The Team Approach to Protecting the Best Interest of Children

by Daniele C. Johnson

The role of the Guardian ad Litem was only recently defined by the Georgia Uniformed Superior Court Rules in May of 2005. U.S.C.R. 24.9. Until then, guardians were left virtually to their own devices to conduct their investigations and make their recommendations however they deemed appropriate.

Even with the guidance of U.S.C.R. 24.9, guardians and judges are allowed a wide range of discretion to decide how they will work together in contested custody cases. With that discretion, comes varying opinions on several aspects on how such trials are conducted. For example, judges differ on their opinions of whether or not a guardian should provide a written report.

Unless otherwise directed by the appointing Judge, the guardian ad litem shall submit to the parties or counsel and to the court a written report detailing the guardian's findings and recommendations at such time as may be directed by the assigned Judge. U.S.C.R. 24.9(6). In other words, a judge may excuse a guardian from providing a written report.

Some judges consider the contents of a report to be purely hearsay, thus inadmissible. Others share the concern that the report may fall into the hands of the child or children at issue, further perpetuating familial strife and turmoil. Perhaps this reasoning is behind the requirement that report shall be released to counsel and parties only, and shall not be further disseminated unless otherwise ordered by the Court. U.S.C.R. 24.9(6)(a). Many Judges, however, insist that without a written report, he or she can't make an informed final decision of what is in the child's best interest.

Guardians also fail to reach a consensus on whether they should provide a written report. Some are of the opinion that a report will only be used to impeach their recommendation and ask themselves "why should I give the parties ammunition to use against me"? Others use the process of writing the report to organize their thoughts, not really forming a final recommendation until the last sentence of the report is written.

As the saying goes, "it takes a village to raise a child". Similarly, in contested custody cases, it takes a team of professionals to determine what is in the best interest of a child. A guardian is only one member of that team, which consists of several other members, including, but not limited to, Judges, attorneys, and psychologists. The written report opens the dialog with the other members so that they can then work together to develop the best possible parenting plan.

This team approach has an inherent circular system of checks and balances designed to protect the best interest of children. The parties, attorneys, guardians, trial courts, and appellate courts check each other until the final resolution of the case. This system simply does not work without a written report. The report summarizes the Guardian's investigation, including identifying all sources the guardian contacted or relied upon in preparing the report. U.S.C.R. 24.9(6)(a). Providing this trail of reasoning for the Judge gives the final decision more credibility for the parties, attorneys, and appellate courts.

It is expected for the guardian to be called as the Court's witness at trial and be subject to examination U.S.C.R.24.9(7). A guardian should welcome the challenge of defending his or her recommendation. By listening to the opinions of other team members, the guardian is forced to consider alternative views that he or she may have previously missed. If the recommendation is sound, clear, and reasonable, it should withstand challenges made against it. If the recommendation is in fact impeached by the contents of the written report, then it probably should not be accepted anyway.

The guardian is an officer of the court and shall *assist* the court and the parties in reaching a decision regarding child custody, visitation and child-related issues. U.S.C.R. 24.9(3). However, the recommendation is only one of several factors the court will consider in making its final decision, as outlined in O.C.G.A. §19-9-3(3).

The written report provides the Court with a clear explanation of how the recommendation is reached. Ironically, the report will contain hearsay statements, one of a handful of exceptions to the hearsay rule. Of course, hearsay is inherently unreliable. As such guardians must be careful to only include statements in the report that are either undisputed or heavily substantiated by other credible evidence. Further, there is no reason to include statements that do not influence the recommendation. Including such insignificant statements may either embarrass one or more of the parties and inflame an already contentious situation.

In short, while there may be several arguments against providing a written report, those arguments are easily overcome by its benefits. The written report is an important tool used by all parties involved to achieve the common goal of protecting the best interest of children, lending transparency and credibility to the process. *FLR*

Daniele Johnson has been practicing family law in the metro-Atlanta area for the past 15 years. She has been a Guardian ad Litem since 2005 and a certified parent coordinator since 2011. To learn more about her and her firm, you may visit her website at www.djfamilylaw.com.