exists.

Clare Dalton, Judge Susan Carbon, and Nancy Olesen (2003) suggested that control is one of the main differentiating factors. In the chart below the authors compared high conflict couples with couples where domestic violence control-initiated conflict is present.

High Conflict	Abuse
<i>The likelihood of personality disorders in both partners, stemming from unresolved childhood issues.</i>	<i>One partner exhibits attitudes and behavior designed to exert inappropriate control in the relationship, while the other may display symptoms of physical and/or emotional injury from exposure to abuse.</i>
<i>The partners' unresolved feelings regarding their failed relationship, which are channeled into fighting over the children.</i>	<i>The abusive partner's unresolved feelings regarding his or her partner's desire to separate from the relationship prompt the abusive partner to fight for custody or generous access to the children as a way of punishing him or her for leaving, or using the children to meet physical or emotional needs. maintaining access to the partner,</i>
<i>Mistrust of each parent for the other, based on the distorted and exaggerated negative view of each held by the other.</i>	<i>Mistrust of the abusive partner by the spouse, solidly grounded in past experience and well-informed assessment of the abuser's current intentions and likely future behavior, along with unfounded allegations about the abused parent made by the abusive , based on his or her distorted and exaggerated negative view of the abused parent.</i>
<i>Cycles of reaction and counter reaction which further erodes the possibility of trust.</i>	<i>Repeated instances of manipulation and control, which further erode the abused partner's capacity to trust the abuser.</i>
<i>Pressure on the children to "take sides," leading children, on occasion to relieve the pressure by pleasing one parent since they cannot please both.</i>	<i>Children fearful of exposure to the abusive partner's dangerous, neglectful, or inappropriate behavior, yet often desirous of maintaining a connection to him or her and sometimes distrustful of the abused parent's capacity to meet their physical, social and emotional needs.</i>

It is important to examine the differences between high conflict and domestic violence because recommendations for custody, access and decision making may be different depending on this distinction. Important questions to ask in your efforts to clarify this issue are: Were allegations of violence raised before or after the separation? If raised afterwards, is there evidence of prior violence or control? What are the specific incidents on which a parent is basing allegations? Is there evidence to corroborate the parent's reports? However, even when the allegations only come up after separation and there is no corroborating data, domestic violence may well have occurred.

Recommendations for High Conflict Families

What do you do with these high conflict couples when developing recommendations for a parenting plan? The goals of your recommendations are to protect the children from parental conflict and reduce the likelihood of ongoing conflict and litigation. We are looking for the least restrictive recommendations that meet those criteria. In general, the greater the overt conflict the more the two families should be encouraged or directed toward parallel parenting rather than cooperative parenting. In Parallel parenting, points of contact between the parents are minimized and independence in parenting style, home structure and rules are encouraged. Contentious interactions arise when an element of the parenting plan is vague or ambiguous. Therefore, the greater the conflict the more detailed and less flexible the parenting plan must be (Stewart, 2001; Baris and Garrity, 1994).

Residential Custody

In Janet Johnston's (2002) article *High-Conflict and Violent Parents in Family Court: Findings On Children's Adjustment, And Proposed Guidelines For The Resolution Of Custody And Visitation Disputes*, she lays out specific recommendations regarding primary custody in parenting plans for high conflict couples:

1. Where there is *indication of both current AND episodic or ongoing threats of and/or use of violence*, sole legal custody should normally be given to the nonviolent parent. In these cases, the noncustodial parent may be denied right of access to the child's medical and educational records if such information would provide access to the custodial address and telephone number, which the custodial parent has the right--for safety reasons--to keep confidential.
2. Where there is a history of domestic violence that is *not* current, nor both recent AND episodic, or ongoing, there should be no presumption in favor of any particular legal custody arrangement."

Other experts in the area of high conflict divorce suggest a primary parent may be necessary when conflict is overt and consistent even when domestic violence is not an issue.

Transitions

- When it is possible to exchange at a parent's home or when exchanges have to take places at other locations, such as airports, the parent who is dropping the children off should provide the transportation so that they can say good-bye to the children without pressure from the receiving parent.
- If parents cannot contain their anger during transitions, a neutral drop-off point may be necessary to ensure minimal or no contact between parents. School is often the most convenient location and the most comfortable place for the children to make the exchanges. If school does not work, other potential drop off areas include a public library, the home of a mutual friend or neutral relative, or extracurricular activities (if the parent dropping off

leaves before the receiving parent gets there). Police stations should be avoided, if possible, as they often create heightened anxiety for the children (although at times this may be the best solution).

- Transitions may need to be scripted. An example may be: The parent dropping off the child says most of their good-byes prior to the actual transition (e.g. before getting out of the car). The parents say hello to each other and exchange necessary information regarding the care of the child such as last meal time, illnesses, or medical regimens. The parent dropping the child off says a short good-bye and encourages the child to transition to the other parent.
- If conflict continues to be a problem at transitions, transfers by a neutral party or supervised transfers may be necessary.
- When conflict during transitions remains high despite use of these other strategies, it may be necessary to adjust the visitation plan, by decreasing the number of transitions and substituting longer visits even with younger children.

Communication

- The greater the conflict, the more important it is to minimize direct communication between the parents.
- If communicating basic information during transitions creates conflict, a log with basic information could be passed back and forth. It is important to outline the type of information that should and should not be communicated. For example, the log could include information about meals, activities, medications and injuries. It is not a place to criticize the other parent or document failures to follow the parenting plan. The log may be more successful if it is not admissible in court.
- Email communication is often used successfully; particularly when there are guidelines for its use (see Appendix Two for detailed email communication guidelines).
- As GAL, you may need to monitor email for a period of time to assist parents in using it successfully as a means of communication. Long term monitoring may also be necessary.

Schedule Changes

- Changes should be firmly kept to a minimum.
- If a change to the basic schedule is unavoidable, it should be written out in detail so misunderstandings are minimized.
- The residential parent must OK any change that takes place during their time before the change is made and before the children are notified of the change.

Special Events and Holidays

- When parents are unable to celebrate holidays and special events peaceably in each other's presence, it is best to alternate special events (such as the children's birthdays) or hold celebrations in both homes.

Telephone

- There should be unrestricted, private telephone contact between the children and the nonresidential parent.
- If unrestricted calls are not occurring, phone appointments should be made two or three times a week. Consequences would occur if the residential parent is not home during scheduled calls or interferes with calls in some other way.
- There are arguments for having make-up phone calls and for not having them. On the one hand, phone contact with the non-residential parent should be encouraged. On the other hand, when telephone calls are a source of conflict, rescheduling them provides one more avenue for conflict. There are a variety of circumstances under which phone calls are missed or cancelled. When a parent is intentionally missing phone calls to hamper a child's communication with the other parent, phone calls may be made up. In this case a make-up time should be scheduled within 24 hours. If the calling parent misses more than one phone appointment within two weeks, the call would not be rescheduled.
- Each parent should notify the other in advance if missing a phone appointment is unavoidable.

Children's events

- When possible, both parents may attend events (school activities, sports practice or games, performances for extracurricular activity). If there is conflict, families may try to both be present but not sit near each other or talk to each other.
- There needs to be an agreement that children may take a few minutes to approach the non-residential parent to say hello. After five to ten minutes the non-residential parent should encourage the child to return to the residential parent.
- If conflict continues to occur when parents attend the same event, separate or alternating attendance should take place.

- When there is a high level of conflict, schools should be encouraged to meet with parents separately for school conferences. Each parent may be given half of the time allotted to other families if teachers' time is limited. When this is not possible, parents could alternate conferences or make other arrangements with the children's teachers.

Decision Making

- Joint decision making is contraindicated for high conflict families who have a history of failure to resolve decisions.
- The parent who is more able to make appropriate child oriented decisions should be given sole decision making.
- Another alternative would be having, a GAL, parenting coordinator, mediator or arbitrator in place, possibly for long term, to assist in resolving differences.

Dispute Resolution

Janet Johnston (2002) recommends “A Spectrum of Alternative Dispute Resolution Services for Divorcing Families” which begins with the least intrusive intervention and increasingly sets up additional structure and monitoring as it becomes apparent that a high conflict couple cannot successfully use less restrictive forms. Some forms may be used simultaneously such as Co-Parent Counseling to address communication enhancement and setting appropriate boundaries and impact directed mediation to deal with specific issues such as a child support modification.

Co-Parent Counseling

These therapies are conducted by a mental health professional that has specific experience working with high conflict divorced or divorcing couples. Treatment has two main areas of focus. First, therapy provides feedback regarding how parents' behavior may positively or negatively affect their children and information regarding child development. The second area of focus is communication, problem solving and decision making with the other parent. At times the therapist works with both parents in the same room and other times works with each parent in parallel in individual sessions. It is appropriate to work with parents separately when one parent feels uncomfortable, pressured or coerced while in the other parent's presence.

Mediation and Consultation

Johnston and Roseby (1997: 230-231) point out that mediation, as originally conceived, “is the use of a neutral, professionally trained third party in a confidential setting to help disputing parents clearly define the issues, generate options, order priorities, and then negotiate and bargain differences and alternatives about the custody and care of their children after divorce.” Mediation and consultation are inappropriate for cases involving serious allegations of abuse, molestation, domestic violence, severe mental illness, substance abuse, etc.

Therapeutic or Impasse-Directed Mediation

This type of mediation integrates mediation and therapy. The rationale for using this type of dispute resolution process is the assumption there are underlying emotional factors that contribute to the impasse between the parents and that this must be dealt with before the parents can make rational, child-centered decisions.

Parenting Coordinator

Also called a case manager, Guardian Ad Litem, special master, custody commissioner, or parenting plan coordinator. This professional is appointed by stipulation of the parties or an order of the court to manage ongoing conflict, help co-ordinate parenting, make timely and flexible decisions, and case manage with other professionals involved. Includes access to children or their therapists.

Arbitration

When there is joint decision making in families Although Johnston includes arbitration in her scheme for intervention and dispute resolution, we approach this as a separate and final level in the dispute resolution process. An arbitrator would make a legally binding determination when a high conflict couple is unable to come to resolutions over specific disagreements.

Other Services to High Conflict Families

Psychotherapy

Individual counseling would address psychological factors that are contributing to an impasse in the dispute resolution process and assisting the parents in understanding the child's needs.

Supervised Visitation

Where there is recent concern about a child's physical or emotional safety, due to allegations of child abuse, battering, parental substance abuse or severe psychological pathology on the part of the parent, supervised visitation is often recommended by the GAL. It may also be used when abduction is a threat. In this context supervised visitation is only about protecting the child physically and giving an anxious or fearful child the support of a protective adult in hopes of reducing their fears during visits. If interactions between parent and child become inappropriate or the child becomes stressed, the supervisor could terminate the visit.

Supervised visitation is observation only, as compared to therapeutic visitation below, where the third party will intervene in an effort to bring about more appropriate parent-child interactions.

Therapeutic Supervision

A therapeutic supervisor not only keeps the child protected from harm but may also teach parenting skills, facilitate needed discussion between parent and child and in high conflict

situations, aid children in remaining focused on their own emotions and needs rather than reactively siding with a parent.

We have also used therapeutic supervision in situations where parent and child have had little contact in recent years (due to lack of attachment, alienation, or parental absence) and need the help of a facilitator to normalize feelings and explore a basis for the relationship.

Suspended Visitation or Temporarily Suspended Visitation

When there has been a history of child abuse, witnessing parental battering, ongoing substance abuse or ongoing severe parental pathology and despite intervention, the child continues to be anxious and fearful; visits may need to be suspended. If permanent suspension of contact is being considered the GAL must weigh the cost of the child losing the parent against future benefits of continuing the relationship.

Reunification Therapy

When there has been estrangement due to child abuse, battering, the child has been co-opted into alienation by the other parent, or there has been a long term disruption to the parent-child relationship for some other reason, reunification therapy may be helpful. There is some functional overlap between therapeutic supervision and reunification therapy in the areas of facilitating a parental apology to the child, having the child voice their experiences and setting rules for how the parent-child dyad will act together in the future. In cases of alienation or a child deciding to align with one parent to avoid conflict; reunification therapy is aimed at helping the parent understand the difficult situation the child is in and what approaches may be the most useful in establishing meaningful dialogue. For the child, reunification therapy targets helping the child to detach themselves from the alienating parent's emotional aggressiveness and reconstituting a relationship with the parent with whom they have become estranged. Reunification therapy may be a long, delicate process that takes considerable skill on the part of the practitioner, requires court structure to assure the alienating parent will make the child available for appointments and requires patience on the part of all the participants.

The GAL assessment is focused on determining a parenting plan and interventions that will support the children's positive adjustment to their parents' separation, support the children's healthy development as they age and allow for meaningful parent-child relationships. The degree of structure and level of intervention recommended for these families depends on the parents' ability to cooperate or collaborate on behalf of the children and their ability to maintain an environment that is safe, nurturing and encouraging. As the parents' ability to provide these important factors decrease, recommendations will seek to increase the structure and rigidity of the parenting plan and provide for higher levels of intervention.

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Other Helpful Resources

Department of Justice Canada. www.justice.gc.ca/en/ps/pad/reports/index.html - Series of literature reviews and research on various topics related to divorce.

Revised Codes of Washington (RCW) <http://apps.leg.wa.gov/RCW/default.aspx>

Shared Parenting Council of Australia
http://www.familylawwebguide.com.au/spca/index.php?page=library&keep_su=secretary_s_pca Articles on divorce and high conflict

Washington Administrative Codes (WAC) <http://apps.leg.wa.gov/WAC/default.aspx>

APPENDIX ONE

CHARACTERISTICS OF HIGH CONFLICT FAMILIES

Naomi Oderberg, Ph.D. & Margo Waldroup, MSW

The following table lists many of the behaviors seen in high conflict families. It is meant to help identify, describe and organize the behavior associated with each family member.

1) Presence of Violence and Abuse	
Parent has a criminal conviction for a sexual offence, act of domestic violence or child abuse.	
There is a pattern of domestic violence.	
There is an isolated incident of domestic violence around time of separation.	
Police have been called to break-up parental conflict.	
There are allegations of physical or sexual abuse or domestic violence.	
Child welfare agencies have become involved in the dispute.	
There is a confirmed or alleged history of ongoing verbal aggression, hostility or abuse.	
There is a confirmed or alleged history of intense jealousy, withholding family resources, monitoring a partner's movements or other evidence of abusive power and control dynamic.	
Frequent, demanding, critical or abusive telephone calls and email communications (leaves diatribes on the other parent's voice mail).	
Threats of violence, destroying the parent or taking the children away from a parent.	
2) Legal Involvement	
One or the other party has gone to the court several times to resolve issues.	
The divorce proceeding has been before the court for at least two to three years without being resolved.	

A parent is repeatedly in contempt of the court order.	
A parent has changed lawyers several times.	
There is frequent lawyer involvement and ongoing disagreement over day-to-day parenting practices and inconsequential matters.	
There is a large amount of collected affidavit material related to the divorce proceeding with harmful content against the character of the other parent.	
Inappropriate legal information is communicated to the children directly or through legal documents being left where the children can see them.	
3) Behavior Relating to the Other Parent:	
Traumatic or ambivalent separations.	
Rewrites history of the marital relationship as all bad or as idealized.	
History of denying the other parent access to the children.	
Blames all difficulties on the other parent and does not take responsibility for their own contributions to the conflict or effect their behavior has on the children.	
Disrespectful, devaluing attitude and behavior toward the other parent.	
Boundary violations and manipulations (Gets tickets to Mexico two days early during other parent's residential time, putting the residential parent in a bind).	
Withholds support payments or money owed for medical or other expenses.	
A tendency to vilify the other parent.	
Polarized positions lead to frequent disagreements over schedules, finances, child related activities, and access to children.	
Uses the same destructive patterns of provocation and retaliation that were used in the marriage.	
The parent is rigid in their interpretation of the other parent's intention, behavior, thoughts or feelings and is unable to consider alternate explanations.	
Old disagreements from the beginning of the marital relationship become part of later disputes over the children.	
Transfers negative views from the marriage to the current situation whether or not they are relevant.	
Efforts to block access to information or participation in the children's school, social and recreational activities.	
Withdrawal and non-communicative behavior such as refusing to speak with, look at or acknowledge the other parent at transfers or answer phone calls or emails.	
Resolves disagreements by avoiding the other parent and the issues raised rather than by verbal reasoning.	
4) Parent's Behavior in Parent-Child Interactions	
Parents argue violently or constantly in the presence of the children.	
The interparental struggle takes center stage and as a consequence, the parent does not perceive or respond to the child's needs and	

personal circumstances.	
A parent is more interested in exacting revenge or maintaining control than they are in solving conflict or protecting the children.	
Residential time is seen as the parent's right despite the effect of a particular schedule on the children.	
Parent is self-focused and has difficulty distinguishing their needs from those of their children's.	
During interviews the parent is unable to answer questions concerning the child's well being without repeatedly refocusing the conversation on their own feelings or negative experiences with the other parent.	
Parent has poor boundaries and encourages enmeshment rather than autonomy in the children.	
Does not protect the children from their own emotional distress and ongoing disputes with the other parent.	
The parent depends on their child for emotional support in a way that ignores the child's needs and experience.	
Parents engage in a competition for the child's affection.	
A parent uses guilt to manipulate the child or plays a victim role to gain their loyalty or pity such as, "I just don't know what I'll do when you're with dad/mom."	
The child is rejected or punished for expressing positive thoughts or feelings about the other parent.	
Does not allow the child to approach the other parent or emotionally punishes the child for acknowledging the other parent at performances, activities or other events.	
Children are actively involved in disputes in a number of ways such as asking them to choose an activity when parents endorse different options (e.g. one parent favors soccer and the other baseball).	
Children are used as spies (child complies) and asked to report on the activities at the other household.	
Children are interrogated about the other parent's activities, relationships, parenting decisions, other aspects of the child's life when with that parent (child is pressured to respond).	
Parents insist that the children carry verbal or written communications between homes about topics of conflict to the parents such as late support payments or missed visits.	
Parent encourages the child to align with them and reject the other parent.	
The parent does not allow the child to take any of their belongings to the other parent's home or does not allow them to bring anything from the other parent to their home.	
A parent changes the child's clothes into clothes they've bought as soon as the child transitions to them.	
Distorts the truth about the other parent's behavior or tells the truth without considering the effect the information has on the child.	
Bombards the child with negative stories about the other parent.	

Frequently criticizes, devalues or diminishes the other parent to the child. Uses words such as "liar" or "adulterer" to describe the other parent.	
Allows the child to overhear phone conversations about conflicts, criticism and hostile feelings toward the other parent.	
A parent implies that the other parent is dangerous in some way when there is no evidence that the child is in danger.	
A parent magnifies or exaggerates the other parent's behavior. For example if a parent is labeled an alcoholic although they only drink moderate amounts of alcohol occasionally.	
Devalues or minimizes the importance of the child's relationship with the other parent or repeatedly points out how they have been trustworthy, reliable and devoted to them while the other parent has not.	
A parent communicates that other activities are more important than phone calls or scheduled visits with the other parent.	
The parent makes "loaded" comments to the child before transitions such as "It's too bad you have to go to dad's/mom's and miss your cousin's party."	
A parent will not be home at designated times for scheduled phone calls, will not answer the phone when the other parent calls or does not give the child messages from the other parent.	
A parent interrupts the child's time with the other parent in various ways such as frequently calling to speak with the child or check on them. This may increase the child's anxiety about the other parent and can make the child feel guilty about visitation.	
Makes intentionally provocative decisions or ones that blatantly disregards the other parent's values (cutting a child's hair, piercing ears, allowing tattoos).	
Minimizes the impact that being separated from the other parent will have on the child.	
Views a relocation which significantly decreases contact with the other parent as something that will not have much impact on the child or that the child can easily cope with.	
Parent identifies the child as having the same characteristics as the disliked parent.	
Parent restricts child's access to other parent's extended family members	
5) Child's experience	
The child feels torn in their loyalty to each parent (usually younger than nine years of age).	
Child tells each parent what they want to hear leading to contradictory messages to the parents.	
Child allies with one parent to resolve their loyalty conflict (more likely in nine to twelve year olds).	
A child volunteers information about the other home, focusing on or	

magnifying the negative aspects and leaving out or denying the positive ones.	
Child does not spontaneously offer any information about the other parent or activities at the other household, as would occur in non-conflictual families (I saw that movie at dad's).	
The child feels anger, fear, sadness and powerlessness in response to the parents' conflictual relationship with each other.	
Feels pressure to take sides with one parent or the other in a disagreement between parents.	
It feels untenable and stressful for the child to be at a location with both parents at the same time (transitions are stressful)	
Child begins to reject the other parent, having tantrums at transitions or refusing to go on visits when it is not justified.	
The child displays separation anxiety but only prior to transitions with the other parent and not in other situations.	
Child ignores non-residential parent when together at child focused events such as sports or school activities.	
Child discontinues displays of affection toward one parent in order to avoid disappointing the other parent or appearing disloyal.	
Children recount minor grievances as reasons for disliking or discontinuing contact with the other parent.	
Child parrots complaints about the non-residential parent using the same words and tone as the residential parent.	
Child fears previously trusted parent because of the other parent's view that s/he is dangerous in some way.	
6) Extended family and others	
Child's access to extended family members is restricted.	
The parent creates alliances with friends and family members (sometimes of the other parent's), helping professionals, counselors and lawyers, by constantly relating their negative perceptions of the other parent to them.	
Attorneys, therapists, friends and family accept one parent's side of the story without considering alternative explanations and fuel the dispute by suggesting that the "victim" take an aggressive and uncompromising stance.	
A parent's family members join the hostile parent in denigrating and devaluing the other parent in front of the child.	

This table was created by the authors with some information coming from the following sources: Gilmour, 2004; Stewart, 2001; Johnston, 1995; Emery, 1982; Pearson & Gallaway, 1998; Nelson, 1989; Johnston, Gonzalez and Campbell, 1987; Johnston, 1994; Johnston et al., 1985; Johnston, Campbell, and Mayes 1985; Buchanan et al., 1991; Buchanan & Waizenhofer, 2001; Warshak 2001; Jaffe, Crooks, and Poisson, 2003.

APPENDIX TWO

GUIDELINES FOR E-MAIL COMMUNICATION

Naomi Oderberg, Ph.D. & Margo Waldroup, MSW

Here are some guidelines to help structure e-mail communication in high-conflict families. It may be helpful to monitor emails and provide feedback to parents while they are learning more adaptive communication.

1. The tone of email communications should be neutral and polite. There should be no name calling, put downs, sarcastic comments, verbal threats, demanding or derogatory language which will enflame the conflict. Parents may want to wait 1-24 hours before sending an email so they have time to review and edit before sending it out.
2. The content would be business like, just the facts, and restricted to areas that directly affect the children such as scheduling, appointments and school or other activities. Unresolved feelings about the relationship or a critique of the other's parenting should not be included. Emails could be used in court and parents should be aware that inappropriate emails may be used against them.
3. If a child complains about something that occurs at the other parent's home, send a courteous inquiry asking for an explanation instead of assuming the worst.
4. If the one parent inquires about something that happened at the other parent's home, that parent needs to respond politely with an explanation, request for more information, apology or a solution, whichever is appropriate.
5. Emails should be kept short, between one and four sentences in length. One format is to a) present the issue, request or difficulty; b) state the goal or offer a solution; c) suggest the other parent provide other solutions. For example: "I am concerned that Joshua is having difficulty keeping track of his homework. We could set up a homework log. Any other ideas?"
6. The number of emails sent each week should be limited. Some practitioners suggest a maximum of one a day or one longer email once a week. The limit ensures that parents do not end up having to respond to emails constantly. In situations where one parent feels highly anxious or intruded upon, fewer emails may help create a calmer atmosphere.
7. There needs to be an agreement about how often parents check their email (from once a day to once a week) and how long they have to respond (24-48 hours). If a parent can't respond within that timeframe, they should send an email stating when a response will be forthcoming. For example: "I do not know if I will be available Saturday the 14th, I will let you know by next Thursday."

8. If there is a time sensitive issue, such as the illness of a child, having to cancel a visit with short notice or an emergency, there needs to be some form of back-up communication such as text messaging or voicemail.
9. Both parents should keep a hard copy of all communications for future reference.
10. The files holding past emails should be password protected to keep them out of the children's sight.

CHAPTER 10
UNDERSTANDING THE DYNAMICS OF
DOMESTIC VIOLENCE

UNDERSTANDING THE DYNAMICS OF DOMESTIC VIOLENCE

Submitted by Grace Huang

WHY IS DOMESTIC VIOLENCE RELEVANT TO PARENTING PLANS?

Domestic violence is a crucial area of inquiry in addressing parenting plan disputes. In cases involving domestic violence, courts are obligated to determine how and to what extent the children have been affected by what has gone on in the family, the quality of the children's relationships with each parent, and how to assure the children's ongoing physical, psychological, and emotional well-being.⁴³ Courts are required to consider a history of domestic violence in determining the best interests of children.⁴⁴

Domestic violence can create grave risks for an abused parent and his or her children; and there is no fail-proof method to determine with absolute certainty, especially at the outset, exactly which case, or which circumstances, contain or create those risks. In many cases, separation increases, rather than reduces, the risks of harm to an abused parent or to the children.⁴⁵ Thus, promoting ongoing contact between children and a violent ex-spouse may create increased opportunities for domestic violence through exchanges of children and visitation.⁴⁶ In extreme cases, domestic violence may be lethal. The lethality of domestic violence often increases when the perpetrator believes that the abused party is leaving or has left the relationship.⁴⁷ In these extreme cases, children themselves may become victims or be involved as witnesses to homicide.⁴⁸

In addition, the presence of domestic violence is also an indicator for the co-existence of child maltreatment. In one review of studies investigating this overlap, research indicated that between 30% and 60% of children whose mothers had experienced abuse were also likely to have been abused.⁴⁹ For these and numerous other reasons, domestic violence is a crucial area of inquiry in addressing parenting plan disputes and requires an individualized analysis.

⁴³ RCW 26.09.187.

⁴⁴ RCW 26.09.191(1) and (2)(a) restrict mutual decision-making and dispute resolution and restrict a parent's residential time when a parent has engaged in a history of acts of domestic violence or an assault that has caused grievous bodily harm or fear of such harm.

⁴⁵ Walter S. DeKeseredy, McKenzie Rogness & Martin D. Schwartz, *Separation/Divorce Sexual Assault: The Current State of Social Scientific Knowledge*, 9 *AGGRESSION & VIOLENT BEHAV.* 675 (2004).

⁴⁶ M. Sheeran & S. Hampton, Supervised visitation in cases of domestic violence, *Juvenile and Family Court Journal* 50, 13-25 (1999).

⁴⁷ N. Websdale, Reviewing Domestic Violence Deaths, *National Institute of Justice Journal*, 250, 26-31 (2003); J. Campbell, D. Webster, J. Koziol-McLain, C.R. Block, D. Campbell, M.A. Curry, et al, Assessing Risk Factors for Intimate Partner Homicide, *National Institute of Justice Journal*, 250, 14-19 (2003)

⁴⁸ K. Starr & J. Fawcett, *If I Had One More Day...Findings and Recommendations from the Washington State Domestic Violence Fatality Review*, 30-31 (2006).

⁴⁹ J. Edleson, The Overlap Between Child Maltreatment and Woman Battering. *Violence Against Women*, 5, 134-154 (1999).

DEFINING DOMESTIC VIOLENCE

For purposes of determining its effect on children and families, it is crucial to be aware of the behavioral definition of domestic violence as well as legal definitions. Domestic violence is a *pattern* of assaultive and coercive behaviors that operate at a variety of levels—physical, psychological, emotional, financial, and/or sexual—that abusers use against their intimate partners. The pattern of behaviors is neither impulsive nor “out of control,” but is purposeful and instrumental, in order to gain compliance from or control over the victim.⁵⁰ Some of the behaviors may include criminal conduct, such as physical and sexual assaults, as well as other behaviors designed to control, dominate, humiliate, or terrorize, such as emotional abuse or financial control.

1. Legal Definitions of Domestic Violence

Washington law defines domestic violence in RCW 26.50.010(1) as:

- (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;
- (b) sexual assault of one family or household member by another; or
- (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

The legal definition of domestic violence may be narrower, and more focused on physical acts of violence, than the broader behavioral definition articulated previously. The legal definition may also be broader, as it encompasses violence against a broader range of family members than does the behavioral definition.

Most of the family or household members defined in RCW 26.50.010(2) encompass the behavioral definition of intimate partner, including “spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, . . . persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship. . . .” However, RCW 26.50.010 also includes household or family members who are not, nor have they ever been, intimate partners such as some “adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.”

The behavioral pattern and effects of domestic violence are similar for adult or adolescent intimate relationships regardless of whether they are spouses, ex-spouses, boyfriend/girlfriend, ex-boyfriend/girlfriend, adult child/adult parent, same-sex relationships, individuals who currently live together and are intimately involved, those who have lived together in the past, or individuals who have children in common.

⁵⁰ A. Ganley, Ph.D, *Domestic Violence Manual for Judges*, Chapter 2 (Olympia, WA: published by the Office of the Administrator for the Courts, 2006

While domestic violence cases typically involve intimate partner violence, non-intimate partner violence may also appear in legal proceedings. The dynamics differ in cases involving intimate-partner violence and cases involving domestic violence perpetrated by household members who are not, nor have they ever been, intimate partners with their victims (i.e., adult siblings, adult child to parent, roommates, etc.).

For the purposes of parenting plans, Washington law directs courts to limit a parent's residential time with a child shall if “it is found that the parent has engaged in ... a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm...”⁵¹ In addition, Washington law directs courts to consider whether a “parent’s involvement or conduct may have an adverse effect on the child’s best interests...and preclude or limit any provisions of the parenting plan,” if a parent has engaged in the “abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development” or “Such other factors or conduct as the court expressly finds adverse to the best interests of the child.”⁵²

Because domestic violence in the broader sense impacts the well-being of children, children, it is crucial that guardians ad litem in family law cases have an accurate picture of the violence or abuse perpetrated by one parent against the other or against a child, and to consider its implications for the child after the parents separate on the best interests of a child. It is also important to understand that the impact of domestic violence on children may be mitigated by certain protective factors, such as a supportive relationship with the non-abusive parent.⁵³

2. Distinguishing Between Domestic Violence, High Conflict, and Normal Conflict of Separating Couples

There is general consensus that children’s psychological well-being and adjustment may be negatively affected by both parental conflict and violence.⁵⁴ Some conflict is a normal consequence of most parental separations and can be addressed by the passage of time, or on parenting classes that help focus the parties on the needs of children. Often, these are cases that do not involve guardians ad litem, as the parties are able to resolve the conflicts themselves. However, there is frequently confusion over the term “high conflict,” which has been used to describe more extreme and protracted situations that may involve extensive court and community resources, and which include domestic violence cases.⁵⁵ Given the prevalence of domestic violence in cases before the court system, the term "high-conflict" may obscure serious concerns about violence and abuse.⁵⁶

⁵¹ RCW 26.09.191(2)(a)(iii).

⁵² RCW 26.09.191(3).

⁵³ See Peter G. Jaffe, Nancy K.D. Lemon & Samantha E. Poisson, *Child Custody & Domestic Violence: A Call For Safety And Accountability*, 21-28 (2003); at 27-28 (providing a table that identifies risk and protective factors in domestic violence cases and stating that domestic violence should be a fundamental consideration in determining the best interests of children).

⁵⁴ D.A. Wolfe, C.V. Crooks, V. Lee, A. McIntyre-Smith, & P. Jaffe. “The Effects of Children’s Exposure to Domestic Violence: A Meta Analysis and Critique”, *Clinical Child and Family Psychology Review*, 6, 171-187.

⁵⁵ J. Johnston & L. Campbell, *Impasses of Divorce*. New York: Free Press (1988).

⁵⁶ P. Jaffe & C. Crooks, “Assessing the Best Interests of the Child,” in *Parenting by Men Who Batter*, 2007. The authors recommend that there be distinctions designating individuals who demonstrate a pattern of abusive behaviors that continue over time and that are designed to control, dominate, humiliate, or terrorize their victim as

If the risks to children associated with ongoing conflict and with domestic violence were the same, and the methods to mitigate those risks were the same, the distinction might not matter. However, while there is crossover in both the risks posed to children and strategies to address those risks, there are also some crucial differences. First, the physical safety of the non-abusive parent and the children after separation should be addressed when the parents' relationship has been abusive; this is not necessarily the case if the parents' relationship has been highly, but mutually, conflictual.

Second, when both parents are engrossed in ongoing conflict, the participation of each in the conflict, in of itself does not provide a basis for choosing one over the other as the primary residential parent, but rather, other factors will be determinative in that decision.⁵⁷ However, when one parent has abused the other, there are strong arguments, as well as legal requirements for recommending primary residential time to the non-abusive parent.⁵⁸

Third, the abused parent's capacities may be currently diminished as a result of the domestic violence, making it crucial to look at evidence of past capacity and future potential for parenting once the effects of the domestic violence have been mitigated. Fourth, parents embroiled in conflict are likely to be equally vocal about their differences, and about one another's perceived parenting deficiencies. As explored in greater detail in the following section, in an abusive relationship, the abusive partner is likely to deny and minimize his or her abuse; and the abused partner may also have been, or still be, unwilling or afraid to disclose either the abuse, or other concerns about the partner's parenting.

In the context of contested family law cases, the ability to assess the competing claims made by the parties, to understand the precise nature and level of the risks to which children may be exposed in the post-separation context, and to make appropriate recommendations with respect to parenting plans that meet children's needs and assure their safety depends on being able to identify and distinguish between "conflict-initiated" and "control-initiated" violence.⁵⁹

"Control-initiated" domestic violence is specific to intimate relationships that are more accurately described as "abusive" than simply as "violent" or "conflictual." In abusive relationships, one partner uses a range of coercive behaviors to control the other's activities, associations, and behavior. The threat or actual use of physical violence is just one kind of abusive behavior, and may well not be the predominant one.⁶⁰ Additionally, when violence occurs in an abusive relationship, it is not necessarily triggered by conflict.

In conducting investigations and making recommendations to the court, it is crucial for guardians ad litem to recognize whether it is conflict or domestic violence as defined in the behavioral context that has shaped the family prior to the separation of the parents, and is shaping the ongoing experience of the case within the family law system.

"batterers," as contrasted with individuals who perpetrate minor, isolated incidents of behavior that are not part of a pattern of behavior over time.

⁵⁷ See RCW 26.09.187.

⁵⁸ See RCW 26.09.191.

⁵⁹ D. Ellis & N. Stuckless, *Mediating And Negotiating Marital Conflicts* 13 (1996).

⁶⁰ K. Fischer, N. Vidmar, & R. Ellis, *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 S.M.U.L. REV. 2117, 2120-2126 (1993).

DOMESTIC VIOLENCE IN FAMILIES⁶¹

Domestic Violence is a Pattern of Abusive Tactics.

Domestic Violence is:

A pattern of assaultive and coercive behaviors; including physical, sexual, and psychological attacks, as well as economic coercion; that adults or adolescents use against their intimate partners.

Examples of Domestic Violence Behavioral Tactics include, but are not limited to the following:

- **Physical abuse:** Spitting, poking, shaking, grabbing, shoving, pushing, throwing, hitting with open or closed hand, restraining, blocking, choking, hitting with objects, kicking, burning, using weapons, etc.
- **Sexual abuse:** Pressured, coerced, or physically forced sex
- **Psychological abuse:** Acts of violence against others, property or pets, intimidation through threats of violence against victims, children, others, or self (suicide), as well as through yelling, stalking, and hostage taking, physically or psychologically isolating victims from family, friends, community, culture, accurate information, etc, attacks against victim's self-esteem and competence, forcing victims to do degrading things, controlling victim's activities, etc., alternating use of indulgences: promises, gifts, being affectionate
- **Economic coercion:** Control of funds: spending family funds, not contributing financially to family, withholding funds, etc., or control of victim's access to resources: money, health insurance, transportation, child care, employment, housing, etc.
- **Use of children to control victim:** interrogating children about victim's activities, forcing child to participate in the physical or psychological abuse of adult victim, using children as hostages, using visitation with children to monitor adult victim, undermining parenting of adult victim, custody or visitation fights, etc., false reports to Child Protective Services

Domestic violence consists of a wide range of behaviors.

Some acts of domestic violence are criminal, such as hitting, choking, kicking, assault with a weapon, shoving, snatching, biting, rape, unwanted sexual touching, forcing sex with third parties, threats of violence, harassment at work, attacks against property, attacks against pets, stalking, harassment, kidnapping, arson, burglary, unlawful imprisonment, etc. Other abusive behaviors may not constitute criminal conduct, e.g., degrading comments, interrogating children or other family members, suicide threats or attempts, controlling the victim's access to the family

⁶¹ Portions of this section have been adapted from, A. Ganley, Ph.D, *Domestic Violence Manual for Judges*, Chapter 2 (Olympia, WA: published by the Office of the Administrator for the Courts) 2006.

resources: time, money, food, clothing, and shelter, as well as controlling the abused party's time and activities, etc. Whether or not there has been a finding of criminal conduct, evidence of such behaviors may indicate a pattern of abusive control, or domestic violence.

Domestic violence is a pattern of behavior, not an isolated, individual act.

The pattern may be evidenced either (a) in multiple tactics in one episode (e.g., physical assault combined with threats and emotional abuse), or (b) in multiple episodes over time. One battering tactic or episode builds on past tactics or episodes and sets the stage for future tactics or episodes. All incidents or tactics of the pattern interact with each other and have a profound effect on the abused party. The use of physical force combined with psychological coercion establishes a dynamic of power and control in the relationship. Also there is a wide range of consequences from the pattern, some physically injurious and some not; all are psychologically damaging.

Acts of violence against others or property to control the adult victim.

Some of the acts may appear to be directed against or involve the children, property, or pets when in fact the perpetrator is behaving this way in order to control or punish the intimate partner (e.g., physical attacks against a child, throwing furniture through a picture window, strangling the adult victim's pet cat, etc.). Although someone or something other than the abused party is physically damaged, that particular assault is part of the pattern of abuse directed at controlling the intimate partner.

Psychological attacks through verbal abuse.

Not all verbal insults between intimates are necessarily psychological battering. A verbal insult done by a person who has not also been physically assaultive is not the same as a verbal attack done by a person who has been violent in the past. It is the perpetrators' use of physical force that gives power to their psychological abuse through instilling the dynamic of fear in their victims. The psychological battering becomes an effective weapon in controlling abused parties because abused parties know through experience that perpetrators will at times back up the threats or taunts with physical assaults. The reality that the perpetrators have used violence in the past to get what they want gives them additional power to coercively control the victims in other non-physical ways. For example, an abuser's interrogation of the abused party about the victim's activities becomes an effective non-physical way to control the abused party's activities when the perpetrator has assaulted the victim in the past. Sometimes abusers are able to gain compliance from the abused party by simply saying "Remember what happened the last time you tried to get a job . . . to leave me . . . etc.?" (e.g., subtly reminding the victim of a time when the perpetrator assaulted the abused party). Because of the past assaults, there is the implied threat in the statement.

Psychological control maintained by intermittent use of physical force and psychological attacks.

The psychological control of abused parties through intermittent use of physical assault along with psychological abuse (e.g., verbal abuse, isolation, threats of violence, etc.) is typical of domestic violence. These are the same control tactics used by captors against prisoners of war and hostages. Perpetrators are able to control abused parties by a combination of physical and psychological battering since the two are so closely interwoven by the perpetrator. The incident

of physical assault may be in the distant past but the coercive power is kept alive by the perpetrator's other tactics of control.

Perpetrator's use of indulgences to control victim.

Domestic violence perpetrators, like captors of prisoners of war, also alternate their abusive tactics with occasional indulgences, such as flowers, gifts, sweet words, promises to get help, attention to children, etc. Some victims may think that the abuse has stopped, whereas for batterers they have simply changed control tactics. Early domestic violence literature sometimes referred to this conduct as part of a "honeymoon phase" when, in fact, these are merely different tactics of control.

Some mistakenly argue that both the perpetrator and the abused party are "abusive," one physically and one verbally.

While some abused parties may resort to verbal insults, the reality is that verbal insults are not the same as a fist in the face. Furthermore, domestic violence perpetrators use **both** physical and verbal assaults. Early research indicates that domestic violence perpetrators are more verbally abusive than either their victims or other persons in distressed/non-violent or in non-distressed intimate relationships.⁶² It is crucial where there are allegations that both parties are abusive to examine whether the situation involves mutual high conflict or whether there is a pattern of coercive controlling behavior on the part of one party.⁶³

Determining Predominant Aggressor

Some argue that there is "mutual battering" where both individuals are using physical force against each other. Careful fact-finding often, but not always, reveals that one party is the predominant physical aggressor and the other party's violence is in self-defense (e.g., she stabbed him as he was choking her) or that one party's violence is more severe than the violence of the other (e.g., punching/choking versus scratching).⁶⁴ Sometimes the domestic violence victim uses physical force against the batterer in retaliation for chronic abuse by the perpetrator, but this retaliation incident is not part of a pattern of assaultive and coercive behavior. Research of heterosexual couples indicates that women's motivation for using physical force is often self-defense, while men use physical force for power and control.⁶⁵ "Mutual combat" among gay and lesbian partners is also rare. Even though gay and lesbian partners may be approximately the same size and weight, there is usually a primary aggressor who is creating the atmosphere of fear

⁶² G. Margolin, L. Gleberman, J. John and T. Ransford, *Interpersonal Factors Associated with Marital Violence* (paper presented at the Third National Family Violence Research Conference, University of New Hampshire, Durham, 1987).

⁶³ P. Jaffe, C. Crooks, & S. Poisson, Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes, *Juvenile and Family Court Journal*, 54, 57-67 (2003).

⁶⁴ D. Saunders, "When Battered Women Use Violence: Husband-Abuse or Self-Defense?" *Violence and Victims* 1, no. 1 (1986): 47-60; L. K. Hamberger and T. Polente, "Counseling Heterosexual Women Arrested for Domestic Violence: Implications for Theory and Practice," *Violence and Victims* 9, no. 2 (1994): 125-37.

⁶⁵ D. Saunders and A. Browne, "Domestic Homicide," *Case Studies in Family Violence*, ed. R. Ammerman and H. Michel (1991); M. Wilson and M. Daly, "Til Death Do Us Part," in *Femicide: The Politics of Woman Killing*, ed. J. Radford and D. E. Russell (1991).

and intimidation that characterizes battering relationships.⁶⁶ Self-defense against a violent partner does not constitute “mutual battering.”

Domestic Violence in the Context of Family Court Proceedings

Guardians ad litem may unwittingly become part of a domestic violence perpetrator’s attempts to control the abused party and should be aware of attempts by perpetrators to control the court process as a means of showing the abused party that the perpetrator, not the judge, is in control. Perpetrators of domestic violence become very adept at using the legal system as one more tactic of control against the victim. Some examples may include, but are not limited to:

- Physical assaults or threats of violence against the abused party and others inside or outside the courtroom, threats of suicide, threats to take the children, etc., in order to coerce the abused party to change the petition or to recant previously given testimony.
- Following the abused party in or out of court.
- Using information gained through guardian ad litem interviews and court records to stalk the abused party.
- Long speeches about all the abused party’s behaviors that “made” the perpetrator do it.
- Statements of profound devotion or remorse to the abused party and to the court.
- Requesting repeated delays in proceedings; dragging out parenting plan proceedings over two to three years.
- Requesting changes of counsel, or not following through with appointments with counsel.
- Requesting mutual orders of protection as a way to continue control over the abused party and to manipulate the court.
- Continually testing limits of visitation/support agreements (e.g., arriving late or not showing up at appointed times and then, if the abused party refuses to allow a following visit, threatening court action).
- Threatening and/or implementing custody fights to gain leverage in negotiations over financial issues.
- Using any evidence of harm resulting from the abuse as evidence that the abused party is an unfit parent (abused party’s counseling records, etc.).

⁶⁶ P. Letellier, “Gay and Bisexual Male Domestic Violence Victimization: Challenges to Feminist Theory and Responses to Violence,” *Violence and Victims* 9, no. 2 (1994): 95-106; K. Lobel, ed., *Naming the Violence: Speaking out about Lesbian Battering* (1986); C. Renzetti, *Violent Betrayal: Partner abuse in lesbian relationships* (1992).

DOMESTIC VIOLENCE IS A PATTERN OF STRATEGIC, PURPOSEFUL BEHAVIOR WHICH IS USED BECAUSE IT IS EFFECTIVE

There are many misconceptions about domestic violence that can lead to errors in identifying it, assessing its effects, and developing appropriate responses. These include misconceptions what causes domestic violence, and thus, how it can be addressed.

Domestic Violence is not “Out of Control” Behavior

There are often misperceptions about domestic violence being the result of the perpetrator “losing control.” However, domestic violence perpetrators make choices even when they are supposedly “out of control,” which indicates they are actually in control of their behavior. For example, the great majority of domestic violence perpetrators have not had ongoing problems outside of their intimate partner relationships.⁶⁷ Some perpetrators will batter only in particular ways, e.g., hit certain parts of the body, but not others; use specific methods that do not leave obvious marks; only use violence towards the victim even though they may be angry at others (their boss, other family members, etc.); break only the abused party’s possessions, not their own.

Domestic violence involves a pattern of conduct. Certain tactics require a great deal of planning to execute (e.g., stalking, interrogating family members, etc.). Some batterers impose “rules” on the victims, carefully monitoring their compliance and punishing victims for any “infractions” of the imposed rules.⁶⁸ Such attention to detail contradicts the notion that perpetrators “lost” control or that their abusive behavior is the result of poor impulse control.

Some battering episodes occur when the perpetrator is not emotionally charged and are done intentionally to gain victim compliance.⁶⁹ Perpetrators choose to use violence to get what they want or to get that to which they feel entitled. Perpetrators use varying combinations of physical force and/or threats of harm and intimidation to instill fear in their victims. At other times, they use other manipulations through gifts, promises, and indulgences. Regardless of the tactic chosen, the perpetrator’s intent is to get something from the victims, to establish domination over them, or to punish them. Perpetrators selectively choose tactics that work to control their victims.⁷⁰

Domestic Violence is Not about Anger, or Caused by “Stress,” Alcohol, or Drugs

The role of anger in domestic violence is complicated and cannot be simplistically reduced to cause and effect. Some battering episodes occur when the perpetrator is upset and others when the perpetrator is not angry or emotionally charged. Some abusive conduct is carried out calmly to gain the victim’s compliance. Some displays of anger or rage by the perpetrator are merely tactics used to intimidate the victim and can be quickly altered when the abuser thinks it is necessary (e.g., upon arrival of police).

⁶⁷ L Bancroft & J. Silverman, *The Batterer as Parent-Addressing the Impact of Domestic Violence on Family Dynamics* (Sage Publications) 2002.

⁶⁸ K. Fischer, N. Vidmar and R. Ellis, *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU L. Rev. 2117, 2174 (1993).

⁶⁹ N. Jacobson and J. Gottman, *When Men Batter Women: New Insights into Ending Abusive Relationships* (Simon and Schuster, 1998).

⁷⁰ E. Pence and M. Paymar, *Educational Groups for Men Who Batter: The Duluth Model* (1993).

Current research indicates that there is a wide variety of arousal or anger patterns among identified domestic violence perpetrators, as well as among those identified as not abusive.⁷¹ These studies suggest that there may be different types of batterers. Abusers in one group actually reduced their heart rates during observed marital verbal conflicts, suggesting a calming preparation for fighting rather than an out of control or angry response. Such research challenges the notion that domestic violence is merely an anger problem and raises major questions about the efficacy of anger management programs for batterers.

Remembering that domestic violence is a pattern of behaviors rather than isolated, individual events helps to explain the number of abusive episodes that occur when the perpetrator is not angry. Even if experiencing anger at the time, perpetrators still choose to respond to that anger by acting abusively. Ultimately, individuals are responsible for how they express anger or any other emotions, and for how they try to control adult victims through intimidation or force.

Nor is domestic violence caused by “stress.” We all face different sources of stress in our lives (e.g., stress from the job, stress from not having a job, marital and relationship conflicts, losses, discrimination, poverty, etc.) but we do not all respond by engaging in domestic violence. People respond to stress in a wide variety of ways (e.g., problem solving, substance abuse, eating, laughing, withdrawal, violence, etc.).⁷² People choose ways to reduce stress according to what has worked for them in the past.

It is important to hold people accountable for the choices they make regarding how to reduce their stress, especially when those choices involve violence or other illegal behaviors. Just as one would not excuse a robbery or a mugging of a stranger, because the perpetrator was “stressed,” one should not excuse the perpetrator of domestic violence because he or she was “stressed.” Moreover, as already noted, many episodes of domestic violence occur when the perpetrator is not emotionally charged or stressed. When we remember that domestic violence is a pattern of behavior consisting of a variety of behaviors repeated over time, then citing specific stresses becomes less meaningful in explaining the entire pattern.

Alcohol and drugs such as marijuana, depressants, anti-depressants, or anti-anxiety drugs do not cause non-violent persons to become violent. Many people use or abuse those drugs without ever battering their partners. Alcohol and drugs are often used as the excuse for the battering, although research indicates that the pattern of assaultive behaviors which comprise domestic violence is not being caused by those particular chemicals.⁷³

There does seem to be some conflicting evidence that certain drugs (e.g., speed, cocaine, crack, meth) may chemically react within the brain to cause violent behavior in individuals who show no abusive behavior, except under the influence of those drugs. Further research is needed to explore the cause and effect relationship between these drugs and violence.

⁷¹ N. Jacobson, J. Gottman, J. Waltz, R. Rushe, J. Babcock and A. Holtzworth-Munroe, “Affect, Verbal Content, and Psychophysiology in the Arguments of Couples With a Violent Husband,” *Journal of Consulting and Clinical Psychology* 62 (1994): 982-88.

⁷² A. Bandura, *Aggression: A Social Learning Analysis* (1973).

⁷³ B. Critchlow, “The Powers of John Barleycorn: Beliefs About the Effects of Alcohol on Social Behavior,” *American Psychologist* 41 (1986): 751, 764.

While research studies cited above have found high correlation between aggression and the consumption of various substances, there is no data clearly proving a cause and effect relationship. There are a wide variety of explanations for this high correlation.⁷⁴ Some say that the alcohol and/or drugs provide a disinhibiting effect, which gives the individual permission to do things they ordinarily would not do. Others point to the increased irritability or hostility which some individuals experience when using drugs and which may lead to violence. Others state that the high correlation may merely reflect the overlap of two widespread social problems: domestic violence and substance abuse.

Regardless of the exact role of alcohol and drugs, it is important to focus on the violent behavior and not allow substance use or abuse to become the justification for the violence.

While the presence of alcohol or drugs does not alter the finding that domestic violence took place, it is relevant to certain court considerations and in dispositions of cases. The use of substances may increase the lethality of domestic violence and needs to be carefully considered when weighing safety issues concerning the abused party, the children, and the community.

Interventions and recommendations in cases where the domestic violence perpetrator also abuses alcohol and/or drugs must be directed at both the violence and the substance abuse. For individuals who abuse alcohol and drugs, changing domestic violence behavior is impossible without also stopping the substance abuse.

Domestic Violence is Not Caused by Problems Inherent in the Relationship Between the Two Individuals or by the Abused Party's Behavior

People can be in distressed relationships and experience negative feelings about the behavior of the other without choosing to respond with violence or other criminal activities.

Looking at the relationship or the abused party's behavior as a causal explanation for domestic violence takes the focus off the perpetrator's responsibility for the violence, and unintentionally supports the perpetrator's minimization, denial, externalization, and rationalization of the violent behavior.

Blaming the abused party or locating the problem in the relationship provides the perpetrator with excuses and justifications for the conduct. This inadvertently reinforces the perpetrator's use of abuse to control family members and thus contributes to the escalation of the pattern. The abused parties are placed at greater risk, and the court's duties to protect the public, to assess damages, to act in the best interests of children, and to hold perpetrators accountable are greatly compromised.

Many batterers started bringing this pattern of control into their early dating relationships. They bring these patterns into their adult intimate relationships and tend to repeat those patterns in all their intimate partnerships, regardless of the significant differences in the personalities, or

⁷⁴ A. Ito, N. Miller and V. Pollock, "Alcohol and Aggression: A Meta-Analysis of the Modulating Effects of Inhibitory Cues, Triggering Events and Self Focused Attention," *Psychological Bulletin* 129 (1996): 60-82.

conduct of their intimate partners, or in the characteristics of those particular relationships. These variables in partners and relationships support the position that, while domestic violence takes place within a relationship, it is not caused by the relationship.

Research indicates that there are no personality profiles for battered women.⁷⁵ Battered women are no different from non-battered women in terms of psychological profiles or demographics. Once again this challenges the myth that something about the woman causes the perpetrator's violence. Furthermore, one research study indicates that no victim behavior could alter the perpetrator's behavior.⁷⁶ This also suggests that the victim's behavior is not the determining factor as to whether or not the perpetrator uses violence and abuse in the relationships. Domestic violence in adolescent relationships further challenges the belief that the abuse is the result of the victim's behavior. Often the adolescent abuser only superficially knows his victim, having dated only a few days or weeks before abuse begins. Such an abuser is often acting out an image of how to conduct an intimate relationship based on recommendations from peers, music videos, or models set by family members, etc. The adolescent's abusive conduct is most likely influenced more by that image than by the victim's actions.

Both adult and adolescent batterers bring into their intimate relationships certain expectations of who is to be in charge and what mechanisms are acceptable for enforcing that dominance. It is those attitudes and beliefs, rather than the victims' behavior that determine whether or not persons are violent.

Domestic Violence is a Learned Behavior

Domestic violence behaviors, as well as the rules and regulations of when, where, against whom, and by whom domestic violence is to be used, are learned through observation and reinforcement (i.e., as in cases of the male child witnessing the abuse of his mother by his father, or in the proliferation of images of violence against women in the media, or from the judge colluding with the perpetrator in blaming the victim and by not holding the perpetrator accountable for the conduct).

Domestic violence is learned not only in the family, but also in society. It is learned and reinforced by interactions with all of society's major institutions: the familial, social, legal, religious, educational, mental health, medical, child welfare, entertainment, media, etc. In all of these social institutions, there are various customs that perpetuate the use of domestic violence as legitimate means of controlling family members at certain times (e.g., religious institutions that state that a woman should submit to the will of her husband; laws that do not consider violence against intimates a crime, etc.). These practices inadvertently reinforced the use of violence to control intimates by failing to hold the perpetrator accountable for the violence and by failing to protect the abused party.

⁷⁵ G.T. Hotaling and D.B. Sugarman, "An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge," *Violence and Victims* 1, no. 2, (1986): 101-124.

⁷⁶ N. Jacobson, J. Gottman, J. Waltz, R. Rushe, J. Babcock and A. Holtzworth-Munroe, "Affect, Verbal Content, and Psychophysiology in the Arguments of Couples With a Violent Husband," *Journal of Consulting and Clinical Psychology* 62 (1994): 982-88

PARENTING IN THE CONTEXT OF DOMESTIC VIOLENCE

Parents' capacities to meet children's emotional needs are impacted by the presence of domestic violence. In many abusive relationships, in addition to the risks to children of exposure to domestic violence, as discussed in more detail below, children are exposed to the risk of irresponsible parenting. Published studies demonstrate that there are various recurring themes that consistently emerge when evaluating parenting behaviors on the part of perpetrators. For example, in domestic violence cases, children often face the following risks:

Risk of rigid, authoritarian parenting.

Children who have been traumatized are best able to recover in a nurturing, loving environment that also includes appropriate structure, limits, and predictability. A domestic violence perpetrator may be severely controlling toward children⁷⁷ and is likely to use a harsh, rigid disciplinary style,⁷⁸ which may intimidate children who have been exposed to domestic violence and can trigger the reawakening of traumatic memories, setting back post-separation healing.

Risk of neglectful or irresponsible parenting

Domestic violence perpetrators may have difficulty focusing on their children's needs, due to their selfish and self-centered tendencies.⁷⁹ For example, when a child is born, the abusive parent may continue to assert his or her needs over the needs of a crying infant, or a child who is frightened or hurt, especially when the abusive parent is the source of the fear or injury.⁸⁰ In post-separation visitation situations these parenting weaknesses may come to light, as abusers may be caring for children for much longer periods of time than have been accustomed to. In some situations, perpetrators may engage in intentionally lenient parenting as a way to win their children's loyalty, for example by not imposing appropriate safety or eating guidelines, or by permitting the children to watch inappropriate violence or sexuality in media. Neglectful parenting by domestic violence perpetrator may often take the form of intermittently showing interest in their children and then ignoring them for extended periods. Post-separation, perpetrators with this parenting style tend to drop in and out of visitation, which can be emotionally disruptive to their children.⁸¹

Risk of psychological abuse and manipulation.

Domestic violence perpetrators have also been observed to tend towards verbally abusive parenting styles and towards using the children as weapons against the other parent.⁸² Frequently, in abusive relationships, the perpetrator repeatedly usurps the abused partner's

⁷⁷ C. McGee, *Childhood experiences of domestic violence*. Philadelphia, PA: Jessica Kingsley (2000).

⁷⁸ G. Margolin, R. John, C. Ghosh, & E. Gordis, Family interaction process: An essential tool for exploring abusive relationships. In D. Cahn & S. Lloyd (Eds.), *Family violence from a communication perspective*, at 37-58, Thousand Oaks, CA: Sage, (1996).

⁷⁹ N. Jacobson & J. Gottman, *When Men Batter Women: New Insights into Ending Abusive Relationships*. New York: Simon & Schuster (1998).

⁸⁰ L. Bancroft & J. Silverman, *The Batterer as Parent, Addressing the Impact of Domestic Violence on Family Dynamics*, 3 (2002)

⁸¹ *Id.*

⁸² C. McGee, *Childhood experiences of domestic violence*. Philadelphia, PA: Jessica Kingsley (2000); E. Peled, The experience of living with violence for preadolescent children of battered women. *Youth and Society*, 29(4), 395-430 (1998).

autonomy and right to independent decision-making.⁸³ As a consequence, children may feel unsafe or that the world is unpredictable.⁸⁴ After the parents have separated, this tendency tends to increase, with visitation becoming an opportunity for a perpetrator to manipulate the children in continuing efforts to control the other parent.⁸⁵

Risk of abduction.

A majority of parental abductions take place in the context of domestic violence, and are mostly carried out by perpetrators or others acting on their behalf.⁸⁶

In examining a parent's capacity to meet the children's needs, it is important to recognize and understand the impact of an abusive parent's assaultive and coercive behaviors on the children and the vulnerable parent; as well as understand that a vulnerable parent is often able to meet the children's needs more effectively once safe from further violence or abuse.

THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN AND PARENTING

There is a common misconception that as long as children are not abused directly, they are not harmed by exposure to domestic violence. However, the reality is that even when they are not themselves physically or sexually abused, when there is violence at home, children are aware of and affected by it. As a significant and growing body of research attests, exposure to physical violence at home hurts children, although the extent of that injury differs from child to child,⁸⁷ even within the same home. The term "exposure" is used here to mean that children are affected not only when they are present at the violent incident, but also when they hear it, see it, or see or feel the after effects.

The Overlap of Domestic Violence and Child Abuse

Researchers estimate that the extent of overlap between domestic violence and child physical or sexual abuse, ranges from 30 to 50 percent.⁸⁸ In cases in which mothers are assaulted by the father, daughters are five to six times more at risk of sexual abuse than daughters in homes without domestic violence.⁸⁹ Some shelters report that the first reason many battered women give for fleeing the home is that the perpetrator was also attacking the children.⁹⁰ Adult victims

⁸³ E. Stark, A Failure to Protect: Unraveling the Battered Mother's Dilemma, *Western State University Law Review*, 29-110 (1999).

⁸⁴ E. Stark, The Battered Mother in the Child Protective Service Caseload: Developing and Appropriate Response. *Women's Rights Reporter*, 23(2), 107-131 (2002).

⁸⁵ J. Erickson, & A. Henderson, "Diverging realities: Abused women and their children. In J. Campbell (Ed.), *Empowering survivors of abuse: Health care for battered women and their children* (pp. 138-155). Thousand Oaks, CA: Sage. (1998).

⁸⁶ G. Greif, & R. Hegar, *When Parents Kidnap*. New York: Free Press. (1993).

⁸⁷ J. Edleson, Studying the Co-Occurrence of Child Maltreatment and Domestic Violence in Families. *Domestic Violence In the Lives of Children*, Washington, D.C.: American Psychological Association (2001).

⁸⁸ J. Edleson, The overlap between child maltreatment and woman battering. *Violence Against Women*, 5(2), 134-154 (1999); L.M. Williams, Understanding child abuse and violence against women. *Journal of Interpersonal Violence*, 18(4), 441-451 (2003).

⁸⁹ L. Bowker, M. Arbetel and J. McFerron, "On the Relationship Between Wife Beating and Child Abuse," in *Feminist Perspectives on Wife Abuse*, ed. K. Yllo and M. Bograd (1988).

⁹⁰ *Resident Survey* (Seattle, WA: New Beginnings Shelter, 1990).

report multiple concerns about the impact of spousal abuse directly on the children.⁹¹ Furthermore, the more severe and fatal cases of child abuse overlap with domestic violence.⁹²

In cases involving known or suspected domestic violence, as in most disputed parenting plan cases, it is crucial for the guardian ad litem to investigate and report specifically how and to what extent each child has been affected by what has gone on inside the family; the quality of the child's relationship with each parent (both historically and at the present time); each parent's capacity to meet the child's needs; and how best to assure the child's ongoing physical, psychological and emotional well-being.⁹³

How Domestic Violence Impacts Children

Children do not merely witness domestic violence, but also are at risk of being victims of physical or sexual abuse by domestic violence perpetrators, and/or of being victimized by the perpetrator's use of children to control the adult victim.⁹⁴ The early literature in the field made note that male children of battered spouses may be more at risk to grow up to be abusers, but little attention was initially given to the immediate effects on children of the perpetrator's abusive conduct. Current research indicates that domestic violence impacts children in a wide variety of ways.⁹⁵

And they are affected by a parent's use of abusive behaviors that stop short of physical violence, whether those behaviors are directed primarily toward a partner, or characterize the abusive parent's relationships with partner and children alike.

This is why in the development of parenting plans, courts are required to consider the presence of domestic violence in determining the best interests of children.⁹⁶ Where domestic violence is present, courts are obligated to restrict the residential time of a perpetrator of domestic violence.⁹⁷

Consequences of the abuse vary according to the age and developmental stage of the child.⁹⁸

⁹¹ N. Z. Hilton, "Battered Women's Concerns About Their Children Witnessing Wife Assault," *Journal of Interpersonal Violence* 7 (1992): 77-86.

⁹² S. Schechter and J. Edleson, *In The Best Interests of Women and Children: A Call For Collaboration Between Child Welfare and Domestic Violence Constituencies* (briefing paper prepared for the Conference Domestic Violence and Child Welfare: Integrating Policy and Practice for Families, 1994, available through the National Council of Family and Juvenile Court Judges, Reno, NV).

⁹³ RCW 26.09.187.

⁹⁴ P. Jaffe, C. Crooks, S. Poisson, "Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes," *Juvenile and Family Court Journal*, Fall 2003, 59-60.

⁹⁵ J. Edleson, "The overlap between child maltreatment and woman battering," *Violence Against Women*, 5(2), 134-154 (1999)

⁹⁶ RCW 26.09.191.

⁹⁷ RCW 26.09.191

⁹⁸ P. Jaffe, D. Wolfe and S. Wilson, *Children of Battered Women* (1990); J. L. Edleson, "Children's Witnessing of Adult Domestic Violence," *Journal of Interpersonal Violence* 14 (August 1999): 839-70.

1. Infants

During this stage, one crucial developmental task for the very young child is the development of emotional attachments to others. Being able to make attachments to others provides a foundation for healthy development of the individual. This attachment and appropriate stimulation increases infant brain development. Domestic violence not only interrupts the infant's attachment to the abuser, but also can interrupt the child's attachment to the abused party. The perpetrator often intervenes on the abused party's care of the young child. The violence may not permit the bonding between either parent and the child. This results in the child having difficulty forming future relationships and can block the development of other cognitive, emotional, and relational skills and abilities.

2. Toddlers 2 to 4 years old

At these ages, toddlers are developing a separate sense of self and agency ("No" and "Me do."). The perpetrator's abuse of the adult victim may interfere with the toddler's separation, and contribute to anxious attachment to either parent and/or interrupt learning to do tasks for oneself.

3. Children 5 to 10 years old

The primary tasks of children at this age are problem-solving development and cognitive development. The perpetrator's violence and pattern of control can impede or derail both of these tasks. For example, a child may have difficulty learning basic concepts in school because of her or his anxieties about what is happening at home.

4. Teenagers

The central developmental task of teenagers is becoming autonomous and developing relationships. This partly occurs as teens separate from their relationships with parents and establish peer relationships. Often, the learning from family relationships is duplicated in peer relationships. Consequently, for teens who are coping with the domestic violence perpetrator's abuse against the other parent, there are no positive models within the family for learning the relationship skills necessary for establishing mutuality in healthy adult relationships (e.g., listening, support, non-violent problem-solving, compromise, respect for the other, acceptance of differences, etc.).

The negative effects of the perpetrator's abuse in interrupting childhood development may be seen immediately in cognitive, psychological, and physical symptoms, such as:⁹⁹

1. Eating/sleeping disorders;
2. Mood-related disorders, such as depression or emotional neediness;
3. Over-compliance, clinging, withdrawal;

⁹⁹ Barnett, O. W., Miller-Perrin, C. L., & Perrin, R. D. (1997). Children exposed to marital violence. In O. W. Barnett, C. L. Miller-Perrin & R. D. Perrin (Eds.), *Family violence across the lifespan*. Thousand Oaks, CA: Sage Publications.

4. Aggressive acting out, destructive behavior;
5. Detachment, avoidance, a fantasy family life;
6. Somatic complaints, finger biting, restlessness, shaking, stuttering;
7. School problems; and
8. Suicidal ideation.

The children's experience of domestic violence also may result in changes in perceptions and problem-solving skills, such as:

1. Young children incorrectly see themselves as the cause of the perpetrator's violence against the intimate partner.
2. Children using either passive behaviors (withdrawal, compliance, etc.) or aggressive behaviors (verbal and/or physical striking out, etc.) rather than assertive problem-solving skills.

There also may be long-term effects as these children become adults.

1. Since important developmental tasks are interrupted, these children may carry these deficits into adulthood. They may never recover from getting behind in certain academic tasks or in interpersonal skills. These deficits impact their abilities to maintain jobs and relationships.
2. Recent research indicates there are long-term health effects from experiences of family violence during childhood.¹⁰⁰
3. Male children in particular are affected and have a high likelihood of battering intimates in their adult relationships.¹⁰¹

Perpetrators May Physically or Psychologically Traumatize Children in the Process of Battering Their Adult Intimates

While the children may not be the specific target of the domestic violence perpetrator, domestic violence perpetrators may traumatize children in the process of battering their adult intimate partners in the following ways:

- a. The perpetrator intentionally injures (or threatens violence against) the children, pets, or the children's loved objects, as a way of threatening and controlling the abused parent. For example, the child may be used as a physical weapon against the victim, is thrown at the victim, or is

¹⁰⁰ A. L. Coker, P. H. Smith, L. Bethea, M. King, R. E. McKeiwn, "Physical Health Consequences of Physical and Psychological Intimate Partner Violence," *Archives of Family Medicine* 9, no. 5 (2000): 451-57.

¹⁰¹ C. T. Hotaling and D.B. Sugarman, "An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge," *Violence and Victims* 1, no. 2 (1986): 101-24.

abused as a way to coerce the victim to do certain things; or The children's pets or loved objects are damaged, or are threatened with damage (e.g., attacks against pets or loved objects are particularly traumatic for young children who often do not make a distinction between their own bodies and the pet or loved object). An attack against the pet is experienced by the child as an attack against the child.

b. The perpetrator unintentionally physically injures the children during the perpetrator's attack on the adult victim, for example, when the child gets caught in the fray (e.g., an infant injured when mother is thrown while holding the infant); or when the child attempts to intervene (e.g., a small child is injured when trying to stop the perpetrator's attack against the victim).⁴³

c. The perpetrator uses the children to coercively control the adult victim by isolating the child along with the abused parent (e.g., not allowing the child to enter peer activities or friendships); engaging the children in the abuse of the other parent (e.g., making the child participate in the physical or emotional assaults against the adult); forcing children to watch the abuse against the victim; interrogating the children about the other parent's activities; taking the child away after each violent episode to ensure that the abused party will not flee the abuser, etc.; and asserting that the children's "bad" behavior is the reason for the assault on the intimate partner.

d. Assaulting the abused parent in front of the children.

In spite of what parents say, children have often either directly witnessed the acts of physical and psychological assaults, or have indirectly witnessed them by overhearing the episodes or by seeing the aftermath of the injuries and property damage. Research reveals that children who "merely" witness domestic violence may be affected in the same way as children who are physically and sexually abused.¹⁰²

CIVIL AND CRIMINAL COURT PROCESSES RELATING TO DOMESTIC VIOLENCE

Records from civil and criminal court processes relating to domestic violence may provide useful information regarding the presence and effect of domestic violence on children, including information relating to whether there is a behavioral pattern of abuse, the severity of abuse, or whether on parent is fearful of the other. While the existence of court records relating to domestic violence may provide useful information, they are only the starting point for a guardian ad litem's investigation. It is crucial to remember the distinction between the legal definition and behavioral definition of domestic violence, and guardians ad litem must investigate more thoroughly and consider how the violence has affected or will affect the children in the future.

In addition, the existence of ongoing civil or criminal court processes may affect the parties' willingness or ability to participate in a guardian ad litem investigation. In particular, parents who have been charged with a domestic violence crime may feel limited in their ability to

¹⁰² G. Goodman and M. Rosenberg, "The Child Witness to Family Violence: Clinical and Legal Considerations," in *Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence*, ed. D. Sonkin (1986).

provide information to a guardian ad litem if doing so may interfere with their Constitutional rights against self-incrimination.

The following is an overview of some possible civil and court processes that may be relevant to the guardian ad litem's investigation.

Civil Court Processes

Domestic Violence Protection Order

Washington's Domestic Violence Protection Act provides that a victim of domestic violence (as defined in RCW 26.50.010, above) may petition for a protection order on behalf of himself or herself, or on behalf of minor children or household members. Individuals over the age of sixteen can petition the court for a protection order on his or her own behalf.¹⁰³

A protection order can¹⁰⁴:

1. Restrain an abuser from committing acts of domestic violence;
2. Exclude the abuser from the parties' shared dwelling, or from the residence, workplace, or school of the person seeking protection, or from the daycare or school of children named in the order;
3. Order an abuser to participate in batterers' treatment;
4. Restrain the abuser from having any contact with the victim, the victim's children, or any other member of the victim's household, or from coming within a certain distance from a specifically named location;
5. Designate residential provisions regarding the minor children of the parties;
6. Order that the abuser submit to electronic monitoring;
7. Order that one party have the possession and use of essential personal possessions;
8. Order that one person have use of the vehicle
9. Order the individual to pay costs, including attorneys' fees
10. Order the abuser to surrender any firearms;
11. Order any other necessary relief to protect the victim and other family or household members.

Domestic violence victims may obtain an emergency, temporary order, which takes effect immediately if they can show the court that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the other party. Temporary (ex-parte) protection orders can¹⁰⁵:

1. Restrain a party from committing acts of domestic violence;
2. Restrain any party from going onto the grounds of or entering the dwelling that the parties share, from the residence, workplace, or school of the other, or from the day care or school of a child until further order of the court;
3. Prohibit a party from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

¹⁰³ RCW 26.50.020(1)

¹⁰⁴ RCW 26.50.060

¹⁰⁵ RCW 26.50.070

4. Restrain a party from interfering with the other's custody of the minor children or from removing the children from the jurisdiction of the court;
5. Restrain a party from having any contact with the victim of domestic violence or the victim's children or members of the victim's household; and
6. Order the abuser to surrender any firearms;

Violation of any of the provisions of a domestic violence protection order which:

- 1) restrain a party from acts or threats of violence against, or stalking of, a protected party,
- 2) restrain a party from contact with a protected party;
- 3) exclude a party from a residence, workplace, school, or day care
- 4) prohibit a person from knowingly coming within, or knowingly remaining within, a specified distance of a location; or
- 5) violation of a provision of a foreign protection order specifically indicating that a violation will be a crime, are criminal acts and may subject the violator to arrest and imprisonment.¹⁰⁶

Violations of other provisions of a domestic violence protection order are enforceable through contempt of court.

Washington law does not place a time limit within which an abused party must file for a protection order.¹⁰⁷

Protection orders under RCW 26.50 can be issued as part of any dissolution of marriage, non-parental custody, or parentage action, and are enforceable in the same way as stand-alone protection orders.¹⁰⁸

In the context of ordering parenting plans, the weight given to the existence of a protection order issued under RCW 26.50 is within the discretion of the court.¹⁰⁹

Anti Harassment Orders

Washington's anti-harassment statutes, codified at RCW 10.14, authorize civil court orders to restrain respondents in situations not covered under RCW 7.90 (Sexual Assault Protection Orders), RCW 10.99 (criminal no-contact orders) or RCW 26.50 (Protection Orders). Some victims of coercive, controlling behavior may be able to obtain an anti-harassment order in situations where there has not been physical harm, a threat of physical harm, or stalking, which are required for a domestic violence protection order. Anti-harassment orders may be issued to protect a victim of unlawful harassment, defined as, "a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause

¹⁰⁶ RCW 26.50.110 (2007).

¹⁰⁷ *Spence v. Kaminski*, 103 Wn.App.325 (2000); *Muma v. Muma*, 115 Wn. App. 1 (2002); *Barber v. Barber*, 136 Wn. App. 512 (2007)

¹⁰⁸ RCW 26.50.025.

¹⁰⁹ RCW 26.09.191(2)(n).

substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child.”¹¹⁰

Restraining Orders

The statutes governing marriage dissolutions and parentage actions also authorize courts to enter restraining orders, temporary and permanent, in the context of those proceedings. The relief available with a restraining order may be broad or narrowly tailored to the individual circumstances of each case. A restraining order can:

1. Prevent the restrained person from disposing of property or changing insurance policies.
2. Prohibit the restrained person from “molesting or interrupting the peace” of the other person or any child named in the order
3. Prohibit the restrained person from entering the property, home, place of employment or school of the other person, or from coming near the school or daycare of a child named in the order;
4. Order the restrained person not to remove a child named in the order from the court’s jurisdiction

Child abuse as distinguished from intimate partner violence

In investigating a parenting plan matter, guardians ad litem may be faced with allegation of child abuse. It is not unusual for child abuse allegations to arise, given the high overlap of domestic violence and child maltreatment.¹¹¹ Child abuse as defined in RCW 26.44.020(12) specifically addresses the treatment of or actions taken against children.¹¹² The relationship between the perpetrator of the abuse and the child victim is not an element of the definition. However, some families experience both intimate partner violence and child abuse simultaneously. Those families have complex issues and needs. Guardians ad litem should remember that the safety of the child is often directly linked to safety of the care giving adult.

However, if the action of the perpetrator directed at the child has the desired and/or end result of controlling the behavior of the intimate partner parent or care giver, that action can be both child abuse and domestic violence. Perpetrator actions such as using children as pawns in coercing behaviors from their caregiver or using visitation as way to control the child’s caregiver can be domestic violence. Emotional or psychological abuse of a child can also be domestic violence. Actual physical or sexual injury of the child is child abuse, and can also be domestic violence. In other words, as the domestic violence perpetrator continues the pattern of coercion and control of the domestic violence victim, some child abuse is so intertwined with intimate partner violence as to meet the definitions for both child abuse and domestic violence.

¹¹⁰ RCW 10.14.020.

¹¹¹ J. Edleson, The Overlap Between Child Maltreatment and Woman Battering. *Violence Against Women*, 5, 134-154 (1999).

¹¹² RCW 26.44.020 (12) provides a definition of child abuse: “Abuse or neglect means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by any person under circumstances which indicate that the child's health, welfare, and safety is harmed, excluding conduct permitted under RCW 9A.16.100. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.”

Criminal Law Processes

In the course of their investigations, guardians ad litem may encounter parties with pending domestic violence criminal charges or convictions. Some parts of the behavioral pattern of domestic violence are crimes in Washington State. Washington law does not create a separate crime of domestic violence, but rather relies on other existing criminal laws that define criminal activity, and specifies that those crimes committed by one family or household member against another constitute domestic violence.¹¹³ These include:

- (a) Assault in the first degree (RCW [9A.36.011](#));
- (b) Assault in the second degree (RCW [9A.36.021](#));
- (c) Assault in the third degree (RCW [9A.36.031](#));
- (d) Assault in the fourth degree (RCW [9A.36.041](#));
- (e) Drive-by shooting (RCW [9A.36.045](#));
- (f) Reckless endangerment (RCW [9A.36.050](#));
- (g) Coercion (RCW [9A.36.070](#));
- (h) Burglary in the first degree (RCW [9A.52.020](#));
- (i) Burglary in the second degree (RCW [9A.52.030](#));
- (j) Criminal trespass in the first degree (RCW [9A.52.070](#));
- (k) Criminal trespass in the second degree (RCW [9A.52.080](#));
- (l) Malicious mischief in the first degree (RCW [9A.48.070](#));
- (m) Malicious mischief in the second degree (RCW [9A.48.080](#));
- (n) Malicious mischief in the third degree (RCW [9A.48.090](#));
- (o) Kidnapping in the first degree (RCW [9A.40.020](#));
- (p) Kidnapping in the second degree (RCW [9A.40.030](#));
- (q) Unlawful imprisonment (RCW [9A.40.040](#));
- (r) Violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location (RCW [10.99.040](#), [10.99.050](#), [26.09.300](#), [26.10.220](#), [26.26.138](#), [26.44.063](#), [26.44.150](#), [26.50.060](#), [26.50.070](#), [26.50.130](#), [26.52.070](#), or [74.34.145](#));
- (s) Rape in the first degree (RCW [9A.44.040](#));
- (t) Rape in the second degree (RCW [9A.44.050](#));
- (u) Residential burglary (RCW [9A.52.025](#));
- (v) Stalking (RCW [9A.46.110](#)); and
- (w) Interference with the reporting of domestic violence (RCW [9A.36.150](#)).

In cases involving pending criminal charges, it may be difficult to interview the relevant party due to the concern that the party may relinquish the right against self incrimination. If it is not possible to interview the relevant party within the timeframes set by the court, to the extent possible, guardians ad litem may seek information regarding the effect of the domestic violence on the children and the family through collateral sources (see below, section V.A and B.) and note in the report the inability to interview the party.

¹¹³ RCW 10.99.020.

ROLE OF THE GAL IN DV CASES

Routine Identification of Domestic Violence

Domestic violence may not be easily detectable in relationships where the abuse is unseen, or where most of the abuse is not physical in nature. Abusive partners can often appear charming and sincere in their commitment to their families even when their behavior, if known, would relay a different picture. On the other hand, partners who have suffered abuse may appear to be unreliable witnesses, often seeming to be unappealing, disheveled and disorganized or emotionally unstable. The parties are likely to hold radically different views of their relationship and of one another; and abusers are often motivated to deny or minimize their abusive behavior.¹¹⁴ It is particularly important in these cases for guardians ad litem to evaluate what the parties say against other available evidence, including patterns of assaultive and coercive behaviors in past relationships, in relationships with other family members, or in relationships outside the family. Even if none of the collateral contacts has ever witnessed the abuse or violence, the absence of witnesses to the violence or its aftermath does not conclusively prove that it did not take place.

In some cases, there will be public records of violence or abuse (police reports; 911 calls; criminal court pleadings, or protection order case information) and private records (from medical, mental health, substance abuse, shelter, and other service providers). In many others there will be explicit allegations of domestic violence or child abuse, and often counter-allegations; in still others there will be indications of disturbance in the family that may or may not, upon further investigation, be related to violence or abuse. In many cases, domestic violence may not be easily detectable because it is not formally raised, or other collateral issues, such as allegations of mental illness or substance abuse, may obscure the presence of domestic violence. However, the absence of witnesses or corroboration does not conclusively prove that domestic violence did not take place. Furthermore, an absence of convictions for domestic violence or violations of protection or no-contact orders does not mean that a parent is not abusive.¹¹⁵

Victims may not acknowledge that violence exists: they are ashamed; they feel they are to blame; they think that violence is normal; cultural norms keep them from discussing the abuse with strangers; they are trying to protect themselves from increase violence and/or loss of their children; they are trying to keep their family together.

Given the prevalence of domestic violence and its potential impact on children as well as the parties, guardians ad litem should routinely screen for domestic violence in all cases. If domestic violence is identified, then screening should also identify the domestic violence perpetrator and the adult victim in the case. Routine screening should include questions of the parties as well as

¹¹⁴ Am. Psychol. Ass'n, *Violence And The Family: Report Of The American Psychological Association Presidential Task Force On Violence And The Family* 100 (1994) (stating that custody and visitation provide domestic violence abusers with an opportunity to continue their abuse, and that such abusers are twice as likely to seek sole physical custody of their children and more likely to dispute custody if there are sons involved).

¹¹⁵ See E. Aldarondo & F. Mederos, "Common Practitioners' Concerns About Abusive Men," in *Programs For Men Who Batter: Intervention And Prevention Strategies In A Diverse Society* 2-4 (2002) (stating that many physically abusive men are never arrested or brought to trial even though they have a long history of violence toward a partner).

review of relevant records. Evaluations that are based solely on interviewing and/or observing the parties and their children are significantly less reliable. Guardians ad litem should supplement basic information with interviews with relevant collaterals, a thorough review of all pertinent written records, assuming they are non-privileged or that any privilege attaching to them has been properly waived.

When domestic violence is suspected or known, interview family members in the following order if possible. First, interview the adult victim (unless the guardian ad litem believes that this will cause risk to children. If so, begin with the children). Next, interview the children. End by interviewing the alleged domestic violence perpetrator.

Sample Interview Comments and Questions

Some initial questions and statements about domestic violence may include the following:

- a. All families disagree and have conflicts. I am interested in how your family resolves conflict. I am interested in how you and your partner communicate when upset.
- b. What happens when you or your partner disagree and your partner wants to get his/her way?
- c. Have you ever been hurt or injured in an argument? Has your partner ever used physical force against you or anyone else or broken or destroyed property during an argument? Have you ever felt threatened or intimidated by your partner? How?
- d. If your partner uses physical force against a person or property, tell me about one time that happened. Tell me about the worst or most violent episode. What was the most recent episode? Are you afraid of being harmed or injured?
- e. Have you ever used physical force against your partner? If so, tell me about the worst episode. What was the most recent episode? Is your partner afraid of you?
- f. Have the children ever been hurt or injured in any of these episodes? Have the children been present? Are the children afraid of your partner? Afraid of you?
- g. How frequently do the violent episodes occur? Have there been any changes in the frequency or severity of the abuse in the last month or the last year? Is any of the abuse (physical, sexual, psychological) getting worse or happening more often? Have the police or any other agency been involved?

Adult victims may be reluctant to talk with guardians ad litem because of fears of being punished by their abusers. By focusing on the safety concerns, guardians ad litem may be able to build an alliance with the adult victim. Also, some adult victims minimize and/or deny the violence as a way to survive the abuse. In interviews with the adult victims and older children, explain any that it is likely that the domestic violence perpetrators will also be interviewed. Ask adult victims if they will feel endangered by interviews of the perpetrators. Explain to an adult victim how and

when the guardian ad litem will conduct an interview with the domestic violence perpetrator. Ask the victims about possible consequences to them and the children of such interviews with the perpetrator. If it appears that an interview about domestic violence with the alleged perpetrator will endanger adult victims or the children, delay it until their safety is secured.

Interview the alleged abusive party in a way that encourages him/her to disclose his/her own abusive conduct. ***Do not confront the domestic violence perpetrator with information provided by a victim.*** While guardians ad litem can sometimes use police reports or other agency reports about the domestic violence in the interviews with perpetrators, try not use any information from a victim's statements.

If an identified perpetrator denies domestic violence, do not try to force disclosure, but move on to other subjects. Angry confrontations with the domestic violence perpetrators often result in retaliation against the child or adult victims. The guardian ad litem does not need the perpetrator's disclosure to confirm that domestic violence occurred. Such confirmation comes from adult and child victim statements and other collateral sources.

In addition, helpful collateral sources may include:

- 1) Family members, friends, neighbors, co-workers (especially of the abused parent), community members, or former partners who have had regular interactions with the family or been involved in particular incidents relevant to the inquiry. Care must be taken in these instances to guard the flow of information so that neither an adult party nor a child is put at increased risk, keeping in mind that the abuse may not have been disclosed to others yet;
- 2) Professionals with whom the family has had ongoing associations, such as doctors, teachers, clergy, or counselors;
- 3) Professionals (including shelter advocates, child welfare workers, or attorneys) who have become involved with the family because of reported incidents of, or concerns about, domestic violence or the safety or well-being of the children involved.

Pertinent records that may also help may include:

- 1) police reports
- 2) child abuse/child protection reports;
- 3) court files in the present case and any relevant prior civil or criminal cases involving either party;
- 4) medical, mental health, and dental records; and
- 5) school records.

In extraordinary circumstances, guardians ad litem may seek court permission for further evaluation through psychological testing—although this must be relevant and approached with caution, as psychological testing (e.g. MMPI's or other personality measures) is not helpful in predicting domestic violence aggressive behavior or dangerousness. In addition, the results of psychological testing must be interpreted in the context of domestic violence.

ACCESSING FILES RELATED TO DOMESTIC VIOLENCE

In the course of a thorough investigation, and depending on the facts of each case, guardians ad litem will look at files and materials related to domestic violence from a variety of sources, including, but not limited to;

School Records: Schools will often share information with a guardian ad litem after initial contact is made by telephone, and the school receives a copy of the Order of Appointment. Many schools will accept copies via facsimile, so this process can occur fairly quickly.

Medical/Mental Health Records (including perpetrator treatment programs): Most providers of medical and mental health care, as well as providers of substance abuse and domestic violence assessments and treatment, will have their own specific release forms. The parent, step-parent or third party custodian should be directed to go to the provider and execute a release of interest allowing that provider to share information with the guardian ad litem. It is also appropriate to provide a copy of the court Order of Appointment to the provider.

Criminal Records: Guardians ad litem should do a criminal background check as a routine part of every investigation. Criminal Conviction data can be accessed through the Washington State Patrol website: <http://www.wsp.wa.gov/crime/crimhist.htm>. There is a \$10 fee for each search. There may be a way to do a criminal background check through the court which made the appointment. Practices vary from county to county, but it is worth asking questions of court staff.

Probation Records: A guardian ad litem may also need to obtain information from Probation Services. Most probation officers should be able to speak freely with a court appointed guardian ad litem upon verification of appointment.

Employment Records: On some matters, it may be significant to look at a domestic violence perpetrator or victim's employment records. An employee's privacy is protected by law, and employers are likely to be very cautious in this arena. Practices will vary from employer to employer, and a release from the former employer may meet any requirements.

Miscellaneous Children's Records: Day care, preschool, camp and extra-curricular activity records may also be important, and a Guardian ad litem should be able to access these by providing a copy of the court order.

Child Protective Service Records: CPS records may show prior reports of abuse or violence in the home and may be significant. CPS should allow a guardian ad litem access to the files related to any parties in an action. This may mean a trip to the CPS office to actually review a paper or electronic file.

Please remember that any child who is the subject of an action and is over the age of twelve years needs to execute a Release allowing the Guardian ad Litem access to their medical and mental health records.

A guardian ad litem has the option of getting back in front of a judicial officer with a motion for an Order allowing access to specific records. Most judicial officers, while careful to protect confidentiality, will be generous in allowing a guardian ad litem access to relevant information upon a careful showing of need, and meeting the overriding standard of in the best interests if the children.

Confidentiality and Privilege

In cases involving domestic violence, the abused party and children may not be able or willing to disclose information that may put themselves or others at risk. Thus, in some cases, the abused party may not be able to share various pieces of information, including addresses (theirs or those of others), employers, children's school or daycare, support groups, substance abuse treatment providers. Some of the information about the parties and the children may be protected by confidentiality or privilege laws, including information held by health care providers, mental health counselors, domestic violence or sexual assault advocates. It is crucial for guardians ad litem to become familiar with these confidentiality laws and legal privileges, so that appropriate releases may be developed, and so that guardians ad litem do not violate the privacy and confidentiality rights of the parties and the children.

In addition, in some cases, the abused party or others may be increasing the risk of danger to themselves or the children because domestic violence is being disclosed to an outside party for the first time. In order for the abused party to appropriately plan for his or her own safety, the guardian ad litem must be explicit and procedures must be transparent so that he or she will know as much about what information will be disclosed, to whom, and when.

Investigation Protocols that Increase Safety

With care, the guardian ad litem should be able to shield the parties from any contact or unsafe communication with one another during the process of investigation and developing recommendations. In many cases, the guardian ad litem should be able to seek corroboration of adverse information disclosed by one party about the other without disclosing the source of that information. It is important, however, to ensure that the parties understand the lack of confidentiality in the process. It is crucial that, in order to try to minimize the risk of retaliatory abuse, the guardian ad litem inform all individuals who are interviewed that the guardian ad litem's file may be discoverable (requested by the parties), and thus any reports and notes regarding interviews may become available to the court and the parties. Guardians ad litem are also likely to be called as a witness at trial in contested cases and may be asked questions about any statements made by any person the guardian ad litem interviewed or any documents that guardian ad litem reviewed. In order to best protect the safety of the parties and children, guardians ad litem should:

- Make initial contact with each party separately;
- Reflect the safety needs of each family member in any guidelines for further contacts with both the adult parties and the children;
- Respect the terms of existing restraining/protection orders;
- Assist unrepresented litigants understand the evaluation process, the risks of

- disclosing information that may be shared with the other party, and the risks of not disclosing information;
- Inform the parties of an evaluator’s duty to report suspected child abuse (if relevant);
 - Whenever possible, avoid identifying one party as the source of negative information about the other;
 - Seek to corroborate information obtained from the abused party or children, so that it appears to have been obtained from multiple sources;
 - If it becomes clear that information must be disclosed that may put one of the parties at risk, the guardian ad litem should alert that party to the disclosure in advance, so that he or she may take whatever safety precautions are warranted and available;
 - Avoid attributing direct quotes to children; and
 - Use specialized techniques and understanding to obtain and interpret information from children (see below).

Special considerations apply to interviews of children and the use of information obtained from them. First, interview strategies should be non-suggestive and appropriate to the age and developmental stage of the child. Second, the guardian ad litem must build into his or her report the understanding that, while children may provide accurate information, their answers may also involve misinterpretations (or developmentally appropriate but immature interpretations) of events, statements or dynamics, or be influenced by input from one or both parents. Recognize that children may never feel safe disclosing negative information or feelings about a parent; at a minimum, they should be interviewed separately in cases where there are allegations of abuse, even if they are also interviewed, or observed, with one or both parents. From a safety perspective in the context of domestic violence, it is also critical that the guardian ad litem not attribute direct quotes to children, in order to reduce the risk that a parent will use the children’s words against them or against the other parent.

Washington State Court rules provide guidance about the importance of privacy and confidentiality in the scope of the responsibilities of the Guardian ad Litem. GALR 2(n) directs guardians ad litem to maintain the privacy of the parties. The rule states, “[a]s an officer of the court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the court or as necessary to perform the duties of a guardian ad litem.”

In addition, in cases involving domestic violence, the guardian ad litem shall “maintain the confidential nature of identifiers or addresses.”¹¹⁶ This is not limited to only the identifiers or addresses of the parties and children, it can also apply to information about other persons interviewed.

Determine whether all or a portion of the report should be submitted under seal

In cases where the guardian ad litem is concerned about the safety or confidentiality of the parties or witnesses, the guardian ad litem may recommend that the court seal the report or a portion of the report.¹¹⁷ In addition, if the guardian ad litem is concerned about the safety of a witness, the guardian ad litem may ask that the court establish conditions to protect witnesses

¹¹⁶ GALR 2(n)

¹¹⁷ *Id.*

from harm, or address other concerns relating to confidentiality while maintaining the ability of the parties to challenge the truth of the information.¹¹⁸

Guardians ad litem may need to provide the abused party with information or referrals on safety planning, —which may include referring the abused party to a domestic violence program or shelter. (See, section VI, below).

ASSESSMENT OF THE DOMESTIC VIOLENCE RISK POSED TO CHILDREN

Given the range of physical and psychological danger to children and the many elements necessary for recovery, assessing the risk of danger to children is complex.¹¹⁹ The guardian ad litem should gather information from many sources.

Factors to be considered in assessing risk to children

In particular, guardians ad litem should be gathering information regarding the following:¹²⁰

- 1) Level of physical danger to the non-abusing parent, because the higher the severity or frequency of a batterer's level of violence, the greater the risk of child abuse.
- 2) History of physical abuse towards the children.
- 3) History of sexual abuse or boundary violations towards the children.
- 4) Level of psychological cruelty to the non-abusing parent or the children. Research indicates that the degree of emotional abuse in the home is an important determinant of the severity of difficulties developed by children exposed to domestic violence.¹²¹
- 5) Level of coercive or manipulative control exercised during the relationship. Research indicates that the more severely controlling individuals are towards their partners, the more likely they are to draw the children in as weapons of the abuse.¹²²
- 6) Level of entitlement and self-centeredness, meaning an abuser's perception of himself as deserving of special rights and privileges within the family. Highly entitled and self-centered abusers have been observed to chronically exercise poor parenting judgment and to inappropriately expect children to take care of their emotional and physical needs.¹²³
- 7) History of using the children as weapon, such as manipulating the victim by threatening to abuse or take away the children, hurting partner by hurting children, not allowing partner to comfort children or have physical contact with them, teaching children to use insulting language towards the non-abusing partner, and of undermining the other parent.

¹¹⁸ *Id.*

¹¹⁹ Bancroft and Silverman, *Assessing the Risk to Children from Batter* (2002).

¹²⁰ Bancroft, L., & Silverman, J. (2002). *The batterer as parent: Addressing the impact of domestic violence on family dynamics*. Thousand Oaks, CA: Sage.

¹²¹ Hughes, H., Graham-Bermann, S., & Gruger, G. (2001). Resilience in children exposed to domestic violence. In S. Graham-Bermann & J. Edleson (Eds.) *Domestic violence in the lives of children: The future of research, intervention, & social policy* (pp. 67-90). Washington, DC: American Psychological Association.

¹²² Bancroft, L., & Silverman, J. (2002). *The batterer as parent: Addressing the impact of domestic violence on family dynamics*. Thousand Oaks, CA: Sage.

¹²³ *Id.*

- 8) History of placing children at physical or emotional risk while abusing the other parent.
- 9) History of neglectful or severely under-involved parenting.
- 10) Refusal to accept the end of the relationship, or to accept the other parent's decision to begin a new relationship, as such behavior often is accompanied by severe jealousy and possessiveness, and has been linked to increased dangerousness in batterers.¹²⁴
- 11) Level of risk to abduct or murder the children.
- 12) Substance abuse history.
- 13) Mental health history, with recognition that psychological tests and evaluations do not predict parenting capacity well even in the absence of domestic violence, and that mental health testing cannot distinguish a batterer from a non-batterer, or assess dangerousness in batterers.¹²⁵

Guardians ad litem should also address the lethality risk of domestic violence perpetrator. One of the more troubling aspects of responding to domestic violence is assessing how dangerous the domestic violence may be in a specific individual case. Research indicates that not infrequently, domestic violence may cause death or severe injury to the adult victim, the perpetrator, the children, or others due to the behaviors of the perpetrator, or the adult victim, or the children. A threat of suicide indicates high lethality, although suicide is uncommon.

What domestic violence fatality reviews in various states¹²⁶ have shown is that much of the salient information related to the homicides or severe injuries was known prior to the homicides by various community systems, but too often decision-makers did not understand the connection between the domestic violence and individual factors or knew only part of the information.

When the courts and the community are weighing the safety needs of the children and abused parent, they must consider all the factors and must gather information from multiple sources: the adult victim, children, other family members, perpetrators, and others (probation, counselors, and anyone having contact with family).

What follows is a list of factors to consider when attempting to assess the danger to any party, either through significant injury or death (not just related to DV perpetrator homicide potential) in a particular domestic violence case:

¹²⁴ Weisz, A., Tolman, R., & Saunders, D. (2000). Assessing the risk of severe domestic violence: The importance of survivors' predictions. *Journal of Interpersonal Violence, 15*(1), pp. 75-90.

¹²⁵ Bancroft, L., & Silverman, J. (2002). *The batterer as parent: Addressing the impact of domestic violence on family dynamics*. Thousand Oaks, CA: Sage.

¹²⁶ K. Starr, M. Hobart and J. Fawcett, "If I had One More Day," *Washington State Domestic Violence Fatality Review 2006*; K. Starr, M. Hobart and J. Fawcett, "Every Life Lost is a Call for Change," *Washington State Domestic Violence Fatality Review 2004*; M. Hobart, "Tell the World What Happened to Me," *Findings and Recommendations from the Washington State Domestic Violence Fatality Review 2002*; M. Hobart, "Honoring Their Lives, Learning from Their Deaths," *Findings and Recommendations from the Washington State Domestic Violence Fatality Review 2000* (Seattle, WA: Washington State Coalition Against Domestic Violence, 2006, 2004, 2002, 2000), <http://www.wscadv.org/projects/FR/index.htm>, www.wscadv.org.

LETHALITY ASSESSMENT: FACTORS TO CONSIDER¹²⁷

- Perpetrator's access to the victim
- Pattern of the perpetrator's abuse
- Frequency/severity/escalation of the abuse in current, concurrent, past relationships
- Use of weapons and use of dangerous acts
- Threats to kill adult victim, children, self
- Imprisonment, hostage taking, stalking
- Perpetrator's state of mind
- Obsession with victim, jealousy
- Ignoring negative consequences of their abusive behavior
- Depression/desperation

Individual factors that reduce behavioral controls of either adult victims to protect themselves or perpetrators to monitor consequences:

- Substance abuse
- Certain medications
- Psychosis
- Brain damage
- Suicidality of victim, children, or perpetrator
- Adult victims' use of physical force
- Children's use of violence

Situational factors

- Separation violence/victim autonomy
- Presence of other stresses
- Past failures of systems to respond appropriately

Considering Additional Information

1. Psychological Testing

In the *rare* case in which it is a relevant and necessary aspect of an evaluation, a guardian ad litem may determine that psychological testing would provide a helpful supplement to the information obtained through interviews and examination of the written record. This is an area to approach with caution.¹²⁸ If psychological tests are used, the test(s) should be administered and interpreted by a psychologist who has expertise in the use of psychological testing in the context of contested child custody cases with allegations or evidence of domestic violence. As a general rule, psychological testing is not appropriate in domestic violence situations. Some of these standard tests may measure and confuse psychological distress or dysfunction induced by

¹²⁷ A. Ganley, Ph.D., *Domestic Violence: National Curriculum for Children's Protection Services* (Family Violence Prevention Fund, 1996).

¹²⁸ See Daniel W. Shuman, *The Role of Mental Health Experts in Custody Decisions: Science, Psychological Tests, and Clinical Judgment*, 36 Fam. L. Q. 135 (2002).

exposure to domestic violence with personality disorder or psychopathology. Such testing may misdiagnose the non-abusive parent's normal response to the abuse or violence as demonstrating mental illness,¹²⁹ effectively shifting the focus away from the assaultive and coercive behaviors of the abusive parent.

Many of the tests appearing in evaluations are psychological tests regarding personality. Domestic violence is a behavior problem, not a personality problem, exhibited by individuals from a wide variety of personality types, including those who test clinically normal. It is impossible to determine whether or not someone is domestically violent by looking at a personality test. Being a victim of domestic violence is due to the behavior of another, and victims of domestic violence can have any personality type. Some victims may test with clinically significant characteristics, as a result of living with domestic violence, and these so-called personality traits disappeared when victim is free of the abuse and coercion. Often the tests need to be interpreted in light of the information about the perpetrator's domestic violence tactics.

Furthermore, psychological tests cannot rule out risk to adult victims posed by domestic violence perpetrators, or determine risk to children from domestic violence. While there have been some instruments designed to measure risk of child maltreatment, these tools were not designed to measure risk to children posed by intimate partner violence. Whenever psychological tests are used in domestic violence evaluations, or in other evaluations used for custody evaluations, or for parenting plans, they have to be interpreted in the context of a detailed assessment of the domestic violence.

Psychological tests may be helpful for treatment purposes. Understanding how a person functions or their personality style may suggest which approaches may need to be used. Alone, they just are not helpful in identifying whether or not there is domestic violence and whether or not there is future risk.

Safety During the Process

Even after separation, perpetrators often use the children as pawns to control the abused party. When the abused party and perpetrator are separated, the perpetrator's main vehicle for continued contact and control of the adult victim is through the children (whether they are the legal parents of the children or not). Consequently, perpetrators often seek out control of the children in the legal context in order to maintain control over the adult victims. And, courts are often reluctant to set limits on parental access to children by the domestic violence perpetrator. When adult victims have separated from perpetrators without the perpetrators being held accountable for their abusive tactics, they often focus their control of the adult victims through the children. In these cases, the intent is to continue the abuse of the adult victim, with little regard for the damage to the children resulting from this controlling behavior.¹³⁰ Consequently,

¹²⁹ See, Nancy S. Erickson, *Use of the MMPI-2 in Child Custody Evaluations Involving Battered Women: What Does Psychological Research Tell Us?* 39 Fam. L.Q. 87 (Spring 2005).

¹³⁰ E. A. Walker and G. Edwall, "Domestic Violence and Determination of Visitation and Custody in Divorce," in *Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence*, ed. D. Sonkin (1986); J. L. Edleson, "The Overlap Between Child Maltreatment and Woman Battering," *Violence Against Women* 5 (February 1999): 134-54.

separation may increase, rather than decrease, the children's exposure to abusive tactics. Examples include:

- a. Using lengthy court battles as a way to continue control over the other parent (e.g., repeated challenges to parenting plans, visitation schedules, court ordered parenting evaluations, domestic violence evaluations, etc.).
- b. Making or threatening false reports against the adult victim to Child Protective Services, ordering children not to tell the adult victim what is happening during visitation, etc.
- c. Holding children hostage or abducting the children in efforts to punish the abused party or to gain the abused party's compliance.
- d. Some visitation periods become nightmares for the children because of physical abuse by the perpetrator, or because of the psychological abuse that results when the abuser interrogates the children about the activities of the victim, etc. During visitation, some perpetrators will go into tirades about the abused party's behaviors, or will repeatedly break into sobbing because the abused party is "causing" the separation or exposing children to their abusive conduct toward new partners
- e. Insisting that the children take care of all perpetrator's emotional needs, or expecting unlimited visitation or access by telephone/email/school visits/etc. in order to avoid being alone (e.g., one perpetrator persuaded the court to order each of his two adolescent sons to stay alternate nights with him after the separation, ignoring the children's needs for time with each other or with their friends).
- f. Actively undermining the parenting of the adult victim by setting up expectations of the child to directly contradict the parenting of the adult victim (e.g., bedtimes, school work schedules, social activities, excessive indulgences). Sometimes, this takes the form of intervening in their relationships with step siblings or other family members.

RECOMMENDATIONS/ PARENTING PLANS

Because domestic violence is a pattern of behavior with a range of effects and posing a range of risks, any assessment that determines that domestic violence occurred or did not occur, based solely on the *legal definition* of domestic violence applied to one incident, does not address the impact on the safety of the child or other party.

For example, many think there is no domestic violence unless there has been significant documented physical injury to adult victim or child and therefore claim there is no domestic violence in the case. They base their determination on outcome rather than on behavior engaged in by the offender, and in doing so, may place individuals at risk for future harm. Others think there is no domestic violence unless there has been an arrest or conviction for domestic violence. Or they focus solely on the physical assaults. At a minimum, the guardian ad litem should state the definition of domestic violence used in the reports to the court.

In developing recommendations for a parenting plan where domestic violence has occurred, the primary focus of the parenting plan should account for safety of both the children and adult victim, and nurture resiliency. RCW 26.09.191(2)(m)(i) provides that in situations where courts have found a history of domestic violence, “limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time. The limitations the court may impose include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.”

In developing a parenting plan, consider that in the context of domestic violence, the parenting plan is *not a process* to provide the abuser equal and unrestrained residential time with the children. The foundation for successful, regular visitation: trust, communication, and respect may have been seriously eroded by the abuser’s past battering behavior.

In developing recommendations for parenting plans, things to consider include:

A. Providing a context for the children’s recovery:

- Sense of safety and providing that the children reside with the non-abusing parent.
- Restrictions under RCW 26.09.191 that are *mandatory*.
- Providing for structure, limits, predictability.
- such as specific times and processes for (supervised) residential time if any, clarity regarding priorities within parenting plan
- Allowing for strong social relationships with existing playmates, friends, grandparents.
- Strong sibling relationships.
- Specialized therapy.
- Contact with the battering parent if strong protection for the children’s physical and emotional safety is ensured.
- Access to community resources and activities.

B. Parenting services can help support the non-abusing parent:

- Providing opportunities to safety plan and learn about coercive control.
- Develop new rituals and support networks.
- Learn how to parent without aggression.

C. Safe parenting time options for the battering parent

No residential/parenting time.

No residential/parenting time until demonstrated history of changed behavior has been documented.

No overnight residential time.

Supervised visitation center with training and history of working in domestic violence situations.

Professional supervised visitation by professionals with training and history of working in domestic violence situations.

cost to be borne by abusive parent.

D. Conditions during residential/ parenting time might include:

No alcohol or drugs.

Telephone contact with residential parent during visit.

Public place for visitation.

No gifts (to avoid non-abusive parent of coercion).

Limit third parties present.

Short duration.

No derogatory remarks or comments about other parent.

No discussion of parenting arrangements with children.

Children not to be used to relay messages.

E. Satisfaction of certain conditions before residential time is permitted.

Successful completion of Washington State certified batterers' intervention program, pursuant to RCW 26.50, WAC 388-60. This is *not* anger management.

Substance abuse evaluation, with residential time to be determined following the outcome.

Sexual deviancy evaluation, with residential time to be determined following the outcome.

Successful completion of comprehensive parenting classes.

Successful compliance or completion of probation and parole.

F. Minimization of opportunities for contact between the parents

Supervised visitation exchanges.

Pick up and drop off only at school or daycare.

Contact between parents through email only.

G. Surrender of weapons.

H. Requiring the perpetrator to post a bond to ensure the children's safe return.

In considering a parenting plan that becomes less restrictive over time, there should be a reason for unsupervised parenting. It is not sufficient that the visits have gone well. There must be change in the abuser which can be assessed by looking at a number of different factors:

- Has the abuser has made full disclosure of the history of physical and psychological abuse?
- Has the abuser recognized that abusive behavior is unacceptable?
- Has the recognized that abusive behavior is a choice?
- Does the abuser show empathy for the effects of his or her actions on his or her former partner and children?
- Can the abuser identify what the pattern of controlling behavior and entitlement has been?
- Has the abuser replaced abuse with respectful behaviors and attitudes?
- Has the abuser been willing to make amends in a meaningful way?
- Does the abuser accept the consequences of his/her actions?

COMMUNITY RESOURCES

Here is a partial listing of statewide resources. Each one of these organizations has links to other resources about the many facets of domestic violence. You can also find links to local resources in each community through the state, including domestic violence shelters and local programs.

Department of Social and Health Services (DSHS funded DV programs and Perpetrator Intervention Programs)

<http://www1.dshs.wa.gov/ca/dvservices/index.asp>

National Domestic Violence Hotline:

1-800-799-SAFE (7233)

<http://www.ndvh.org/>

Northwest Justice Project

CLEAR- 1-888-201-1014

<http://www.nwjustice.org>

CHAPTER 11
PERSONAL SAFETY

PERSONAL SAFETY

Submitted by Joan Middleton and Jean Cotton

I. INTRODUCTION

The nature of the situation that has caused the Court to appoint a guardian ad litem (GAL) should alert every guardian ad litem to be prepared for and minimize situations that may arise that pose danger to them, to their employees and co-workers, and to those with whom they come in contact in the performance of their duties.

As a guardian ad litem, you will likely be dealing with families in high-conflict family law matters. At best, these families are going to be under extraordinary stress and anxiety. At worst, they may have issues associated with mental health, physical health, chemical dependency and substance abuse, alcohol abuse, physical or sexual abuse, emotional abuse, domestic violence, financial difficulties, intimacy, fear of the Court system, and miscellaneous baggage from past experiences. It is highly unlikely that only one of these issues or similar difficulties may be facing these individuals – more often the case will involve a combination of the above as well as issues not listed here. In other words, it should not be surprising to you that those involved in the case with whom you will be having contact may not be at their best.

While bearing the above in mind, you must remember that you not only have a job to do but that your personal safety as well as those around you must be at the forefront of your thoughts at all times.

What follows are suggestions to help you place yourself in the best possible position to avoid someone getting hurt. These suggestions are not intended to be an all inclusive list of things to do but rather an overview of tools available to help you assure a safe and healthy outcome for all concerned.

II. GENERAL SUGGESTIONS TO KEEP IN MIND

Always be alert to your surroundings and what is going on around you!

- If you are walking down the street, notice what is going on around you. It's easy. When walking past a window, you can observe reflections in the glass. Notice if someone stops each time you do or if they turn every corner you do. Listen for sounds coming from behind you, such as footsteps or breathing. If someone is close behind you, turn and give them a glance to see who it is.
- If you carry a purse, hold it close to the front of your body and keep it closed – fastened or zipped if possible. For men, carry your wallet in your front pant pocket or in a buttoned rear pocket. You may want to wear a waist pouch instead of a handbag if you are in an unfamiliar neighborhood. Some people use small backpacks as purses, too. If

so, make sure all the zippers are closed and the pack is securely on your back. No one will be able to grab it and run away.

- If you can carry your keys in your hands, position the keys between your fingers so that you could use them as a defensive weapon to jab an attacker if possible. If you have a keyless entry system for your car, you may want to carry your car keys in your pocket. Remember that your car keys with a keyless entry system all have a small red panic button. If you press this button either on purpose or by accident, your car will make loud noises if you are in the vicinity. The lights may switch on and off, depending on your car model. To deactivate the panic button, you need to press it again.
- Avoid talking on your cell phone (unless you're calling 911) – it's too easy to become distracted by a conversation and miss the stalker behind you. Pretending to talk on your cell can, however, be a deterrent to an attack as the attacker often does not want you to be able to notify anyone that there is a problem or have you be able to give any kind of a description of the attacker to the person they think may be on the other end of your call.
- If you must use your cell phone in your car, get a Blue Tooth system for hands free phone use, if possible. It is not safe to drive your car while holding your cell phone. If you must use your cell phone while driving, a hands free system should be utilized, if possible. One with voice activation for calls is the safest system. The microphone and speakers are installed in your dashboard or on your visor above the drivers' seat. Newer model cars are now sold with this new technology but you can also buy retrofit kits at your favorite electronics store or you can shop online.
- Avoid being alone after dark if possible. If you have to walk outside, especially in an unfamiliar neighborhood or other place you don't know well, stay in well-lit areas as much as possible and where there are other people around (unless the other people are obviously not upstanding citizens). Carrying a flashlight or whistle are also good ideas.
- Never, ever visit a residence or meet a person you know little about at night – especially if you are going to be alone. You might want to have your first interview during the day either at your office (if you have one) or at a neutral location. You can meet at a court house where there may be security screening. You can also consider meeting in a public library or at a police station if a community resource room is available. Churches sometimes have rooms or empty offices available for community use.
- If you must conduct a home visit or meet with an interviewee away from your office, check out the location of the home ahead of time.
 - Drive by the address before you actually conduct the visit so that you know where it is located, what the neighborhood looks like, what cars should be in the driveway (and what cars should not), and whether you need to take any unusual or special precautions.

- Carefully map your travel to the location so that you do not get lost. Always carry a good road map with you or have a GPS navigation system in your car. There are portable systems now available for reasonable prices at electronics stores or online. This is a business expense well worth making.
- If the residence is in a location that is considered a high-crime neighborhood or you just feel unsafe, have someone go with you that can stay in the car and observe for you OR just don't conduct the meeting at that location – period!
- If there are allegations of methamphetamine use or manufacturing in the home, do not do a home visit. These substances are extremely flammable and are bio-hazards – avoid them whenever possible. Remember that law enforcement will wear hazardous materials suits and protective clothing when visiting these locations. Methamphetamine manufacturing and use is extremely dangerous to you and to the environment. These toxic materials must be disposed of properly.
- Be sure someone knows where you are at all times. You can let this person (we refer to this person as your secretary) know when you arrive at the home; set a prearranged time for either your secretary to call you or for you to call the secretary if the appointment is more than the time you anticipated; let your secretary know when you have left the appointment and what to do if you don't call at the prearranged time or within some other time frame.
- Keep in mind that many home visits are in the evenings and on Saturdays. That's when children are home from school and when adults are generally home from work, unless they work non-traditional hours. If you don't have a secretary or work partner in the evening, you may have to ask a friend or family member to go with you and they should sit in the car and wait for you. Establish a protocol for leaving the address of where you are going when you go out for a home visit regardless of whether it is a day or evening one. For example, if your visit is during the day, tell your co-worker what case you are on and leave important file information on your desk. If you are ever in a compromised position, you can tell the angry person that you are expected at a certain time and your location is already known. Never leave a home visit to go elsewhere with a party without first notifying someone so that you can be found if something happens.
- You may also consider meeting with a child privately at school. This may or may not require obtaining permission from the parent(s) and/or the school. Very often, guidance counselors will provide a meeting room for you during the school day. This depends on the age of the child and whether they are receptive to this idea. Some children may be embarrassed by having a GAL show up for a school meeting. Children don't want to stand out or be different from their peers.
- Keep your cell phone handy during the appointment – perhaps in a jacket pocket. Some phones have 1 button dialing of preassigned numbers – others use voice

cues – or just pre-dial and have it ready to press and send a message in an emergency.

- If the meeting is not at a home, but simply at a public location – checkout various locations that might be safe. Many local libraries have small meeting/reading rooms that are available to the public for their use and that are enclosed in Plexiglas so that you are visible at all times. Restaurants can be a good location but do not offer much privacy except in the corners and that is not a safe place to be. Many courthouses have witness interview rooms that could be reserved. Also, many courthouses have law libraries where you may find some private space or research rooms. Sometimes churches and police offices will provide a meeting space for members of the public as a community service. Check out as many possibilities as you can so that you always have an option available to you.
- Never accept any food or drink offered to you during a home visit. A polite ‘no thank you’ should be sufficient.
- If you are concerned about safety and behaviors of a party, you can also arrange to meet a party at a convenience store in front of the video surveillance system. Some high-conflict cases do exchanges at convenience stores for just this reason. A security video exists of the event as the child is being passed from one party to the other.
- **Wear comfortable shoes and clothing – you may need to move quickly to get out of a dangerous situation!**
 - Avoid wearing high heels or slick soled shoes if possible. Unless you are an excellent runner in such shoes, they will not facilitate a prompt withdrawal from danger. On the other hand, if you find yourself in heels, there are things you can do to convert them from a handicap to a protective device. A self-defense course can teach you how to do this.
 - Tight dresses, skirts, or slacks can also problematic but so can overly flowing dresses and wide-legged slacks. Think about what you wear and whether it will help or hinder you in an emergency situation.
 - You should dress in a way that your clients can be comfortable with you. For example, if you are meeting a child, a business suit might be too formal. Nice jeans or casual wear with a sweater over a nice shirt or blouse may be calming to them and comfortable for you.
- **Avoid carrying files and other unnecessary articles that will slow you down!**
 - Some suggest not even carrying a purse, but sometimes a purse can be a nice weapon if you need to strike at an attacker so that you can get away. If you do carry a purse, keep as little personal or valuable contents as possible in it that

could be used to discover where you live or to steal or that could result in identify theft

- A waist pouch with a small flashlight, a pen, your cell phone, a small wallet and a whistle can be helpful to have. Some people carry a small Swiss Army knife, not as a weapon, but because the small tools can be helpful if you are in a rural remote area. You may want to keep your cell phone in an easily accessible pocket. Remember that you may lose cell phone service in certain areas. Not all cell phones have complete coverage in all locations. If this is the case, know where the local pay phones are located along the way.
- **Take a self-defense course if you can.**
 - Many larger communities offer self-defense training through the Y or a community center. If there is no such place in your community, talk to the local law enforcement agencies to see if they can teach you how to protect yourself.
- **Never EVER give out personal information about yourself or your family to the people you are investigating or any other persons involved in your investigation!**
 - Don't tell them your home address or telephone number, the names of your family members or partner, where you shop or go to church, where you workout or go to school, etc. If you work out of your home, don't tell anyone involved in the case that you do.
- **Never make a home visit by yourself in cases involving allegations of illegal activity, substance abuse, or mental health concerns!**
 - If there are allegations of illegal activity or substance abuse or dangerous mental health issues, exercise EXTREME CAUTION. Ask one of the attorneys of record to be present, take an 'assistant' with you, or contact local law enforcement and request a civil assist during the visit. Otherwise, simply arrange for the meeting elsewhere.
 - Advise the court when your concern for safety may compromise the investigation. You can always note a motion and ask for court instruction regarding an investigation where there are security concerns that put you outside of your comfort zone. Do not hesitate to seek court instruction if needed. Judges and Commissioners know these cases can be challenging. They have security concerns of their own and will be understanding of yours.
 - Know when to identify safety concerns to the court when they arise. This might be in cases involving suspected drug activity or suspected mental health issues. You can always recommend an enhanced security presence in court, especially if your local court house does not have a security screening system. Cases

involving allegations of domestic violence or suspected domestic violence should be mentioned to the court.

- Park your car so that you are positioned to drive away quickly, if necessary. Do not allow another car to block you in the driveway. Park on the road in front of the home, if possible. If you are visiting a home on a dead end, always park your car so that you are facing the way out to the main road.
- **Meet children in an environment that will make them comfortable.**
 - Some GALs have a special, child-friendly room at their office where they can sit at a child-sized table to meet with children while playing or coloring with the child(ren) to put the child(ren) at ease. If you don't have one of these kinds of rooms, check with other local GALs to see if they do and perhaps you can arrange to use their room from time to time for free or pay a small fee to have access to it on a more frequent basis.
 - If the parent(s) agree, meeting a child at McDonalds or Burger King or a similar fun/relaxing public place can often assist in building a rapport with the child.
 - Many schools will allow you to meet with a child at the school using a counselor's office or a private meeting room.
 - Local public libraries often have meeting rooms available that might be comfortable for the child.
 - Try to meet with children without their parents standing by in the same room or noticeably nearby. If you cannot avoid having a parent bring the child to you and if both parents have visitation rights, then be sure to have at least one visit with the child where the other parent provides the transportation. This may reveal whether either or both parents are coaching the child prior to the meetings with you. It's a good idea to observe the child with both parents, if possible, and spend an equal amount of time with each parent-child observation. You can ask to have some private moments with the child in the parents' home(s) by sitting in the living room and asking the parent to go to another part of the house out of hearing range. If you go to a child's bedroom, do not close the door. You can ask the child to show you his or her room but then go to a more public part of the home for conversation.
 - Do not provide transportation to any party or child. Avoid being in a position where you are transporting the child to/from meetings with you. Transporting a child could put you in a position of liability should an injury occur or expose you to other possible negative consequences.

III. YOUR WORKPLACE

You have to work from somewhere, but with each such scenario there can and should be a plan on how to be safe and secure. Following are some suggestions for keeping your workplace a safe, well-organized location for you and all with whom you are in contact.

A. The Office Environment

If you are an attorney-GAL or if you work with a group of non-attorney-GALs, the odds are that you work in an office environment with or without other attorneys or staff. You may office share with another attorney. You may have your own staff or work alone in a professional suite of some type. You may be one of several attorneys and staff members in a large firm. In any event, if you are working in an office outside of your home, here are some things you can do to protect yourself and those with whom you work.

You may also have a ‘virtual office’ which is a popular way for attorneys and other professionals to minimize overhead office costs in urban areas. With a ‘virtual office’, the office manager will handle your mail, phone and faxes. You are there by appointment only and can use the conference rooms on a hourly basis. They provide administrative assistance that you can use on an ‘as needed’ basis. These office spaces are often listed in the yellow pages as Executive Office Suites.

You may also be able to speak with local attorneys about using their firm’s conference room for your meetings. Very often, attorneys may extend this favor for a small fee or free as a community service. To avoid a potential conflict of interest, if the attorney whose office you are considering using is involved in any case with you, first obtain approval from everyone involved in such cases prior to arranging to use the office for your meeting.

1. Whenever possible, schedule appointments to meet with the parties and any others involved in your investigation in your office when someone else is nearby; i.e. your secretary or paralegal or another co-worker of some kind. Schedule these appointments during the regular work day rather than after hours.
2. Have an alert system pre-arranged in your office that will allow you to notify someone that there is a problem and that either assistance is required (they need to come into your office) or that law enforcement needs to be called. This can be a buzz word or phrase; it can be an intercom button, it can be a pre-assigned button on your phone to dial ‘911’, it can be a ‘panic button’ located under your desk that can be activated with or without use of your hands, or some other system. If your secretary or co-worker that is nearby hears the buzz word or is otherwise alerted that there is a problem, that person should already be prepared to take the next step and do so without hesitation.
3. Remind your staff and co-workers what the pre-arranged alert system is from time to time. Conduct an orientation for new staff so that they know what the system is and how to respond. Consult with other GALs to see what their system is and adjust yours when new, better ideas are brought to your attention.

4. Arrange the office or space where you are meeting with the interviewee so that office supplies that could be used as a weapon are not easily accessible to the interviewee; i.e. scissors, letter openers, etc.
5. Minimize the opportunity to find yourself trapped or cornered without an easy exit. Arrange chairs so that anyone who wishes to leave may do so without being trapped from direct access to the door.
6. If you are going to keep a weapon in your office for self-protection, be properly trained in its use and have it readily accessible to you. Keeping it in a locked drawer will do you no good – an attacker is not going to wait for you to fumble with a key to open the drawer and retrieve your weapon! If you don't know how to properly use a weapon or feel uncomfortable with one, then don't have one! **DON'T TRY TO BE A HERO** – it will probably backfire and could increase the potential for danger or harm to you and others. Focus on defensive moves that provide an opportunity to depart the scene and the situation quickly! If you must use force, use only as much as is necessary to get out of the situation – don't try to control the situation, you usually cannot. If the interviewee tells you they have a weapon, assume it to be true and resort to your pre-arranged safety plan and avoid a confrontation.
7. If a dangerous situation has occurred, once the danger is over – if it is safe to do so, try to observe in what direction the person went and whether a vehicle was involved. Getting a vehicle description as well as an accurate description of the perpetrator is extremely valuable. Immediately sit down as soon as possible and write as much as you can remember before discussing it with anyone! Discussing the matter may alter your memories and thus make them less reliable. Have each member of your staff do the same thing. When the police arrive, you will have the best possible, unadulterated information to give them that will also assist them in their duties.

B. Working Out of a Home

Many non-attorney GALs, in particular, work out of their home. These individuals conduct much of their business over the internet and via telephone. The question of having to meet with persons involved in your investigation in addition to protecting the identity of your location at home becomes an issue for the GAL with a home-based business to address.

1. Have a business line installed in your home office – the address published in the directory for this line (if you use yellow pages) should simply be a post office box and not a street address. Most telephone directories will publish a number without an address – some charge an extra fee to keep the physical address confidential. It's worth it to keep your physical address private. This is part of your cost of doing business and lets you

avoid compromising your personal safety by spending the extra money for address confidentiality.

2. Always use caller ID and block your identity with outgoing calls when appropriate such as when you use a personal cell phone to place the call. If you intend to make a lot of calls from a cell phone, have a second phone just for business purposes and keep the address unpublished. Assuming you have high speed Internet in your home or office, you can also have a VOIP phone line. This is a Voice Over Internet Phone and there are popular providers such as Vonage. You pay a flat fee for unlimited long distance and you can choose your outbound phone number identification including any area code you want to use. Some GALs have a business line, 1 or 2 cell phones plus VOIP which you can use for outbound calls without location identification. This is a good way to keep your location confidential. The added bonus is you keep your business long distance bills down, too.

3. Never, ever give out your home address to an individual involved in a case.

4. Never, ever meet with anyone involved in the case at your home. Many local libraries have small meeting/reading rooms that are available to the public for their use and that are enclosed in Plexiglas so that you are visible at all times. Restaurants can be a good location but do not offer much privacy except in the corners and that is not a safe place to be. Many courthouses and sometimes police offices have witness interview rooms that could be reserved. Some churches may also provide public meeting rooms as a community service. But, if it is your church, do not tell your client. Your private life is to be kept private at all times. Check out as many possibilities as you can so that you always have an option available to you.

5. Arrange the office or space where you are meeting with the interviewee so that office supplies that could be used as a weapon are not easily accessible to the interviewee; i.e. scissors, letter openers, etc.

6. Minimize the opportunity to find yourself trapped or cornered without an easy exit.

7. If you are going to keep a weapon in your office for self-protection, be properly trained in its use and have it readily accessible to you. Keeping it in a locked drawer will do you no good – an attacker is not going to wait for you to fumble with a key to open the drawer and retrieve your weapon! If you don't know how to properly use a weapon or feel uncomfortable with one, then don't have one! DON'T TRY TO BE A HERO – it will probably backfire and could increase the potential for danger or harm to you and others. Focus on defensive moves that provide an opportunity to depart the scene and the situation quickly! If you must use force, use only as much as is necessary to get out of

the situation – don't try to control the situation, you usually cannot. If the interviewee tells you they have a weapon, assume it to be true and resort to your pre-arranged safety plan and avoid a confrontation.

8. If a dangerous situation has occurred, once the danger is over – if it is safe to do so, try to observe in what direction the person went and whether a vehicle was involved. Getting a vehicle description as well as an accurate description of the perpetrator is extremely valuable. Immediately sit down as soon as possible and write as much as you can remember before discussing it with anyone! Discussing the matter may alter your memories and thus make them less reliable. Have each member of your staff do the same thing. When the police arrive, you will have the best possible, unadulterated information to give them that will also assist them in their duties.

9. Regarding weapons, when you are doing a home visit, always assume there is a gun in the home. Many Americans exercise their Second Amendment right to bear arms. Perhaps you keep a gun in your own home or office. Some law enforcement agencies indicate 50% of all American homes have guns. Additionally, many people have permits to carry concealed weapons. Even if they don't have permits to do so, some people carry guns illegally either on their person or in their cars. If you assume there is a gun in a home when you are doing a home visit, then be mindful of the fact that you don't know where it is but they do.

IV. TOOLS FOR COMMUNICATING WITHOUT NEGATIVE RESULTS

The way in which you explain your role in the legal proceedings and the way in which you present yourself to those involved in your investigation can and often will set the tone for how those meeting with you will react.

Communicate Effectively

Learn to clear up confusion and frustration before it develops into a hostile encounter.

1. Take time early on to explain that the judge is the decision-maker, not you. Explain that your report will be only one piece of evidence the judge will be considering before making his or her ultimate ruling. This alone can often diffuse tension and misapprehension before it has time to develop into anger and frustration.

2. Define your role and abilities. Explain that just because one county may expect one thing from its GALs, this may not be the same set of expectations in your county. For example, some courts expect GALs to conduct home visits in all cases, whereas other counties only allow home visits on a case by case basis based on very limited circumstances. Knowing

what the playground rules are in advance can eliminate fears based on ignorance or speculation and therefore reduce anxiety and tension.

3. Explain how your services are going to be paid for up front. Some counties have no program for guaranteeing payment of the GAL's fees and costs by the county whereas others have extensive programs. Some GAL cases are privately paid by the parties without the county guaranteeing payment and in such cases, a sizeable retainer is required up front. Still other cases are assigned to persons who have agreed to charge nothing for their services.

4. If the court has authorized you to conduct random drug testing, explain what your standard procedures are and what is expected from the individuals involved. Generally, GALs will refer clients to drug testing labs where Certified Drug Professionals are employed. They oversee the collection of the specimens which are then sent to a lab for evaluation with the results mailed or faxed to the GAL, the court and counsel. The client must sign a release with the testing center to have lab results sent. Do not republish drug test results by filing them or telling others. You may be violating federal law. Become informed about HIPAA and privacy rights regarding the transmission of medical information.

5. Listen carefully and patiently whenever possible. Just knowing that someone is really listening to them will often ease a tense, frustrated, or confused individual and open the door to a more meaningful exchange of information.

6. Redirect responses to the question when necessary rather than allowing a person to ramble or become agitated. But in redirecting, be courteous and understanding rather than terse and rigid.

7. Ask open ended questions rather than leading ones. If the response is difficult to follow, paraphrase what you think you are hearing to be sure you are in sync with the speaker.

8. Demonstrate empathy. If you let the frustrated person know you understand that they are frustrated and that you care about how they feel, that you want to help - the frustration will often dissipate and the person will relax.

9. Review and clarify whenever you are unsure about what the person wants or what they are trying to say.

Diffuse Anger

1. If tempers flare, the best response is often saying nothing – simply listen with a non-aggressive affect. Let the person vent appropriately. This will often diffuse the anger and

allow a meaningful exchange to follow. If the anger continues to build, it may be best to end the meeting and try again another day.

2. When people you are dealing with appear angry, remember that they are more likely to be angry with the situation rather than with you – it is not normally a personal attack. Avoid contributing to their stress and your own by getting defensive or taking their anger personally. Be objective and remain the calm force in the room.
3. If you make a mistake, admit it. An honest acknowledgement that you made an error can calm an angry person. Remember, however, to choose your words carefully because you will probably be held accountable for them.
4. Let the angry person know that you are recording their concerns or complaints in writing. This does not indicate that you are in agreement with what they are saying, but it does show that you are taking what they say seriously rather than viewing it as unimportant or dismissing it. Dismissing their concerns suggests the speaker is being dismissed as well and can create hostility.
5. You do not have to tolerate personal attacks on who you are or who you are perceived to be. If the interviewee resorts to verbal attacks, terminate the meeting and reschedule for another day if possible. Explain that you have a job to do; that you want to help but that until the tone is more calm, communication cannot be effective. If the situation escalates rather than diminishes, and **IF YOU FEEL YOU ARE IN IMMINENT PHYSICAL DANGER**, remove yourself from the situation immediately. Activate your safety plan and call 911 if necessary.

When Violence Occurs

1. Try to remain calm and remember your safety plan. Decide on a strategy that includes a physical escape route, if possible. Watch for opportunities to maneuver yourself into a physically advantageous or benign position.
2. **DON'T BE A HERO!** Do not physically or verbally confront the violent person unless absolutely necessary to protect yourself from injury. Focus on defensive moves that could open up an escape route for yourself.
3. If you must use force, use only as much as is necessary to control the situation and establish safety for yourself and innocent bystanders. Your reaction should be one that a reasonable, prudent professional who deals regularly with the public would take.
4. If you are not trained in the use of deadly weapons or deadly force and competent to exercise its use, don't use either! There are pros and cons to carrying guns or other

deadly weapons. Consider these carefully before bringing one into your workplace situation. If you choose to carry a weapon, know where and when it is allowed and the laws that govern its use.

5. After the violent person has departed, make a written record of all facts you can recall including a description of the person, the situation, which way they went when they left, what mode of transportation they were using and a description of it. In the case of an assault, robbery, or other dangerous circumstance, lock the doors after the person has left to prevent their re-entry.

Behavioral Cues for Identifying Violence

Anger responses vary as widely as any other emotional or personality traits. There is no way to determine with any degree of certainty whether a disgruntled person's anger will escalate into violence. When judging a person's violence potential, watch for verbal and non-verbal signs. Are the words, vocal tones, and body language logical and consistent or does the individual appear to be erratic and in danger of losing control?

The following nonverbal clues should be viewed as indicators not absolutes:

FACIAL EXPRESSIONS

- Jaws tense, clenched teeth, biting lip, pursed or quivering lips
- Frowning
- Eye contact vigilant, staring with no break, dilated pupils
- Skin flushed red or blanched looking (more obvious with lighter skin tones)
- Facial sweating, especially if it is not warm in the room
- Pulsing carotid artery or temple blood vessels
- Lips drawn tight or showing teeth (not smiling)

BREATHING PATTERN CHANGES

- Breathing becomes shallow or rapid

BODY LANGUAGE

- Attitude changes
- Squaring off – facing you in a confrontational style
- Tensing that appears to be preparation for action
- Restlessness
- Pacing
- Becoming withdrawn or 'stony'
- Head held back – a sign of aggression
- Arms crossed tightly high across chest

EXTREMITIES

- Hands clenching or signs of being tensed or wringed
- White knuckles
- Noticeable shift from relaxed to tense or tight position
- Hiding hands
- Pounding fists, stomping feet, kicking at objects

V. DEALING WITH ANIMALS

If you are familiar with animals, you will likely know how to react when coming across an unfamiliar animal during your investigation. Determining whether the animal is friendly or not may be more important than you think. The most common situation you will likely encounter is having an encounter with an unfamiliar dog. Following are some suggestions for what to do and what not to do in such a situation:

- STAY CALM!! This may be difficult but how you react initially will often determine the outcome of the situation. Be confident, steady, and firm. It must appear to the animal that you are the one in control; not the animal.
- Don't turn and run – no matter how much you want to. Running may indicate to the animal that you are weak and vulnerable; something that wants to be conquered. Some dogs may also consider this a playful act and an invitation to engage in play or a chase.
- Don't flail your arms and legs about as this may heighten the animal's excitement and cause them to bite.
- Don't flail to the ground and curl up into the fetal position for protection. Playing opossum with a dog will not work. The dog may attack you on the ground and you will be at a greater disadvantage than if you were upright and erect.
- Don't yell and scream at the dog – emotional tones and volume may heighten the animal's excitement and prompt an attack.
- Don't move suddenly or act hesitant as this may indicate that you are afraid and weak resulting in an attack.
- Don't extend your hand out to the dog – not all dogs understand this as a friendly gesture.
- Stand firm and steady – fight the desire to run.
- Keep your hands in close to your body. Don't give the animal any distractions like moving hands, fingers, or specific focal points to attack.
- Move slowly and calmly. This may help relax the stressful situation for both you and the animal.
- Back out of the situation facing the dog. Maintain control and confidence.
- Tell the dog “NO” or “STOP” or “HALT” in a strong, confident, low pitched voice.

If a dog does attack you, kick, hit, or knee the soft parts of the dog's body. Keep fingers rolled under and in a fist if possible and keep fighting. After the attack, call 911 for assistance.

As a related issue, when you are doing a home visit, look at the pets. Are they well-nourished and clean? Does the house smell like animal waste? Ask a child about his or her pets. Do they have any pets, where are they, what happened to them? How a family treats a pet may be helpful information to you in your investigation. Animal abuse is marker behavior and you should be aware of how people treat their animals. Also, there are often many dogs in homes where drug use is an allegation. Be vigilant and cautious if you enter a home with 'too many' pets. Although you are court appointed to work for the best interests of a child, that does not mean you can not call animal control as a concerned citizen if you see animal abuse or neglect. Furthermore, a neglected or abused animal can be dangerous to you or the children and adults in the home.

VI. SUMMARY

You need to be at your best. When working with families under stress, at a minimum, be unfailingly polite, be kind, look and listen, do not be judgmental, and be respectful.

CHAPTER 12
CULTURAL COMPETENCY

CULTURAL COMPETENCE

Submitted by Padmaja Akkaraju Ph. D.

INTRODUCTION

The Guardians ad Litem (GAL) will work with professionals and families from diverse cultural and socio-economic backgrounds. Their responsibilities span over a variety of functional areas such as investigation; interviewing; report writing; testifying in the court; communicating with children and family members; collaborating with other professionals involved in the case; assisting the court in decision making including specific recommendations for court action based on the findings of the interviews and independent investigation.

The following awareness, knowledge and skills enable the GALs to perform their duties effectively:

- ◆ knowledge of their cultural heritage and upbringing and how it shaped their world views and personal biases
- ◆ willingness to challenge and transform their world views and biases with the belief that change is necessary and positive (Pope and Reynolds, 1997)
- ◆ awareness of the impact of their worldviews and behavior on their perception of people with different cultural backgrounds
- ◆ actively seek out educational experiences to increase knowledge of diverse cultures in the contexts of history (trail of tears: American Indians; slavery, Asian American immigration; GI Bill; etc.) and the socioeconomic (poverty, gentrification, etc.) status
- ◆ recognize the role of a person's identity (race, ethnicity, religion, sexual orientation, ability, age, etc.) and socio-economic status in his or her experiences, family structure, functioning and child rearing practices
- ◆ recognize the institutional barriers (such as lack of health care; lack of legal sanction for second parent adoption by same-sex parents) in the society and how they may limit access to opportunities to minority populations which in turn may affect their family structure and child rearing practices; behavior and functioning
- ◆ recognize the impact of racism on the domestic violence
- ◆ mindful of personal biases and power hierarchies in their working relationships with children and families
- ◆ acquire the ability to go out of personal comfort zone in communication and developing trust-based working relationships with children, families, and professionals involved in the case while fully acknowledging their identity attributes and cultural differences
- ◆ recognize the impact of Indian Child Welfare Act and the Multicultural Placement Act on placement decisions and acquire the ability to advocate for the children while assisting the court in decision making

- ◆ acquire the ability to make decisions and administer interventions that support the integrity and strengths of the culture of the child and the parties (McPhatter, 1997) while being mindful that each case is unique

The above mentioned awareness, knowledge and abilities are indicative of the GALs' cultural competence. Culture is an integration of people's history, customs, communications, moral values, philosophies, and myths that may be transmitted from generation to generation as well as identity attributes that may include gender, race, ethnicity, language, religion, sexual orientation and ability. Culture is a way of living "informed by the historical, economic, ecological, and political forces" on a group of people (American Psychological Association, n.d.). We develop our thinking patterns, values and behaviors from our culture and view the world through our cultural lens. We learn about culturally different people through the social conditioning imposed by the family and the society (educational system, media, etc.). Our culture becomes the frame of reference when we interact with people thus affecting the way we may interpret the meaning of their values and behaviors.

Cultural competence is the acquisition of congruent knowledge, attitudes, behaviors (Cross, Bazron, Dennis, & Isaacs, 1989; Sue, 2001) that enables us to think, act, and interact with people from different cultural backgrounds with an open-mind while respecting their dignity and recognizing the power dynamics . At the organizational level, cultural competence enables us to actively advocate for institutional policies and practices that are equitable and responsive to all people.

Cultural Competence Attainment

Derald Wing Sue, an eminent psychologist and a leading researcher on cultural competence, posits that the term, acquisition, in the definition of cultural competence indicates that cultural competence is the "process of becoming" (Sue, 2001). Bryant and Peters (2001) point out that developing competence in cross-cultural lawyering is a lifelong process. To begin the process, the GALs need to acknowledge and accept the role culture plays in shaping their worldviews and perceptions of people from different backgrounds. Self-awareness is the key to cultural competence and enables the GALs to be mindful of possible biases in performing their diverse responsibilities.

Need for culturally competent practice

The primary responsibility of the GALs' is to work and advocate on behalf of children and represent their best interest to assist the court in the decision making process. GALs can accomplish their purpose only by starting their journey toward achieving cultural competence. The cost of cultural incompetence is both institutional and personal. Cultural incompetence perpetuates the prevalent societal inequities and does nothing to help the neediest children and their families. Despite having lofty goals, culturally incompetent individuals and organizations provide disservice to children, too often by devaluing their families and communities into which they are born (Green and Appell, 2006). Cultural competence makes us socially responsive and responsible human beings with an enlightened consciousness. McPhatter (1997) says:

The real payoff is the realization that we are more effective in our efforts and more energized toward goal attainment when we are not constantly trying to protect our fears, trying to say or do the politically correct thing, and trying to avoid the most frightening prospect-being thought of as a bigot. We begin to develop a foundation of trust at the core of which is equality, resulting in more creative solutions to difficult problems. (p.275)

VOCABULARY

It is critical to learn the definitions of terms related to multiculturalism and social justice since people tend to confuse and misuse them.

Race: Race is the category to which others assign individuals on the basis of physical characteristics, such as skin color or hair type, and the generalizations and stereotypes made as a result. Thus, "people are treated or studied as though they belong to biologically defined racial groups on the basis of such characteristics" (Helms & Talleyrand, 1997)

Ethnicity: Ethnicity is an identity attribute that a group of people having a common ancestral origin may share on the basis of their shared history, regional, linguistic and cultural characteristics.

Sex: Sex refers to the genetic and anatomical characteristics which define humans as female or male. These biological characteristics tend to differentiate humans as males and females but they are not mutually exclusive since there are people who possess both

Gender: Gender refers to culturally based expectations of the roles and behaviors of men and women. The term distinguishes the socially constructed identity from the biologically determined aspects of being male and female.

Gender identity: The gender that one believes oneself to be. An individual's innermost sense of self as male or female, as lying somewhere between these two genders, or as lying somewhere outside gender lines altogether.

Transgender: Refers to those whose gender expression and/or anatomies may not confirm to predominant gender roles. Transgender is a broad term that includes transsexuals, cross-dressers, drag queens/kings, and people who do not identify as either of the two sexes as currently defined. When referring to transgender people, use the pronoun they have designated as appropriate, or the one that is consistent with their presentation of themselves.

Pronouns when referring to transgender individuals: Use "ze" to replace he or she and "hir" to replace him or her.

Transsexuals: Transsexuals are individuals who do not identify with their birth-assigned genders and sometimes alter their bodies surgically and/or hormonally.

Minority: A group of people who, because of their physical, cultural characteristics or sexual orientation experience differential and unequal treatment thus becoming objects of collective discrimination.

Majority: Group that holds the balance of social, economic and political power (including the three branches of government: judicial, executive and legislative); controls access to power and privilege and determines which groups will be allowed access to the benefits, privileges and opportunities of the society.

Individualism: Individualism holds that the individual is the primary unit of reality and the ultimate standard of value. Society is a collection of individuals. Values include self-reliance and personal independence.

Collectivism: Collectivism holds that individual is connected to the family and kinship which are the primary units of reality. Values include interdependence, harmony with family and kin as well as with nature. Harmony within the family and nature leads to harmony within the self.

Privilege: Any entitlement, sanction, power, immunity and advantage or right granted or conferred by the dominant group to a person or a group solely by birthright membership in prescribed identities (Black and Stone, 2005).

Oppression: The state of keeping down, making invisible and ignoring of the minority by unjust use of force, authority or the dominant group's norms. Racism, sexism, heterosexism, accentism, ableism are oppression of people based on their race, sex, sexual orientation, language, and disability respectively.

Equity: Equity is about removing institutionalized barriers to provide fair access to opportunities (college education, for example) and privileges (marriage, for example) for all the members of the society.

Multiculturalism: Accepts the existence of multiple worldviews and belief systems, understands behaviors in a social context. As a social movement, multiculturalism includes principles of social justice (Sue, 1999 as cited in Parker and Fukuyama, 2007).

IDENTIFYING THE GAL'S WORLDVIEWS AND PERSONAL BIASES

Identifying the Dominant Culture/Defined Norm

Dominant culture is practiced by the members of the dominant group or the majority who hold the balance of social, economic and political power (including the three branches of government: judicial, executive and legislative). The dominant group controls access to power and privilege and determines which groups will be allowed access to the benefits, privileges and opportunities of the society.

Indicators of dominant culture:

- ◆ Standard of rightness and righteousness

- ◆ Educational system (philosophy, curriculum, teachers, and leaders)
- ◆ Language that everyone must learn
- ◆ Religion and spirituality that are dominant
- ◆ Conscious and unconscious suppression of other cultures
- ◆ The racial and ethnic background, gender, sexual orientation, educational level, class, religion and ability of people who occupy positions of economic and political (governing, judicial, etc.) power

Exercise

Based on the above indicators, identify what is the dominant culture in the United States of America.

Self-exploration exercise

1. Identify your identity attributes: race, class, and gender. When did you become aware of your identity attributes and in what context/situation?
2. Using the dominant culture indicators, identify your membership in dominant or non dominant groups.

	Dominant	Nondominant
Race		
Gender		
Sexual orientation		
Education		
Class		
Religion/Spirituality		
Ability		

3. Read Peggy McIntosh’s article, “White privilege: Unpacking the invisible knapsack.” Identify your privileges
4. What are your standards for rightness regarding family, relationships, sexuality, child rearing, and spirituality?
5. What are your views about meritocracy and about pulling oneself up by one’s bootstraps?
6. How does your culture shape your attitudes, values, biases and assumptions about your work as a GAL and about others who come from a different cultural background?

Cultural bias in the GALs' work

One's good intentions toward others may not always result in outcomes that are free of discrimination. The distinction between intentions and effects is crucial to developing cultural competence (Weng, 2005). Research evidence points out that despite their beliefs about their open-mindedness, people tend to unconsciously harbor prejudice against racially or ethnically different groups that may result in subtle discriminatory behaviors (Ridley, 2005; Weng 2005). Some culturally biased assumptions that are harbored by western trained professionals (Pedersen, 2002) are: (1) measuring people against one "normal" standard of behaviors irrespective their cultural differences; (2) valuing rugged individualism; (3) emphasis on independence while dependency is undesirable or neurotic condition; (4) neglecting client's support system such as extended family members; (5) only "cause and effect" thinking considered as scientific and appropriate; (6) minimization or ignorance of the historical roots of the client's background; (7) focus on changing the individuals, not the system; (8) Assumptions that the professionals and their work are free of cultural biases. Very often the inequities in education, class and power become the invisible barriers in the professional-client interaction.

Avoiding gender, same-sex and transgender biases

Identification of hidden biases creates mindfulness. The following list of questions enable the GALs to make an honest assessment of their sexist and heterosexist attitudes and beliefs:

1. How did your culture play into your understanding of gender?
2. Do you have religious beliefs that guide your values about gender and sexual orientation?
3. What are your views about same-sex and transgender relationships and parenting?
4. Have you interacted with gay/lesbian/bisexual/transgender parents?
5. What are your views about child placement and adoption by same-sex couples or transgender people?

Once the GAL identifies her or his worldviews and biases, she or he needs to make an informed decision about the limits of her or his effectiveness working with same-sex or transgender couples – especially if her or his religious or spiritual beliefs disapprove same-sex relationships.

While working with the same-sex or transgender parents, mindfulness of the role of individual and institutional heterosexism is the key to prevent biases. The following checklist may help the GALs in avoiding the biases:

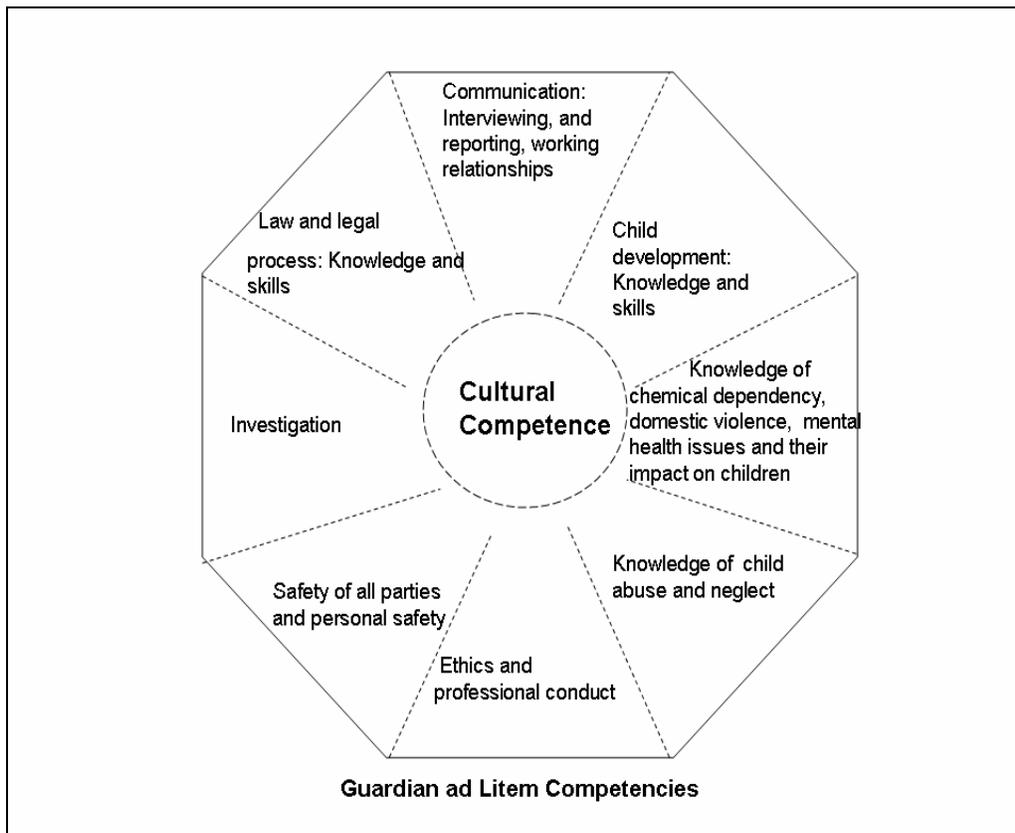
1. Think about the child in context of the family. Same-sex or transgender parents are parents first.
2. Use inclusive language in communication and reporting
3. Increase your knowledge of the same-sex and transgender parents

4. If you have personal biases for whatever reasons, look at the research evidence and listen to the professionals. All the major professional organizations and medical experts support the gay, lesbian and transgender parenting.

BRIDGING THE GAP BETWEEN INTENTIONS AND OUTCOMES

Model for understanding the central role of cultural competence in the GALs' functional responsibilities

Substantial research evidence from various service professions such as counseling (Ridley, 2005), law practice (Bryant and Peters, 2001; Weng, 2004), health care and social work (McPhatter, 1997) points out that cultural competence plays a crucial role in the efficaciousness of the professional. Cultural awareness, knowledge and skills form the core part of a service professional's functioning since people are cultural beings. GALs' cultural competence development influences their effectiveness in all the responsibilities that the GALs undertake in their child advocacy. The following model gives a visual presentation of various functions of the GALs:



The model presented here identifies the central role of cultural competence in achieving the GAL standards. Cultural competence occupies the core or the hub of the model thus signifying that without the development of cultural competence, the GAL standards would fall short of the best practices thus doing disservice to the child and defeating the very purpose of the GALs' work. The GALs' cultural competence development affects how they understand the legal system and practices, observe, interact, communicate, investigate, report to the court and assist the court in making a culturally competent decision that serves the best interests of the child. The model therefore indicates the need for cultural awareness, knowledge and skills in all areas of the GALs' professional performance as discussed in the following sections:

Personal safety assessment

The GALs' assessment of personal safety depends on his or her worldviews and biases which may affect her or his comfort level and the ability to go out of comfort zone while working with people from a different race or sexual orientation. Without achieving some level of cultural competence, any assessment of personal safety made by the GAL would not be valid and reliable thus falling short of the best practice

Communication

The GALs' work involves interviewing the family and others involved in the case; analyzing and reporting the information. Self-awareness including the power hierarchy between the GAL and the family members; knowledge of the cultural background, historical roots of the family and the systemic oppression that may be affecting the family members all required for developing effective communication skills and for building trust-based working relationships.

Cultural competence enables GALs to develop trust-based relationships with family members and professionals involved in the case, and to be mindful of the unconscious cultural biases that may creep into the investigation and to work toward fixing the systematic disparity in services provided to the minority children.

Ethics and Professional Conduct

The GALs need to be cognizant that ethics and standards for professional conduct may have implicit cultural norms and values. In maintaining fairness, the GALs need to be mindful of the reasons, such as racial bias, for the overrepresentation of minority children in the foster care system.

The law and the legal process

The law and the legal process require the GALs to represent the child and assist the court in the decision making process. Cultural competence of the GALs enables them to be sensitive to the autonomy and possible mental trauma of the child during the process, help the court see the child in the context of family and community by "framing and supporting alternative approaches to dispute resolution – non judicial processes that allow children and their families to have an authentic voice in decision making (Olson, 2006 as in Green and Appell, 2006). The GALs need

to see how the laws that are based on individualistic model of rights and responsibilities (Bryant and Koh Peters, 2001) may affect the families that may have collectivist views and behaviors.

Knowledge of child development

Culturally appropriate knowledge of child development needs to include the minority child development and address the cultural differences in child rearing practices and family structures and values. As the UNLV (Green and Appell, 2006) recommendations point out, children must be understood in the context of their families, communities and their historical roots.

Knowledge of child abuse and neglect

Knowledge and analysis of child abuse and neglect need to be free of personal biases against others' cultures and stereotyping. In addition, cultural competence enables the GALs to look at the effect of systemic oppression in the form of inequitable policies and disparate services that they may wish to address at the organizational level. Culturally competent GALs would be able to sort out culture-influenced processes of child rearing from harmful behaviors.

Knowledge of chemical dependency, domestic violence, mental health issues and their impact on children

Cultural knowledge enables the GALs to study how cultural factors as well as systemic oppression are interrelated to the issues of chemical dependency and mental health among the minorities. Knowledge about domestic violence must include contextual factors such as poverty, single parenthood, and histories of previous intimate partner violence, as well as the double bind situation faced by the white women as well as women of color while facing the issue of domestic violence. The double bind situations include the risk of children being placed in foster care because of lack of financial resources if the battered women seek help. In the case of women of color, their responses to violent and abusive behavior may also be influenced by the chronic experiences of racism, and the social contexts in which they live. GALs need to be mindful of the cultural and socioeconomic context of domestic violence and the impact on battered mother and child.

The UNLV children's conference recommendations (Green and Appell, 2006), caution against the lawyers making assumptions of what the children need and want and how best to serve the children because these assumptions may be based on stereotyping or the lawyer's own personal experiences, worldviews and biases. The UNLV recommendations posit that children must be understood in context – as developing human beings with families and complex multiple identities. Cultural competence enables the GALs to be mindful of making assumptions while learning and applying their knowledge of chemical dependency, domestic violence and mental health issues and their impact on children.

Investigation

Cultural competence will enable the GALs to become aware of distractions and biases that might detract them from representing the best interests of the child, and will develop strategies for avoiding them.

The central role of cultural competence thus emphasizes the connection between personal and professional development and makes it imperative that the GALs find ways to address the role of cultural competence in all of their functions

Sorting individual biases, systemic oppression and cultural norms from harmful behavior that impacts children

There is substantial research evidence (Hill, n. d.) that racial bias among the child welfare professionals and the child protective services system results in disparity in services provided to the minorities, especially African Americans, whose children are overrepresented in the foster care system. The minority overrepresentation in the child welfare system results from the cultural insensitivity and biases of workers, policies and institutional racism. Blacks are twice as likely to be investigated for child maltreatment as whites. Most research studies suggest that race alone or race in addition to other factors is strongly related to the higher rates of investigations for the African Americans.

Fontes (2002) reported that in the United States, most child welfare professionals hold a highly individualistic view of child maltreatment by assuming that it is inflicted by parents on their children. Thus they disregard the systemic issues such as child poverty; inadequate housing; poor health care; overcrowded and under funded schools; dangerous neighborhoods and lack of opportunities for parents to get out of the cycle of poverty and racial oppression which result in social stress. Fontes (2002) suggests that professionals caring for these families may also work to bring about systemic changes for social justice.

When the GALs suspect child maltreatment, in addition to being mindful of the social stress, they need to be cognizant of the cultural differences child rearing practices (Fontes, 2002). For example, while spanking children with a stick or a broom may be considered as child abuse by the European American culture, leaving the infants to sleep on their own or male infant circumcision is perceived as abusive by many cultures. While the corporal punishment, defined as the use of physical force to inflict pain, may be seen as an acceptable form of discipline among some minorities, information about the frequency of such punishment, its intensity as well as the context would help the GALs in recognizing if there is physical abuse.

Cohen (2003) provides a check list of critical considerations when child welfare professionals work with diverse families. The following list is adapted from Cohen's frame work.

Critical considerations to sort cultural factors from harmful behaviors:

- What are the GAL's standards of norm for child rearing practices and how are they different from that of the child's family?
- Has a conflict occurred because of different child-rearing beliefs and behaviors?
- Are there any language barriers or religious differences that are affecting the GAL's interaction with the child and the family?
- Is the parenting leading to neglect, medical neglect, inadequate nutrition and supervision thus endangering the physical and mental health of the child?
- Are conditions related to safety, neglect, supervision and nutrition the result of poverty factors?
- Is substance use affecting the safety, physical and mental health, nutrition and education of the child?
- Have other caregivers, extended family members or teachers expressed concerns about the child's wellbeing?
- Does the child give indications of being affected by witnessing violence or experiencing psychological maltreatment?

Role of GAL in assessing behavior resulting from cultural differences

Bryant and Koh Peters (2001) identified five habits for cross-cultural lawyering based on the core principles that are necessary for lawyering: people are cultural beings and cultural competence is imperative for lawyering; open-mindedness; lawyers need to remain with the individual client, always respecting her dignity, voice and story. The five habits identified by Bryant and Koh Peters (2001) have been adapted for GALs' work practices with an additional sixth habit. These habits enable the GALs to effectively assess the behaviors arising from the differences in the cultural norms in the GAL-client-Law triad.

1. Identify how the similarities and differences between the GAL and the client's backgrounds may affect the GAL-client interaction. By identifying differences, GALs can become aware of potential misunderstandings or personal biases. By identifying similarities, GALs can recognize their connection with the clients. This process may enable the GALs to analyze the effect of similarities and differences on their functional responsibilities such as information gathering and analysis and presentation. By identifying similarities and differences GALs can explore the ways they connect with the clients and the ways they might judge, misunderstand or misinterpret clients.
2. Identify and analyze the similarities and differences of two different dyads: client-law and the lawyer-law. Make a list of the similarities and differences and compare the dyads with the lawyer-client dyad. The comparison will enable the GALs in assessing the credibility of the client's story; plan appropriate legal strategies; identify the agreements and disagreements with the cultural values and norms implicit in the law and how it applies to the client; analyze if the GAL is probing for clarity using all the three frames of reference: Client, GAL and the law.

3. The parallel universe habit enables the GALs to challenge themselves to identify many alternatives to the interpretations they may come up with, in the absence of sufficient information. This habit enables the GAL not to be judgmental about their client or family's behavior. For example, people working for minimum wage may not be able to spend time or have a flexible work schedule to meet with the GAL during the work day since they have to earn their living.
4. Be mindful of the communication and be on the alert for the red flags when interpreting the information.
5. Recognize that there are numerous factors that may adversely affect the GAL-client interaction. The GAL who proactively addresses these factors may prevent the interaction from reaching a breaking point.
6. Use the cultural asset paradigm: It is also critical that the GALs look at their client and their family from the cultural assets paradigm thus valuing the strengths of their cultural background. For example when working with a bilingual Latino child, the GAL can focus on their ability to speak two languages and the support of the community. Looking at the strengths of a different culture may help the GALs to build a trust-based relationship with the child and the family.

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CHAPTER 13
PUTTING IT ALL TOGETHER

PUTTING IT ALL TOGETHER

Submitted by Carol Bailey and Dr. Marsha Hedrick

An individual becomes a Guardian ad Litem by virtue of a court order. Thus, the role of a Guardian ad Litem is from its inception one defined by statutes and court rules. There has been controversy regarding guardian ad litem in family law cases because some people object, *inter alia*, that the guardian ad litem prejudices the facts which is the province of the court.¹

The role of guardian ad litem in a family law case is a relatively new concept in the law because divorces were uncommon before the 1960s.² Historically, under Roman law and Anglo-Saxon law guardians for children were limited to care for children following parental death. “The Early History of the Law of Guardianship of Children: From Rome to the Tenures Abolition Act 1660”, UWSL Law Review. So long as parents were living, it was assumed by the law that they knew what was best for their children and society was reluctant to intervene in the matters of an individual family. Guardian ad Litem in Child Abuse and Neglect Proceedings, Hartz, R., National CASA (1997). With the publication in 1962 of the book The Battered Child Syndrome by Dr. Henry C. Kempe our society became more willing to allow court intervention in family affairs to protect children, in this case for physical abuse. Id. In 1971 the Wisconsin legislature was the first to require by statute that a guardian ad litem be appointed in dissolution child custody disputes.

Practitioners are sometimes confused about what their role is. “The distinguishing feature of the attorney appointed as a guardian ad litem in these contexts [family law cases] is that he or she makes decisions in the case based on that attorney’s view of what is in the best interests of the child client. The attorney need not be bound procedurally or substantively by the child’s expressed desires. In this regard, the attorney acts almost as much as a social worker as an attorney. However, the guardian ad litem should consider the child’s wishes and should inform the court of those wishes even when they conflict with the guardian ad litem’s position.” Haralambie, A.M., The Child’s Attorney: A Guide to Representing Children in Custody, Adoption and Protection Cases, page 6. American Bar Association, 1993.

Thus, the guardian ad litem is to use his or her judgment, after investigating all relevant facts, to develop recommendations concerning some or all aspects of parenting arrangements that will be in the best interest of the children. This is a very serious responsibility and one whose execution through a Parenting Plan, should the parties or the judge accept your recommendations, can have an enormously significant impact on the course of a child’s development. The guardian ad litem is most helpful by conducting a thorough investigation and reporting the information to the court. A thorough investigation means checking and cross checking on the accuracy of all important information and reporting to the court what you learn. Almost all cases in which there is a guardian ad litem involve one or more significant events about which the parents have very different stories. The guardian ad litem is not the judge and is not a decision maker. The guardian ad litem is to assist the judge. If you find yourself feeling personally invested in the outcome of the case this is something you must examine and if this occurs repeatedly this might indicate you are not suited to the role of a guardian ad litem. It is the judge’s responsibility to listen to the testimony of witnesses, determine their credibility and make a decision about

parenting arrangements for the children. Your job is to give the judge relevant information which may be hard to obtain in a courtroom so the judge can make a sound ruling.

Although the guardian ad litem should almost always speak with the children and observe them with the parents, one must be very careful about asking the children what parenting arrangements they want. Asking children questions related to their preference sets up an expectation in them that what they say is what will occur. This can be damaging to children both if they get what they say they want and if they do not. It is inadvisable to ask younger children (less than 13) what their ideas are for the residential schedule. Since cases in which a guardian ad litem is involved are generally not typical cases, not “normal divorcing families”, the situation is not a straight forward one where you can ask the children for information and then recommend what they say. The children in these cases are almost always very confused and often have become directly involved in the parental conflict and feel the need to protect or advocate for a parent, sometimes the parent who is unable to care for them. In the latter situation rather than be cared for by the parent as the child should be, the child begins to care for the parent who does not function well. It is not in the best interest of children to take on the role of parenting their own parents and children placed in this position often do not know what is in their best interest.

In order to develop sound recommendations, the knowledge base of the Guardian ad Litem should go well beyond knowledge of the law, i.e., the priorities for determining parenting arrangements established by the legislature. Because the fundamental questions in a family law case obviously concern children and parenting the Guardian ad Litem must also be able to fairly assess the degree to which each adult can perform the parenting functions the legislature has established as primary considerations. This assessment involves knowledge of psychology, child development and other information developed in the social sciences as well as the ability to form practical recommendations that will work in real life. Each Guardian ad Litem has the obligation to the court and the families in whose lives they become involved to continuously consult with colleagues to ensure to the extent possible that his or her ability to assess fairly is not distorted by bias concerning traits or characteristics of the adults that is not a priority established by the legislature for determining parenting arrangements. In particular gender bias in favor of mothers as primary parents remains a prevalent concern.

Developing sound judgment and ensuring that your analysis is not influenced by personal bias of any kind usually takes many years of work in this highly charged environment. These cases are not “typical” family law cases. Most family law cases are resolved by the parties and/or attorneys and do not require the services of a Guardian ad Litem. The cases in which there is a Guardian ad Litem almost always involve complex issues. Aside from knowing and applying information from social science research, effective recommendations involve an analysis of intangible factors specific to the family (such as geographical distance of residences, work schedules, extended family support, etc.) and a common sense, practical, bias free synthesis of information.

The legislative priorities seek first to protect the child from harmful influences, then to support the child to become a responsible citizen by providing emotional nurturance and stability and finally, and optimally, to assist the child or children to develop their unique talents and gifts to their full potential. The discussion below is divided into these three areas.

As set forth below the two most harmful influences specific to children in family law cases and from which they must be protected are 1) compromised mental health on the part of parents or parental figures and 2) exposure of the children to high conflict between the parents or parental figures. It is your obligation as a guardian ad litem to investigate both of these areas thoroughly and seek the services of a mental health professional if there is evidence of possible mental health concerns and you are not a mental health professional.

Child sexual and physical abuse are beyond the scope of this chapter. Except as it is related to parental mental health, the topics of parental substance abuse, domestic violence and neglect of children are not specifically covered in this chapter.

I. LIMITING DAMAGING INFLUENCES

A. Mental health of each parent

In studies looking at the types of parents who, in order to finalize their divorce, require substantive intervention in the form of GAL appointment and/or parenting evaluation, it becomes apparent that this group does not represent the normal divorcing population. Joan Kelly, Ph.D., a prominent researcher in assessing the impact of divorce and conflict on children, has estimated that in 75% of the cases requiring this kind of intervention, one or both parents have a personality disorder. Understanding the nature of personality difficulties and other mental health issues is important for at least two reasons: 1) These issues are often central to the parents' inability to resolve custody issues on their own 2) The mental health status of the primary parent may be the biggest factor affecting a child's wellbeing in the aftermath of divorce. The mental health of each parent, then, becomes crucial to designing appropriate, child-focused parenting plans.

In custody evaluations, it is not often the case that we see parents with severe mental disorders such as schizophrenia. However, personality disorders, bipolar disorder, and depressive disorders are frequently an issue. Character disorders are firmly entrenched, long-term, learned ways of relating that create a pattern of interpersonal dysfunction. They are difficult to treat and are most often not directly amenable to amelioration by medication. Bipolar disorders and depressive disorders, on the other hand, may be fully managed by medication management in many cases but recalcitrant to medication in others. Critically important to understanding the role of any mental health issue in a parenting context is a detailed and complete psychosocial history that provides information regarding the extent and nature of the dysfunction. Information may be acquired from interviews of each parent, medical records, and collateral contacts that have information about interpersonal functioning in areas both inside and outside of the parenting context.

While mental health professionals may use diagnoses to communicate effectively with one another about an individual's mental health status, it is not generally effective to use diagnostic categories to communicate about parenting issues in a family court setting. Much more effective is a clear, detailed description of the specific ways in which a parent's issues impact his/her functioning with the children. For instance, little relevant information can be gleaned from the

statement, “This mother suffers from a bipolar disorder”. Much more informative is the statement, “This mother’s functioning is compromised and does not allow her to consistently provide her children with predictability in their daily schedule. She sleeps erratically and is often unable to get up in the morning to make sure the children are at the bus stop on time. She keeps the children up late with loud music and grandiose plans to stage theater productions or with late night trips to music stores. Meals, as such, are non-existent and the children are allowed to ‘graze’ at will when there is food available”.

In order to inform the court process, statements about a parent’s mental health functioning must be tied directly to the impact on the children in question. A mental health issue that does not impact the children, for instance a bipolar disorder that has been stabilized on medication for years, is irrelevant. There are some parents who do a very good job of parenting despite some degree of mental illness. In this context, it should be noted that use of pornography does not, in and of itself, constitute a mental health issue. Unless the pornography is focused on children, or the parent does not safeguard the children from the pornography, or the parent is involved in pornography to the extent that it impacts their ability to provide adequate parenting, the issue is irrelevant.

The importance of considering the mental health status of each parent becomes apparent in light of the literature regarding the link between the emotional functioning of the primary parent and the well being of children in the aftermath of divorce. Several studies have suggested that emotional problems in the custodial parent, such as anxiety, depression, and personality disorder, are often correlated with a diminished post divorce adjustment in their children. (Johnston 1996. Johnston, J (1996) Children’s adjustment in sole custody compared to joint custody families and principles for custody decision- making. *Family and Conciliation Courts Review*, 33, 415-425).

It is worth noting that the impact of one parent’s mental health status may have had little impact on the children during the marriage. This may be because the other parent was successful in buffering the children from the impact of the other parent’s emotional difficulties-- for instance a mother who over-functions in the household and camouflages the father’s chronic depression. Once parents are living in separate households, a parent cannot provide this function for the children and the children are then apt to receive an undiluted dose of the other parent’s dysfunction. Another possibility is that the parent with psychological difficulties may have functioned relatively well up until the emotional trauma related to separation and divorce. Individuals who are emotionally intact may have a relatively brief period of dysfunction in the aftermath of the separation. However, individuals with underlying difficulties whose disturbance surfaces as a result of the divorce may become chronically dysfunctional and never regain the level of functioning that was provided by the structure of the marriage.

It is important to remember that emotional difficulties in one parent do not preclude emotional difficulties in the other parent. In fact, particularly in long-term relationships, it is not unusual for parents to have competing mental issues. The issue then becomes which issues are most detrimental to the child and which parent is most likely to benefit from intervention.

The mental health status of each parent post divorce can impact children’s adjustment in several ways. Parents suffering from chronic anxiety and depression are apt to have less energy to focus

on the physical and emotional needs of their children. They may rely unduly on children to function beyond their developmental level in providing nurturance and support to the parent and to younger children. The household may be chaotic and unpredictable with insufficient structure provided for optimal school functioning and involvement in extracurricular activities.

Personality disorders in parents may compromise the wellbeing of children by modeling ineffective interpersonal interactions. For instance, parents with borderline personality disorders often have chaotic intimate relationships and expose their children to a series of volatile, unstable relationships with transient partners. They may model intense anger, preoccupation with abandonment, and self-destructive behaviors. Narcissistic parents may exhibit a bottomless need for admiration and a need for their children to behave in ways that enhance the parent's esteem rather than the child's. They are apt to have difficulties with empathy and little capacity to model attention to the feelings of others.

Finally, mental health difficulties in one or both parents can have a profound impact on each parent's ability to avoid excessive conflict with the other parent and buffer the children from parental conflict. Difficulties with empathy may leave a father unable to comprehend that a child's feelings about the mother are not the same as the father's feelings about the mother. Preoccupation with abandonment may make it difficult for a mother to allow a child to spend extended periods of time with the father.

In considering the role of mental health issues in formulating parenting plans, it is important to consider chronicity and severity of the disorder, the specific manner in which it impacts the children involved, and the likelihood that available interventions will be effective. When severity and impact is high and the likelihood of remediation low, consideration should be given to limiting time between the effected parent and the children. When this is the outcome, efforts should be made to provide a structure that will enhance a troubled parent's ability to function in an optimal way over shorter periods of time.

B. Exposure of child to conflict between parents

The legislature has determined (consistent with social science research) that exposing the children to conflict between the parents is damaging to children. R.C.W. 26.09.191(3) provides:

A parent's involvement or conduct may have an adverse effect on the child's best interests and the court may preclude or limit any provisions of the parenting plan if any of the following factors exist:....(e) the abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development.

Note in this provision that the court's ability to require limitations in the parenting plan is discretionary by use of the word "may".

In addition R.C.W. 26.09.191(2) provides:

The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct:..... (ii) physical, sexual or a pattern of emotional abuse of a child.

Note in this provision that the court must require limitations in the parenting plan if emotional abuse is found by use of the mandatory word "shall". In addition to these provisions the legislature has established as an objective of the parenting plan "minimizing the child's exposure to harmful parental conflict". R.C.W. 26.09.184.

There are three main ways in which parents involve their children in parental conflict. One is that the parents fight repeatedly with each other in front of the children. The second is that the parent talks directly to the child about the other parent by making direct statements to the child or in front of the child about the other parent such as the father saying: "Your mother is a liar. She lied to the Judge". This can take the form of a parent constantly complaining to the children about what the other parent did or did not do such as the father saying "Your mother never sends you with enough clothes. She doesn't care how you look. She only thinks about herself." The third way of involving children in parental conflict is the more subtle means of psychological manipulation of the child against the other parent, for example the mother telling the child: "We hate fat people", when the father is overweight. Other examples are the mother telling the child "Gay people are abnormal" when the father is in a gay relationship; the mother saying: "Your father likes his friends more than he likes you. That's why he always plays golf."; and the mother telling the children: "Your father doesn't love us. He left us for his girlfriend, Susan." All three of these (and other ways of involving the children in parental conflict) can arise to the level of emotional abuse of the child. The latter form of subtle manipulation is more common with younger children whose perceptions of reality are less firm and who depend on their parents for emotional security. For this reason, the latter category of involving children in parental conflict through subtle manipulation often arises to the level of emotional abuse because it has a predatory quality and completely violates the child's need for emotional security with both parents. When any of these situations are frequent and do not subside after the initial stage of the dissolution, the behavior arises to the level of emotional abuse and requires mandatory restrictions on contact in the parenting plan. This also applies to parents who generate conflict at exchanges including persistently calling the other parent names and making accusations about the other parent in front of the children. Although it was a domestic violence case review the facts in In re Marriage of Stewart, 133 Wn. App. 545 (2006).

Why is this damaging to children? 1) Children need to feel valued and loved by both parents. Children need to feel good about both of their parents to internalize this positive perception of one's parents and later feel good about themselves. 2) Children become confused about what is real because their parents inappropriately share different versions of events with them. They begin to doubt their own perception of reality which undermines their ability to trust their own judgments. When children do not know who to believe they feel very confused and are often angry. 3) They develop guilt in taking one parent's side against the other. They often assume a caretaking role for the parent who presents him or herself as a victim of the situation or of the

other parent. 4) Children develop a fear of sharing and begin to “compartmentalize” their lives. When one parent gets mad at them or exudes hostility when the child says something positive about the other parent or the other parent’s friends or family, children learn to stop sharing and/or discussing anything that takes place with the other parent. This makes the child constantly aware of the dysfunction and negativity in his or her family and can damage the child’s developing sense of self.

Children should not have to carry these burdens. It takes their focus and energy away from their own social, academic and emotional development which should be both parents’ primary concern, not trying to “win the child over” or get the child or children to align with the parent’s point of view or opinion about the other parent. This is why involving the children in the parental conflict is considered abusive. The child’s focus becomes trying to decide things like which parent is telling the truth, concerns about finances, and concerns about parental infidelity, which are adult issues the parents should handle outside the experience of the child. Children need to be able to develop and concern themselves with reading a favorite book, loving a sports star, studying dinosaurs, mapping the stars, or planning a party with friends and not preoccupied with parental arguments and the resulting fears for their security.

C. Ability to buffer child from divorce conflict and support other parent’s relationship

Washington state has rejected the “friendly parent” concept, In re Marriage of Littlefield, 133 Wash. 2d 39 (1997) but our courts have found that bringing the child into the parental conflict is an “abusive use of conflict” necessitating R.C.W. 26.09.191 restrictions. See for example In re Marriage of Burrill, 113 Wn. App. 863, 56 P.3d 993 (2002).

The “friendly parent” doctrine holds that “primary residential placement is awarded to the parent most likely to foster the child’s relationship with the other parent. See In re Marriage of Lawrence, 105 Wn. App. 683, 20 P. 3d 972 (2001). The problem with rejection of this concept is that the notion of “friendly parent” was tied to the concept of “frequent and continuing contact” with both parents. What the Washington legislature has rejected is that “frequent and continuing contact with both parents is in the best interest of the child” because our legislature does not want to use “visitation privileges to reward or penalize parents for their conduct”. Lawrence, supra, at p. 687.

To be clear, when a parent brings the child or children into parental conflict (as described specifically above) this is damaging to the child or children and when done egregiously or over a period of time this behavior should be the basis for restrictions of a parent’s time with the child or children.

The heart of the problem with bringing the child into the parental conflict is that the parent’s emotional need for vindication or to be “right” overshadow the parent’s ability to care for the child. Thus, the parent is acting immaturely to serve his or her own interests to the disregard of and damage to the child’s interests. This is why egregious examples of parental behavior or continuous parental behavior and/or comments over a period of time both constitute emotional abuse of the child.

Parents must learn to manage their own emotional reaction to the family situation and not force the child to share in their view and/or participate in their emotional distress. Parents must also be mature enough to recognize that the child's relationship to the other parent is different, i.e., that of a child not a former spouse. Both spouses no doubt contributed to various aspects of the former relationship as adults. The child is not a part of that dynamic and is in an entirely different relationship to each of the parents than they are in with each other as former partners or spouses. Parents must recognize this difference and be able to move beyond their own self centered issues (through psychotherapy if necessary) to allow the child to learn and love what is best in the other parent.

II. SUPPORTING CHILD'S "CARE AND GROWTH" TO BECOME A RESPONSIBLE MEMBER OF SOCIETY

A. Parental ability to meet emotional needs of child

1. Quality of parent's emotional relationship with child – engagement vs enmeshment, empathy, recognition of individuality

Often overlapping issues of attachment and child preference, are considerations relating to the quality and nature of each parent's relationship with the child. Important considerations have to do with a parent's ability to maintain appropriate boundaries between child and parent issues, particularly when it comes to conflict with the other parent. A daughter may have an emotionally close relationship with her mother, but if that closeness is exploited or maintained by the mother's denigration and exclusion of the father, this closeness may not be an asset to the child. Distinctions should be made between a parent/child relationship whose closeness is based on affectionate, mutually rewarding interactions with clear parent/child roles and those based on meeting the parent's emotional needs at the expense of appropriate parent/child distinctions. This latter dynamic is often referred to as 'enmeshment', in which the boundaries between parent and child are blurred.

Alternatively, a father may have been substantially disengaged from a child prior to the separation, but begin making exceptional efforts to rehabilitate the relationship once the marriage is over. It is not apt to be in a child's best interests to assume the father's belated interest is merely strategic and therefore likely to be short-lived. It is not unusual for disengaged parents to reorder their priorities after divorce and sustain that change. For the child, this can be an important and positive outcome of the divorce, offsetting some of the negative outcomes. On the other hand, disengaged parents who have little ability to make authentic, enduring changes in their priorities are apt to demonstrate that, even in the process of the evaluation. They often have little ability to accurately assess their child's individuality and specific needs, have trouble setting aside their own needs, and blame others for their deficits.

2. Attachment to each parent

Assessing attachment between parents and children is an exceptionally difficult and complex task, particularly in this context. Much of the information regarding this factor comes from

theoretical considerations that are decades old and unsupported by reliable research. Moreover, there are no good tools for assessing attachment in children over the age of two.

Attachment theory generally defines attachment as a strong emotional connectedness between children and their primary caretaker(s) that endures over space and time, and is necessary for physical survival and emotional well being. Attachment is a reciprocal process in which both the child and caretaker are active participants. Attachment figures serve as a secure base from which the child feels safe to explore and master the environment. When the child perceives a threat in his surroundings during exploratory activity, he will retreat to the attachment figure for reassurance and comfort. (Barone, N. M., Weitz, E. I., & Witt, P. H. (2005). Psychological bonding evaluations in termination of parental rights cases. *Journal of Psychiatry and Law*, 33, 387-412.)

Historically, attachment theory has often been interpreted to mean that a child has one primary attachment and the strength of that attachment will be diminished by the attachment figure's absence, even if there are other important figures available. However, more recent research does not support this view. Children appear to form a hierarchy of attachments, the strength of which depends on amount of contact, needs met by the attachment figure, temperament of the child, and developmental status of the child. It appears to be the case that in most intact families, the child has a substantially equivalent attachment to both parents after the first few months, regardless of the amount of time spent with each parent. (cite) Although one parent often provides more caretaking, the other parent is apt to become increasingly important, even during the first year, as the baby's need for diversion, entertainment, and physical play increases. Mothers and fathers interact with their infants in different ways and most children benefit from the differences in these styles and form attachments based on that diversity. For instance, a child may seek out the mother when tired or ill and seek out the father for 'rough housing'. Both types of interaction are important to the child and form the foundation for stable, complex relationships in the future.

In assessing the importance to the child of relationships to each parent, it is vital to understand the complexity of this issue. Particularly with young children, if the child has had a reasonably adequate relationship with both parents prior to separation, one of the goals of a parenting plan should be to support and enhance the relationship with each parent after the divorce, other factors permitting. It is not sufficient to simply assess who has spent more time with the child with the assumption that they are therefore the primary parent. Even if a 'primary attachment' can be determined, it does not therefore follow that one parent should have a substantial majority of the parenting time, while the other parent plays a much lesser role.

With older children, the issue of 'attachment' may better be discussed in terms of 'preference'. Temperamental similarities, mutual interests, as well as the child's experience of which parent has historically met which emotional needs are apt to all play a role in understanding a child's attachment to each parent. Again, the goal should be to maximize the maintenance of the child's relationship with each parent, not the allocation of primary importance to one parent at the expense of the other.

When relationships in a family have been troubled prior to the divorce, and/or children are caught in conflict between the parents after the separation, the difficulties in assessing

attachment issues may be greatly increased. Children who have had a solid, secure attachment with one parent and an insecure attachment with the other parent may become concerned about the less secure relationship as one parent leaves the home. As a result, the child may work to avoid rejection by consolidating the insecure relationship. They may do this by allying with the more distant parent and even denigrating the parent with whom they have a more secure attachment. Careful assessment of this issue will include both historical information about the nature of the relationship between the child and each parent, as well as current information about parental agendas and the impact of those on the child.

3. Supporting Relationships Aside from Parents: Ability to Facilitate Involvement in Other Important Relationships: Siblings, Extended Family, Neighbors, Former Step-Siblings and Half Siblings

Sibling relationships can be an important, and complicating issue in making custodial recommendations. In general, efforts should be made to minimize the disruption of important sibling relationships whenever practical, regardless of the legal status of those relationships. For example, if a child has always been raised with a step-sibling as though they were a full sibling, recommendations should be made with consideration given to the child's emotional attachment to that sibling. Similarly, a parent's willingness to disregard the emotional attachment of a child to a former step-sibling may reflect poorly on his/her capacity for empathy.

Evaluators are, at times, faced with the issue of splitting full siblings between two parents. Such a recommendation should be considered only after careful review of the potentially negative short term and long term effects of splitting siblings. Research has suggested that siblings can provide important emotional support to one another, particularly during stressful times such as parental separation and divorce. As Kaplan notes, "Siblings spend more time interacting with one another than they do with their parents. A common family history, age, and long-term nature of the relationship make sibling relationships qualitatively different from other kinship relationships". (Kaplan et al 1993). In addition, sibling relationships may be important in later life as a source of assistance (Borland, 1989). However, siblings are only likely to see one another as a resource if they spend significant time together during childhood. For these reasons, splitting siblings should be done only in exceptional situations.

There are factors, however, that support splitting siblings. These include: (1) children and parents are divided into warring camps and there is little likelihood that contact will improve the schism (2) there is little or no relationship between siblings, often because of age differences or prior living situations (3) siblings have already been living apart for an extended period (4) neither parent is able to manage primary custody of all the children (5) there are substantial differences between the parents in their ability to handle the emotional, physical, or disciplinary needs of different children in the sibling group (6) older children have strong preferences for different parents that appear well-reasoned (7) siblings have a detrimental effect on one another. When splitting siblings appears to be the best option, efforts should be made to maintain contact between siblings that might maintain or improve sibling bonds. This might mean having the siblings divided during the school week, but spending every weekend together, alternating between the parents.

In addition to siblings the legislature has made “Assisting the child in developing and maintaining appropriate interpersonal relationships” a specific category of parenting functions. R.C.W. 26.09.004(3)(d). What this means most directly to the child is helping the child form and maintain both adult and childhood friends. This involves arranging “playdates” or family gatherings at which children are included. Especially for younger children, the parents are largely responsible for managing young children’s social lives and arranging to take other families children to the zoo, to a movie, etc. This begins the development of social relationships that can last throughout childhood. Sometimes parents who are ending a second (or later) marriage are angry at the soon to be ex-spouse and cut their children off from contacting former step-siblings. When the children shared a positive relationship this can be very destructive and teaches the children that relationships are of no lasting value. The latter is true of cutting the children off from any significant, positive relationships because the parent is angry with someone. These positive relationships outside of the immediate family can be of enormous support to children whose families are involved in dissolution and they should be encouraged.

B. Parental Ability to Discipline and Establish Rules, Boundaries and Structure in Daily Life

1. Authoritative vs. authoritarian vs. permissive discipline

Comparative parenting skills is another factor to be considered in formulating parenting plans since parenting skills have been shown to be empirically related to the adjustment of children in the aftermath of divorce. Four general types of parenting have been identified in the literature.

An authoritative style of parenting is high on warmth and high on control. Parents with this style enforce rules with warmth, nurturance, and encouragement of children’s autonomy through the use of appropriate choices. These parents provide consistent guidelines for behavior and follow through on consequences but encourage communication about rules and give rationales. They provide structure but can be flexible and do not promote a sense of their own infallibility. In addition, these parents encourage children to see issues from other perspectives and emphasize self-regulation rather than obedience.

Authoritarian parents are low on warmth and high on control. They tend to emphasize obedience to authority and do not encourage questioning of rules or allow flexibility. These parents often believe in the efficacy of punishment to enforce behavior, rather than ‘natural consequences’, which are more apt to result in a child’s internalization of standards.

Permissive parents are high on warmth and low on control. They tend to place few restraints on their children and often believe that children’s self-regulation will result in greater creativity and spontaneity. They are responsive to their children but do not provide firm guidelines or emphasize consequences.

The final type of parenting identified in the literature is indifferent or neglectful parenting. This is characterized by behaviors that are low on warmth and low on control. With this style, parents are often disengaged and exercise little control and display little warmth. They are not available to their children as a resource and often prioritize other activities over parenting.

For the most part, parents who demonstrate an authoritative parenting style tend to have children who are better socialized, more self-confident, more self-controlled and more achievement oriented. The exception to this may be children in ‘high-risk settings—i.e. urban ghettos—who may do somewhat better with authoritarian parenting styles.

2. Ability to provide appropriate structure and predictability

One of the most important aspects to providing stability for children is establishing and maintaining a daily routine. Children develop more securely when they know what to expect. This involves establishing a regular time to wake up for school, a nutritious breakfast of some kind before school, predictable after school care, a regular study time and clear expectations regarding school work, a regular meal time, a regular time for bathing and teeth brushing and a regular bed time. It is very important that children learn early on that it is important to be on time to school and that the parent does what is necessary to get the children to school on time. The same applies to teaching children to complete tasks on time. Lifelong habits that can profoundly affect one’s ability to work effectively as an adult are formed in childhood through the structure the parents provide or fail to provide through the daily routine.

The rules of the house need to be set and maintained, within reason for occasional interruptions. Matters such as friends coming over on school nights, television viewing, viewing of rated movies and television, acceptable music genres, choice of friends, where the children can go without the parents, cell phone use, with whom they can ride and/or drive in a car, etc. All of these rules need to be discussed, established and enforced. If the children know what the rules are and the rules are enforced by the parents it provides secure boundaries within which the child can grow.

3. Ability to model pro-social values and behavior as well as an effective lifestyle C

Children learn how to behave and what is acceptable behavior by watching their parents. Parents with serious mental health problems, in general, do not model pro-social behavior and the child should be protected from learning to emulate this behavior. Children need to be protected from parents who engage in repeated angry outbursts, frequent promiscuous sexual relationships, substance abuse, stealing and other unlawful behavior, and lying. On the positive side parents should demonstrate through their words and actions the values of our culture: tolerance for differences, caring for others, forgiveness, helpfulness, contribution to the betterment of the community, honesty, consistent employment, and other attributes that make one a productive member of society.

Teaching children an effective lifestyle begins by establishing a predictable daily routine and enforcing consistently a known set of rules as discussed in the preceding section. As the child gets older he or she, by high school age, should have internalized this structure and be able to manage completing most aspects of his or her school work. The parent’s can model more subtle aspects of an effective lifestyle that will serve the child into adulthood such as good eating habits, exercise, stress management, religious values to the extent they are practiced in the

family, enjoying social gatherings, artistic enjoyment and expression and other elements that complete a balanced adult life.

C. Recognizing Child's Individual Attributes

- 1. Temperament relative to temperament of each parent *M***
- 2. Temperament relative to ability to manage/benefit from complexity and change – special needs *M***

III. MAXIMIZING CHILD'S UNIQUE TALENTS AND GIFTS

A. Ability to meet physical and logistical needs of child

A parent must be able to physically care for the child or arrange for someone else to physically care for the child. This includes not only feeding, bathing and comforting of infants but also scheduling and attending necessary medical appointments. As the child ages the parent must provide or arrange for proper day care. As the child approaches school age the parent must know or find out what the child's academic needs are and make the best selection available. Almost all public schools have counselors who are trained to assess children and recommend appropriate school placement. Teachers and school counselors almost always know when a child has special needs. If a parent is advised that his or her child has special needs it is the parent's responsibility to access all resources available to give the child what he or she needs. In addition to school choice, a parent must know or seek assistance to learn the child's specific abilities and aptitudes and arrange appropriate activities for the child such as sports, arts, tutoring, Boy Scouts, modeling, therapy, etc. It is not a good sign if a parent spends so little time with the child that the parent does not know what the child's interests and talents are. In addition to arranging for activities that encourage the child's interests, the parent needs to be available, share with other parents or find someone else who is available to take the child so he or she can participate in appropriate activities.

To the extent possible parents need to arrange their work schedules so they are available to supervise younger children after school, or arrange for someone else to do this. The parents need to know what the child's logistical needs are. When does school start? Who is the child's teacher? What are test days? When are projects due? What does the parent need to do to contribute in the classroom? Who does the parent talk to if the child is having difficulty with a teacher or student? Who are the child's friends? In what subjects do they excel, or struggle? How often does the child need to have his or her teeth checked? Who is the pediatrician? When are shots or other healthcare needs required?

B. Financial Considerations

Providing financial support for the child is one of the primary parenting functions identified by the legislature. R.C.W. 26.09.004(3)(f). Parents have an obvious obligation to support their

children by providing or paying for housing, clothing and food. Beyond that, parents should use their talents, education and training to not only provide income to enrich the child's life if that is achievable, but also to model the life of a working parent for the child.

¹ For example see: Raven Lidman and Betsy Hollingsworth, *The Guardian ad Litem in Child Custody Cases: The Contours of Our Judicial System Stretched Beyond Recognition*, 6:2 George Mason Law Review 255, 279 (1998); Margaret K. Dore, *Court-Appointed Parenting Evaluators and Guardians ad Litem: Practical Realities and an Argument for Abolition*, *Divorce Litigation*, Volume 18, No. 4, April 2006; Robert E. Emery, Randy K. Otto, William T. O'Donohue, *A Critical Assessment of Custody Evaluations: Limited Science and a Flawed System*, Psychological Science in the Public Interest, Vol. 6, No. 1 (2005) www.psychologicalscience.org/pdf/pspi/pspi6_1.pdf at page 3); References on Dr. Hagen's website: <http://www.bu.edu/hagen/> and her book: *Whores of the Court: The Fraud of Psychological Testimony and the Rape of American Justice* and the following cases: Toms v. Toms, 98 S.W.3d 140, 144 (Tenn. 2003) (guardian ad litem reports were hearsay; trial court erred to rely upon the reports); C.W. v. K.A.W., 774 A.2d 745, 749 (Pa. Super. 2001) (the trial court's reliance on the guardian ad litem constituted "egregious examples of the trial court delegating its judicial power to a nonjudicial officer"); Patel v. Patel, 347 S.C. 281, 555 S.E.2d 386 (2001) (the guardian ad litem so tainted the family court decision, the wife was denied due process of law); S v. S, 571 N.W.2d 801, 809 (Neb. App. 1997), overruled on other grounds (no merit in giving credence to guardian ad litem opinion based on hearsay); In Re B.S. and J.S., 829 P.2d 939, 940 (Mont. 1992) (hearsay elicited from the guardian ad litem should not have been considered); Gilbert v. Gilbert, 664 A.2d 239, 243 (Vt. 1995) (error to rely on guardian ad litem report based on hearsay); Pirayesh v. Pirayesh, 359 S.C. 284, 596 S.E.2d 205 (2004) (reversing because the guardian ad litem's recommendation was not the product of an independent, balanced and impartial investigation); Hastings v. Rigsbee, 875 So.2d 772, 777 (Fla.2d DCA 2004) (reversing because the trial court delegated its authority to the "parenting coordinator" who improperly acted as finder of fact); In Re Schiavo, 780 S.2d 176, 179 (Fl. App. 2001)(affirming decision to proceed without a guardian ad litem because "a guardian ad litem . . . might cause the process to be influenced by hearsay"); Heistand v. Heistand, 673 NW.2d 541, 550 (Neb. 2004) (error to admit guardian ad litem's opinion testimony and related hearsay where guardian ad litem had not qualified as an expert); John A. v. Bridget M., 79 N.Y.S.2d 421, 427 (2005) (noting "ongoing debate" as to the proper role of expert psychological opinions in custody litigation) and Higgenbotham v. Higgenbotham, 857 So.2d 341, 342 (Fla. App. 2003) ("it is difficult to grasp how it is in the best interest of the child to deplete the resources of the family [with a \$20,000.00 parenting assessment]").

² See discussion of historical development of role of guardian ad litem in: *The Guardian ad Litem in Child Custody Cases: The Contours of Our Judicial System Stretched Beyond Recognition*, Lidman, R. and Hollingsworth, B. 6:2 George Mason Law Review 255, 279 (1998)

