



1995

The Best Interest Team: Exploring the Concept of a Guardian Ad Litem Team

Tara Lea Muhlhauser
University of North Dakota

Douglas D. Knowlton

Follow this and additional works at: <https://commons.und.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

Muhlhauser, Tara Lea and Knowlton, Douglas D. (1995) "The Best Interest Team: Exploring the Concept of a Guardian Ad Litem Team," *North Dakota Law Review*: Vol. 71 : No. 4 , Article 3.
Available at: <https://commons.und.edu/ndlr/vol71/iss4/3>

This Viewpoint is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact und.commons@library.und.edu.

THE "BEST INTEREST TEAM":
EXPLORING THE CONCEPT OF A GUARDIAN AD LITEM TEAM

TARA LEA MUHLHAUSER, J.D.*
WITH
DOUGLAS D. KNOWLTON, PH.D.**

I. INTRODUCTION

The multi-disciplinary guardian ad litem team is a unique concept that unites the idea of multi-talented and transdisciplinary professionals into one representative guardian ad litem. The guardian ad litem (GAL) team responds to the court and follows the traditional representational role of a guardian ad litem. The goal of the GAL team is to arrive at a recommendation that incorporates a broad range of expertise and integrates the ideas, information, involvement, and integrity of the team. Their skills and disciplinary focus become the tools used to arrive at a comprehensive recommendation that frames the best interests of the child.

Nationally, the traditional guardian ad litem model has included both lay people and attorneys as potential guardians ad litem and has encouraged professionals with typical "expert" credentials to serve as guardians ad litem. Variations on this representational model have included CASA volunteers.¹

* Director, Children and Family Services Training Center; Faculty, Department of Social Work, University of North Dakota; licensed attorney and social worker in North Dakota. B.S.S.W. 1979; J.D. 1985, University of North Dakota, Grand Forks, North Dakota.

** Associate Professor, Center for Teaching and Learning/Special Education, University of North Dakota, Grand Forks, North Dakota; licensed clinical psychologist in both North Dakota and Minnesota. B.A., 1972, University of Denver; M.A. and Ph.D., 1979, University of North Dakota.

The authors wish to acknowledge the contributions of The Honorable Bruce Bohlman and Jan DeRemer, Attorney at Law, for their early work and assistance in the development of the diagram illustrating the team process.

1. The Court Appointed Special Advocate (CASA) model refers to a volunteer based cadre of trained lay and professional people who assist the court by making best interest recommendations based on the investigations, interviews, and information synthesis they conduct in each case. This model is used nationally and has gained the support of many courts, particularly in cases of child abuse and neglect where children are placed in out-of-home settings. For a discussion of the definition of models used nationally, see UNITED STATES DEP'T OF HEALTH & HUM. SERVS., FINAL REPORT ON THE VALIDATION AND EFFECTIVENESS STUDY OF LEGAL REPRESENTATION THROUGH GUARDIAN AD LITEM, § 4.1, at 4-2 (1994) [hereinafter DEP'T OF HEALTH REPORT].

II. WHY THIS NEW CONCEPT?

Domestic relations cases have become increasingly complex.² The interests and issues presented to the court have multiplied in volume and intensity, leaving many concerned about the effectiveness of the legal process in this area.³ With the increased complexity, the need for a commitment to "protection" interests has been renewed.⁴ Thus, the role of a GAL (and the role of child's counsel) has increased in importance in a realm of domestic relations cases, including divorce and custody, juvenile justice, criminal child sexual abuse, physical and emotional child abuse and neglect, and partner and family violence cases.

Correspondingly, many courts have found that the complexity of cases, diversity of issues, and crowded court calendars require a flexible guardian ad litem model; a model that makes use of both attorneys and lay guardians ad litem.⁵ Research confirms that while both the attorney model and the lay guardian ad litem model have strengths, some cases require skills, time, and resources that may not always be available to attorneys or lay guardians ad litem.⁶ When this occurs, a judge (or guardian ad litem) generally must seek outside expertise from expert professionals, e.g. psychologists, social workers, etc. Thus, commitment to a single GAL model may not meet the needs of the court, the litigants, or lend justice to the interests of children.

2. See Janet R. Johnston, *High Conflict Divorce*, in *THE FUTURE OF CHILDREN: CHILDREN AND DIVORCE*, 165, 165-182 (1994) (reviewing available research studies on high conflict divorce and its detrimental effects on children); see also E. MARK CUMMINGS & PATRICK DAVIES, *CHILDREN AND MARITAL CONFLICT: THE IMPACT OF FAMILY DISPUTE AND RESOLUTION*, 1-87 (1994) (analyzing the complexity of divorce); David Finkelhor, *The Victimization of Children: A Developmental Perspective*, 65 *AM. J. ORTHOPSYCHIATRY* 177, 188-89 (1995) (concerning developmental victimology). These authors cite many examples of current situations that have led the field of divorce and child custody to increasing levels of complexity with increasingly harmful effects on children. In addition to divorce/custody cases, complexity is found in juvenile deprivation and dependency proceedings, cases of third-party custody and visitation, and cases where familial violence has occurred.

3. See generally ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, *DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY* (1992) (describing the results of an in-depth study of 1,100 families making post-separation arrangements for their children). Arguing that the adversarial system can frustrate the outcome in divorce and custody matters, various scholars suggest alternate procedures or alternate dispute resolution options. *Id.*

4. Protection interests include the complete range of interests the court considers in full exercise of the power of *parens patriae*. See Lawrence B. Custer, *The Origins of the Doctrine of Parens Patriae*, 27 *EMORY L.J.* 195, 195-208 (1978) (providing an historical analysis of the *parens patriae* doctrine).

5. DEP'T OF HEALTH REPORT, *supra* note 1, § 6, at 6-1. This report, based on a national survey and analysis, lists the particular strengths of each model, with a recommendation supporting a mixed model of GAL representation. *Id.* at 6-23.

6. *Id.* at 6-21 to 6-23.

The diversity of issues and interests also complicates the representational equation.⁷ Complex cases may require the skills of an attorney to address the legal interests inherent in representing the "best interests." Understanding legal advocacy is only the beginning of the comprehensive role of a guardian ad litem. An attorney must be expected to address issues beyond this limited horizon. For many attorneys, this becomes uncomfortable or unproductive because the role requires many to work outside the "comfort zone" of skills and training they possess.⁸ Conversely, lay guardians ad litem in complex cases often request the assistance of an attorney to help with an understanding of the legal process or the legal issues that must be considered to properly fulfill their role and arrive at an informed recommendation.⁹

Since the process relies on a complete execution of the role of a guardian ad litem,¹⁰ judges want reassurance that all considerations are examined and synthesized into the delivered recommendation. Thus, a guardian ad litem with a limited spectrum of skill or knowledge may not fully understand how to interpret the broad array of "best interest" factors the court expects or needs to make the weighty decisions that affect childrens' development and long-term mental health in complex family law cases.

Balancing this array of interests while working toward the goal of presenting a recommendation can be a demanding and time consuming task that may be more efficiently managed by a "team" approach. A round table approach, where there is an opportunity for review, discourse, and the sharing of knowledge has become a synonym for efficiency, quality, and enhanced work product in education, management, corporate, and medical sectors.

Incorporating this concept into the traditional legal process, or immediately outside the process, may have some very beneficial results. Problem solving, coordination, and collaboration outside the courtroom in complex domestic relations cases can arguably be more efficient, less frustrating and time consuming, and perhaps yield more firmly-based recommendations, reflective of a greater range of consider-

7. See generally Andrea Charlow, *Awarding Custody: The Best Interests of the Child and Other Fictions*, in CHILD, PARENT, & STATE 3 (S. Randall Humm et al. eds., 1994) (analyzing difficulties of the best interests of the child standard); Martin Guggenheim, *The Best Interests of the Child: Much Ado About Nothing?*, in CHILD, PARENT, & STATE 27 (S. Randall Humm et al. eds., 1994) (analyzing alternative standards).

8. See DEP'T OF HEALTH REPORT, *supra* note 1, §§ 6.31-6.32, at 6-21 to 6-22.

9. *Id.* §§ 6.2.2.1-.2, at 6-11 to 6-12.

10. See generally ANN M. HARALAMBIE, *THE CHILD'S ATTORNEY* 5-11 (1993) (describing the role of a guardian ad litem); 1 LEGAL RIGHTS OF CHILDREN §§ 12.01-12.07 (Donald T. Kramer ed., 2d ed. 1994) (describing the authority and responsibilities of a guardian ad litem).

ations. To do so gives the issues and interests of children a stronger and better positioned voice in the process.

Finally, as the court rarely examines the work product of a guardian ad litem until the recommendation is delivered, there is little or no opportunity to scrutinize the presence of de jure or defacto bias, or the absence of a consideration of cultural factors. As many states do not have guidelines or standards in place for the role of a guardian ad litem,¹¹ a multi-disciplinary team would reduce the opportunity for bias and increase the opportunity to consider other factors when arriving at a recommendation, including cultural considerations, differing philosophies, and creative uses of existing community resources.

A team approach generally increases the comprehensiveness and enhances the validity of a resolution or recommendation.¹² Additionally, use of this concept would distribute the time commitment among the group. This will increase the likelihood of receiving recommendations which have reached the full tenure of the role of a guardian ad litem without disadvantaging the interests of the child by overwhelmed professionals who are attempting to balance the realities of practice.¹³

III. THE MULTI-DISCIPLINARY GUARDIAN AD LITEM TEAM MODEL

The concept of a team includes at least three individuals. The core of the team would be a guardian ad litem appointed by the court. In order to maximize the benefits of the team model, both attorney and lay guardians ad litem should have access to the team.¹⁴ Given the nature of the issues present in the case, other professionals can be added to the team on an "as needed" basis. Also, the team can be built around the individual needs of the child or the facts of the particular case. For exam-

11. The development of guidelines and standards for guardians ad litem is a topic of national interest; many states are now reviewing or creating such standards and guidelines to lend greater uniformity to the representational expectations and boundaries of guardians ad litem. For a list of existing guidelines, see HARALAMBIE, *supra* note 10, at 239-88. See also STATE OF MINNESOTA OFFICE OF THE LEGISLATIVE AUDITOR, GUARDIANS AD LITEM, ix-xv (1995) (calling for a clear articulation of the role of a guardian ad litem and the need to develop standards and guidelines).

12. See generally PETER R. SCHOLTES, THE TEAM HANDBOOK 6-23 (1991) (exploring how to build a successful Team); W. BRENDAN REDDY & KALEEL JAMISON, TEAM BUILDING: BLUEPRINTS FOR PRODUCTIVITY AND SATISFACTION 3-4, 15-17 (1988) (explaining the fundamentals of "team theory").

13. DEP'T OF HEALTH REPORT, *supra* note 1, at § 4.2.2, at 4-7 to 4-9 (discussing the GAL workload), § 5.6, at 5-49 to 5-50 (concerning conclusions of GAL effectiveness), and § 6.3, 6-20 to 6-26 (containing a summary of conclusions and recommendations).

14. Because the authors strongly support a mixed model of GAL representation, both attorneys and lay guardians ad litem should have access to the team model for assistance in arriving at a best interest recommendation. The individual needs of a case, in light of the team constellation, would be established at the start of the team process. As the team model can operate with great flexibility, if non-law trained guardians ad litem feel the need for legal assistance, the team could include an attorney member.

ple, it may be beneficial to include a pediatrician in cases of severe medical neglect (failure to thrive) or a psychiatrist when a juvenile has been institutionalized in a psychiatric facility. If the guardian ad litem is not law trained, there may be situations where it would be appropriate for an attorney to join the team.

At all times, and in all team proceedings, the guardian ad litem maintains the responsibility to focus on the issue at hand and carries the traditional role that accompanies such an appointment. The guardian ad litem has an opportunity to use the skills of team members by delegating particular tasks. For instance, it is quite fitting to ask a social worker to complete a home study/social study on a family or group. Many cases require this particular task, but it is often overlooked. By delegating such tasks, the guardian ad litem can direct team members to complete tasks themselves or rely on other professionals to accomplish the tasks while team members serve as interpreters of data received from outside professionals.

During the time outside professionals collect information, the team meets to discuss the case, the results of evaluations, the findings of the home/social study, and any other issues incumbent on the child's best interest. The team collaborates on a recommendation; and the guardian ad litem delivers it to the court. The guardian ad litem is the spokesperson for the team and bears the responsibility of explaining and defending the recommendation if requested or required in the legal process.

Members of the team, through working agreements, delegate the responsibility of spokesperson to the guardian ad litem. Working agreements can also identify and clarify issues of confidentiality, reporting responsibilities for internal and external ethical violations, breaches, claims of abuse or neglect or criminal activity. The agreement creates individual team member's mutual commitment to the process, and details procedures to identify conflicts of interest or procedures to clarify the role and process for a team member who does not agree with the final team recommendation.

If the team agrees that a member should appear in court regarding a particular piece of evidence or information, the guardian ad litem will call the team member to testify, just as they would call another witness. Similarly, if team members are subpoenaed to testify in a proceeding, they would take the position any other expert witness appointed by the court might be expected to take in a case. While team members might discourage attorneys from subpoenaing individual team members (preferring to have the guardian ad litem defend the recommendation), it is clear there may be situations where this may be necessary.

Cases can be assigned to the team by the court as part of the regular guardian ad litem appointment process, based on case complexity or criteria considering risk factors and situations where a child's best interests require greater protection. These higher risk situations might include divorce/custody cases with protracted litigation over child custody or involve sexual abuse allegations, situations where third parties seek custody, juvenile offenders, high risk or emotionally disturbed children, and children in persistently violent homes.¹⁵

The diagram that follows provides an example of the flow of a typical contested custody case using the team model.¹⁶

IV. ISSUES TO CONSIDER FOR THE TEAM MODEL

In considering the team model, the issue of how to best implement the process including determining criteria for the selection of personnel will have to be addressed. In addition to the guardian ad litem, it is recommended that the two other professional members of the team be a social worker and a psychologist. Both individuals should have additional training in the areas of concern to the court, or in the areas of risk identified by the court. The training requirement refers to a level of skill and knowledge not necessarily contained in the basic education for entry into their profession; demonstrated achievement of a "specialty" or advanced skill in those identified areas is necessary.

The social worker should hold expertise in the area of home studies and family assessments, resources available to support families, and dynamics related to family functioning. The psychologist should be someone trained in the areas of child development, assessment, and cognitive and emotional functioning that might affect how a child will process and convey information.

While the team members might provide the actual assessments and investigations, they may also serve as the interpreters or synthesizers of evaluations performed by other professionals. Team members should also be familiar with a broad array of resources for families and for presentation to the court; for example, the appropriateness of alternate dispute resolution.

The cost of the team model is an issue for the court to consider when adopting a team approach. The team process will require the

15. See generally CUMMINGS & DAVIES, *supra* note 2, at 87-100 (providing an up-to-date review of research on conflict processes within families). It is well established by many scholars in the field that these high risk situations reflect the need for greater understanding of the nature of family dysfunction, treatment resources, and an approach that addresses the holistic needs of both child and parent. See *id.* at 110.

16. See Appendix A for a flowchart detailing the GAL team process.

involvement of additional professionals initially, which will predictably exceed the average cost of an individual guardian ad litem. It is anticipated that the overall cost may be reduced in the long term by partial elimination of protracted litigation, elimination of the costs of using multiple experts in a case, and by more efficient use of the guardian ad litem's time. Additionally, it is anticipated that the enhanced recommendation will be of greater value to the court in making decisions.

V. SUMMARY

The guardian ad litem team model offers an opportunity to use multi-disciplinary expertise to develop and deliver recommendations to the court on behalf of a child's best interests. Inherent in the model are opportunities for cross-disciplinary collaboration and cooperation. The team model will enhance the ability of an individual guardian ad litem to present a full complement of best interest considerations. In turn, the judge will have a more comprehensive recommendation and a broader array of information regarding the child's best interests prior to making a decision. We owe children in these difficult cases the full range of voices to create a harmonious recommendation that speaks directly and comprehensively to the ultimate issue; the child's best interests.

GAL Team Project Flowchart





