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INTRODUCTION

This Manual was created to assist: lawyers and non-lawyers serving as guardians ad litem in private family court cases involving custody and visitation; lawyers appointed to serve as guardians ad litem in family court child protection cases; and non-lawyer volunteers serving as guardians ad litem in family court abuse and neglect cases.

This Manual is not designed to be the primary source of information for volunteer guardians ad litem working with the South Carolina Guardian ad Litem Program and the Richland County CASA Program. Both programs have training and resource materials for volunteer guardians ad litem, and those program materials are the volunteer guardian ad litem's primary sources of information. This Manual provides an additional source of information for volunteer guardians ad litem.

Should this Manual offer information or guidance different from the information or guidance provided to volunteer guardians ad litem by either the South Carolina Guardian Ad Litem Program or the Richland County CASA Program, a volunteer guardian ad litem having a question about such a difference should consult the guardian ad litem's program coordinator or the guardian ad litem's attorney.

The information contained in this Manual is current as of October 1, 2008. The Children's Law Center drafters will make every effort to update the information as changes in law and policy are made.

We made every effort to ensure accuracy in this Manual but errors are inevitable. Please inform us of any errors, large or small, so that we may remedy them in publishing updates for the Manual.

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The Children's Law Center

The Children's Law Center, School of Law, University of South Carolina, was founded in 1995 and exists to promote community and professional awareness and increased knowledge of children's legal issues and to improve the administration of justice in children's cases. The Children's Law Center (CLC) provides education, training, research, community projects, and technical assistance to professionals and child advocates in South Carolina's family courts and other legal proceedings affecting children.

The CLC provides a full array of training, technical assistance, resource materials, and research activities addressing a broad spectrum of law and court-related topics affecting children in the child protection and juvenile justice systems.

The CLC is funded by a variety of state and federal grant sources including the South Carolina Bar Foundation.

This project was funded by the South Carolina Bar Foundation.

Points of view or opinions contained within this document are those of the authors and do not necessarily represent the official position of the South Carolina Bar Foundation or the School of Law, University of South Carolina.

OVERVIEW

Overview of Court System in South Carolina

The family court is part of the unified court system in South Carolina. The unified court system includes the South Carolina Supreme Court, the South Carolina Court of Appeals, circuit courts, family courts, masters-in equity, summary courts (including magistrate and municipal courts), and probate courts.

There are sixteen judicial circuits in South Carolina and each judicial circuit covers a minimum of two counties. Each county has a clerk of court who provides administrative support for the circuit court.

Each judicial circuit has a family court. There are fifty-two (52) family court judges, and they are selected by circuit seat. Family court judges routinely rotate from county to county within their circuits, and the Chief Justice of the South Carolina Supreme Court may assign family court judges to other circuits based on caseload and other considerations.

The chart on the next page graphically summarizes the South Carolina court system.

SUPREME COURT
5 Justices
Death Penalty
Public Utility Rates
SC Constitutional Issues
Public Bond Issues
Elections
Abortion by a Minor
Post Conviction Relief Cases
Certiorari from Court of Appeals

COURT OF APPEALS
9 Judges
Appeals from Family Court
Appeals from Circuit Court

Family Court
52 Judges
Domestic, Child Maltreatment
DSS, Child Support Enforcement,
Juvenile J

Circuit Court
46 Judges
Common Pleas-civil
General Sessions-criminal
Appeals from Magistrate Court and
Administrative Law Judges

Magistrate Court
Civil to $7500
Criminal- up to 30 days in jail or
$500 fine
Restitution to $5000

Municipal Court
Criminal-up to 30 days or
$500
Restitution to $5000

Probate Court
46 Judges
Administration of estates and
trusts, conservators
Civil Commitments

Administrative Law Judge Division
6 Judges

Appeals from Administrative Agencies

Family Court Jurisdiction

The jurisdiction of the family court in domestic matters is set forth in S.C. Code Ann. § 63-3-530 (Supp. 2008). The family court's jurisdiction includes authority over marriage, divorce, separate maintenance and support, custody of and visitation with children, child support, alimony and spousal support, division of property, and name change.

The family court also has jurisdiction over adoptions, Uniform Enforcement of Child Support Act matters, interstate custody matters, domestic abuse, abuse and neglect of children under 18, minors under 17 alleged to be delinquent and to have violated state law or municipal ordinance, and abortions (without parental consent) involving minors.

Overview of Family Court Personnel and Procedure

Personnel in Family Court

Cases in family court, including cases involving child custody and visitation, are heard by a family court judge without a jury. People generally present in the courtroom for family court hearings include the judge, court reporter, bailiff, attorney for each party (if the party is represented by an attorney), each party, and a guardian ad litem (this resource manual will use the word guardian in referring to guardian ad litem) if appointed by the court.

The court reporter is responsible for recording the family court proceeding word for word, but a court reporter normally prepares a written transcript only when requested by a party or the court. A party requesting a written transcript must pay the court reporter for preparation of a written transcript.

Procedures in Family Court

Family court operates under the South Carolina Rules of Family Court (SCRFC) and the South Carolina Rules of Civil Procedure (SCRCP). There are, however, a number of rules of civil procedure which do not apply in family court. Rule 2, SCRFC, sets forth the rules of civil procedure which are not applicable in family court.

Guardians Generally

Generally, a court appoints a guardian for the limited purpose of litigation when a person involved in the litigation has a legal disability. A legal disability may be due to minority or due to a physical or psychological infirmity which make it impossible for the person to protect his or her rights. A guardian appointed for such a person has specific duties set forth in the statute which authorized the appointment and generally functions independently of the parties to the litigation.

South Carolina statutory law allows, but does not require, a family court judge to appoint a guardian when custody or visitation of a minor child is an issue before the court in a private action. South Carolina statutory law requires appointment of a guardian for a child in all abuse and neglect proceedings and in all termination of parental rights cases in family court.

Private and Appointed Cases

Guardians serve in several different types of cases, but this Resource Manual addresses two broad categories of cases, private cases and appointed cases.

Private cases are those brought by individuals. In such cases, the parties are seeking rights to the children including custody, visitation or some other right of the party or the child, and the child's bests interests need to be protected by a guardian. The court may appoint either an attorney or a certified non-attorney guardian, and the guardian will be compensated as determined by the court. Guardians are usually compensated by the parties as determined by the court in a case.

A guardian will investigate the facts and circumstances and report to the court on the results of the investigation. A guardian may make recommendations concerning the child's best interests. Included among those recommendations may be recommendations for services, counseling, or other supports which might benefit the child.

In appointed cases, the children become involved with the court system because a state agency, usually the South Carolina Department of Social Services (this resource manual will use the word Department when referring to the South Carolina Department of Social Services), has found that the children need the protection of the state. The court appoints a guardian to safeguard the children's best interests.

Appointed guardians may be attorneys who are appointed by the court or they may be individuals who are volunteers working with a county guardian ad litem office. Those volunteers are trained by the county guardian ad litem office. Volunteer guardians are appointed to safeguard the best interests of the children who are in the custody of the Department and who may have been placed by the Department with a relative or with a foster parent. Unlike guardians in private cases, guardians in appointed cases are permitted to make recommendations about the custody of children.

Both guardians in private cases and guardians in appointed cases are expected to investigate those matters before the court that concern the children, to report to the court the results of the investigation, and to protect the children's best interests.

GUARDIANS APPOINTED IN ABUSE AND NEGLECT CASES OR TERMINATION OF PARENTAL RIGHTS CASES

Guardians Appointed in Abuse and Neglect or Termination of Parental Rights (TPR) Cases

General

Part One of this Resource Manual generally explains the reasons for appointing a guardian for a child in an abuse and neglect case or in a termination of parental rights case. As explained in Part One, a guardian appointed in abuse and neglect case or in termination of parental rights (TPR) case may be a lawyer or a volunteer guardian. Unlike a guardian in private custody or visitation case discussed in Part Three of this Resource Manual, a guardian appointed in an abuse and neglect case or in a TPR case will encounter a lawyer employed by the Department and carrying out the Department's roles of protecting children and providing services to families.

The Department routinely files abuse and neglect cases in an effort to protect children allegedly abused or neglected. Moreover, should the conditions which led to a child's removal from home not be remedied or should other grounds exist (those grounds are discussed more fully below), the Department may file a termination of parental rights (TPR) case. The Department's doing so is an effort to facilitate permanent placement for the child.

Qualifications of Volunteer Guardians in Abuse and Neglect Cases

Volunteer guardians are selected by county coordinators and must undergo a criminal records check, a South Carolina Department of Social Services Central Registry of Abuse and Neglect check, a character reference check, and an interview. Volunteer guardians must also complete thirty hours of

training in child development, child maltreatment, permanency planning, the legal system, and other topics. Volunteers are also expected to participate in ongoing education in areas related to serving as guardians for children.

Guardians in abuse and neglect cases may have no convictions for any crime listed in: South Carolina Code, Title 16, Chapter 3 (offenses against the person); South Carolina Code Title 44, Chapter 53, Article 3 (narcotic and controlled substances); or for contributing to the delinquency of a minor in violation of S.C. Code Ann. § 16-17-490 (West 1985).

S.C. Code Ann. § 63-11-520 (West 1985 & Supp. 2008).

Appointment of a Guardian in an Abuse and Neglect Case

A family court judge must appoint legal counsel and a guardian for a child in an abuse and neglect case. S.C. Code Ann. § 63-7-1620(1)(West Supp. 2008). According to Code § 63-7-1620, if the guardian is a lawyer, the guardian serves as guardian and legal counsel for the child. According to the South Carolina Bar's Ethics Advisory Opinion 08-04 dated July 28, 2008, a lawyer may not serve as legal counsel for the child and guardian ad litem for the child. Code § 63-7-1620 also says that, absent extraordinary circumstances, a court may not appoint legal counsel to represent an attorney guardian.

Volunteer guardians who are trained and qualified as set forth above are routinely provided from either of two sources. The South Carolina Guardian ad Litem Program was created by statute as a division of the Governor's office. S.C. Code Ann. § 63-11-500 (West Supp. 2008). It is operational in

forty-five counties and in all sixteen judicial circuits. The Richland County CASA Program is an independent program operating as part of the Richland County government.

The court appoints a lawyer to serve as guardian when a volunteer guardian is not available or there is a conflict of interest which disqualifies a volunteer from serving as guardian. Under Rule 608, South Carolina Appellate Court Rules, lawyers are appointed from a civil appointment list maintained by each clerk of court's office.

As authorized by Rule 41(a), SCRFC, lawyers appointed by the family court to serve as guardians in abuse and neglect cases may request reimbursement for fees and costs. Application for reimbursement may be filed with the South Carolina Commission on Indigent Defense (a copy of the Commission's reimbursement guidelines is provided in Appendix 10 to this Resource Manual).

Regardless of whether a guardian is an attorney or a volunteer guardian, the family court for the circuit in which the Department brought the action appoints the guardian by way of a court order. As noted below, a guardian may be relieved of the guardian's duties only by way of a court order.

Due to statutory time limits prescribed for family court abuse and neglect actions, an appointed guardian may receive the appointing order shortly before a scheduled hearing. Such a guardian must be aware that he or she may have time for no more than an expedited review of the case before the first scheduled hearing.

Appendix 9 of this Resource Manual contains detailed information about timelines in abuse and neglect cases. Guardians should consult Appendix 9 for information on processing times for abuse and neglect actions.

Responsibilities and Duties of a Guardian in an Abuse and Neglect Case

Specific statutory duties of a guardian are set forth in statute and in case law. South Carolina Code Ann. § 63-11-530 (West Supp. 2008) lists the responsibilities and duties of a guardian appointed in an abuse and neglect case:

1. represent the best interest of the child;
2. advocate for the welfare and rights of a child involved in an abuse or neglect proceeding;
3. conduct an independent assessment of the facts, the needs of the child, and the available resources within the family and community to meet those needs;
4. maintain accurate, written case records;
5. provide the family court with a written report, consistent with the rules of evidence and the rules of court, which includes, without limitation, evaluation and assessment of the issues brought before the court and recommendations for the case plan, the wishes of the child, if appropriate, and subsequent disposition of the case;
6. monitor compliance with the orders of the family court and make motions necessary to enforce the orders of the court or seek judicial review;

7. protect and promote the best interests of the child until formally relieved by the family court.

Best Interest of the Child

S. C. Code Ann. § 63-7-10(1) (West Supp. 2008) sets forth the public policy of South Carolina that all child welfare intervention by the State has as its primary goal the welfare and safety of the child. This public policy is reinforced by the provisions in S.C. Code Ann. § 63-11-510(1) (West Supp. 2008) that a guardian's duty is to represent and protect the best interest of the child. It is also reinforced by the provision of S.C. Code Ann. § 63-7-2570 (West Supp. 2008) requiring that the court find, in a termination of parental rights case, that termination of parental rights is in the best interest of the child.

Numerous court decisions hold that the best interest of the child principle controls family court proceedings involving children. While the best interest of the child principle is statutorily mandated and judicially recognized, application of the principle may be complicated as it involves an assessment of the totality of the circumstances impacting the child.

As a preliminary matter, it is important to have a basic understanding of the best interest principle. Black's Law Dictionary provides a very basic definition of "best interest of the child".

> A standard by which a court determines what arrangements would be to a child's greatest benefit, often used in deciding child-custody and visitation matters and in deciding whether to approve an adoption or a guardianship. A court may use many factors, including the emotional tie between the child and the parent or guardian, the ability of a parent or guardian to give

> the child love and guidance, the ability of a parent or guardian to provide necessaries, the established living arrangement between a parent or guardian and the child, the child's preference if the child is old enough that the court will consider that preference in making a custody award, and a parent's ability to foster a healthy relationship between the child and the other parent.

Black's Law Dictionary (8th ed. 2004).

South Carolina appellate courts have long acknowledged that the best interest of the child determination involves considering the totality of circumstances involving the child. While most appellate cases addressing the best interest principle are private cases involving custody and visitation issues, the analysis of the best interest principle found in those cases is applicable in abuse and neglect and termination of parental rights cases.

An example of a custody case which sets forth a method of analysis in circumstances which may be similar to those in an abuse and neglect or termination of parental rights cases is *Shirley v. Shirley*, 536 S.E.2d 427 (S. C. Ct. App. 2000). In *Shirley*, the father sought a change of custody based on a number of alleged lapses in the mother's care of the parties' minor daughters. The court noted:

> In all child custody controversies, the controlling considerations are the child's best welfare and best interest. *Citation omitted*. In reaching a determination as to custody, the family court should consider how the custody decision will impact all areas of the child's life, including physical, psychological, spiritual, educational, emotional, and recreational aspects. *Citation omitted*. Additionally, the court must assess each party's character, fitness and attitude as they impact the child. *Citation omitted*. "There are no hard and fast rules for determining to change custody and the totality of the circumstances peculiar to each case constitutes the only scale upon which the ultimate decision can be weighed." *Quoting Davenport v. Davenport*, 220 S.E. 2d 228, 230 (S.C. 1975).

Shirley 536 S.E.2d 427 at 430.

The best interest of the child principle should guide a guardian's investigation in both abuse and neglect cases and termination of parental rights cases. With respect to abuse and neglect cases, a guardian must consider the child's safety, and the child's physical, psychological, spiritual, educational, emotional, and recreational needs as the guardian reviews the Department's proposed treatment plan and permanent placement plan.

A guardian must also consider the parent's character, fitness and attitude as those characteristics impact the child.   With regard to termination of parental rights cases, a guardian must consider the child's needs as well as the parents' actions or inactions which establish a ground for termination of parental rights.

In conducting investigations in abuse and neglect cases or in termination of parental rights cases, a guardian must be guided by the best interest of the child principle and must seek to obtain information which will inform the court of the child's needs and of the capacity of the child's parents to meet those needs.

Removal of Child from Home

A child may be removed from his or her home either by a law enforcement officer under the emergency protective custody procedures described below or by the Department in a non-emergency situation. Non-emergency situations may involve the Department receiving a report of suspected abuse or neglect or the Department encountering abuse or neglect during the Department's delivery of services. In a non-emergency situation, the Department may file a removal petition requesting the court to order a child removed from the home. S.C. Code Ann § 63-7-1660(A) (West Supp. 2008).

Emergency Protective Custody

Only a law enforcement officer may take a child into emergency protective custody, and a law enforcement officer may do so only when the officer has probable cause to believe that, by reason of abuse or neglect, a child's life, health, or physical safety is in imminent and substantial danger. S.C. Code Ann. § 63-7-620(A)(1) (West Supp. 2008).

In addition to a law enforcement officer taking a child into emergency protective custody based on the law enforcement officer's determination of probable cause, a family court judge may order a child into emergency protective custody. S.C. Code Ann. § 63-7-620(A)(1), § 63-7-740(A).

The Department may not take a child into emergency protective custody. The Department may request that law enforcement do so or may petition a family

court judge ex parte for an order that law enforcement take a child into emergency protective custody. S.C. Ann. § 63-7-740(A).

A child may remain in emergency protective custody for twenty-fours hours and that time may be extended another twenty-four hours for situations set forth in the statute. S.C. Code Ann. § 63-7-640 (West Supp. 2008).

It is important to note that, at the time a child taken into emergency protective custody and delivered to the Department, the Department has physical custody of the child. The parents, however, retain legal custody of the child. The Department has twenty-four hours from the time a child is taken into custody to identify someone suitable and willing to provide placement for the child. If the parents and a relative or a non-relative willing to provide placement agree, the Department may delay taking legal custody for up to five days to facilitate the agreed-upon placement. In that situation, a probable cause hearing does not need to be held unless the placement does not occur or the parent requests a probable cause hearing. S.C. Code Ann. § 63-7-690(2).
Should no person suitable for placement be found, the Department must assume legal custody of the child.

Probable Cause Hearing
(May Also Be Referred to as Emergency Protective Custody Hearing)

The family court must schedule a probable cause hearing within seventy-two hours of the time a child was taken into emergency protective custody. If there is no term of family court at the time the probable cause hearing must be

held, the hearing must be held in another county in the circuit or in another court in an adjoining circuit. In the discretion of the judge, the probable cause hearing may be conducted by video conference.

At the hearing, the respondents (normally parents or guardians from whom a child was taken) may submit affidavits and cross-examine the Department's witnesses. S.C. Code Ann. § 63-7-710 (M) (West Supp. 2008).

Table One below sets forth the requirements of S.C. Code Ann. § 63-7-710 for the judge's determinations following a probable cause hearing.

Table Two below sets forth the requirements of S.C. Code Ann. § 63-78-720(A) for the contents of the court order following a probable cause hearing.

Table One. Required Determinations Following Probable Cause Hearing.

1. Whether there was probable cause (good reason based on the facts and circumstances) to place the child into emergency protective custody.
2. Whether there was probable cause for the Department to assume legal custody of the child.
3. Whether there is probable cause for the Department to retain legal custody at the time of the hearing.

Table Two. Contents of Court Order Following Probable Cause Hearing.

1. A finding whether the Department made reasonable efforts to prevent removal of the child and a finding of whether continuation of the child in the home would be contrary to the welfare of the child.
2. States the services available to the family before the Department assumed legal custody of the child.
3. States why the efforts to provide services did not eliminate the need for the Department to assume legal custody.
4. States whether a meeting was convened among the parents, guardians,

extended family, and other relevant persons to discuss the family's problems.
5. States what efforts were made to place the child with a relative known to the child or in another familiar environment.
6. States whether services were reasonably available and timely to address the needs of the family.

In addition to making the determinations set forth above, the presiding judge at the probable cause hearing:

1. must appoint an attorney and a guardian for the child and an attorney for the parents should the parents be indigent. S.C. Code Ann. §63-7-1620 (West Supp. 2008);

2. may hold open the probable cause hearing record for twenty-four hours to receive the reports and other information and may order expedited placement in the home of a relative at a probable cause hearing. S.C. Code Ann. § 63-7-730 (West Supp. 2008); and

3. must schedule the merits hearing. S.C. Code Ann. § 63-7-710(E).

Merits Hearing
(Also Called a Removal Hearing)

If the case is not dismissed at the probable cause hearing or if the Department has petitioned for non-emergency removal, a merits hearing must be scheduled within thirty-five days from the date the removal complaint was filed with the court (the Department must file the removal complaint on or before the next working day after initiating a child protective investigation).

A merits hearing is a formal hearing at which evidence is admitted and at which witnesses testify. In the thirty-five days between the probable cause and merits hearings, law enforcement, the Department, and the guardian further investigate the facts and circumstances surrounding the removal.

Table Three below sets forth the findings required by South Carolina Code Ann. § 63-7-1660(E) in order for the court to order removal from the custody of the parent or guardian. The court's findings must be supported by a preponderance of evidence.

Table Four sets forth the findings required by South Carolina Code § 63-7-1660(G) concerning the Department's reasonable efforts to prevent removal of the child.

Table Three: Required Findings for Removal by Preponderance of the Evidence.

1. The child is an abused or neglected child as defined in S.C. Code Ann. §63-7-20.
2. Retention of the child in the home or return of the child to the home would place the child at unreasonable risk of harm affecting the child's life, physical health or safety or mental well-being.
3. The child cannot reasonably be protected for the harm without being removed.

Table Four. Required Findings on the Department's Reasonable Efforts.

1. Services offered to the family before removal and how those services related to the family's needs.
2. The Department's efforts to provide services to the family before the Department removed the child from the home.
3. The reason the Department's efforts to provide the services to the family did not prevent the child's removal from home.
4. Whether the efforts to eliminate the need for removal were reasonable, that is: were those efforts available and timely; reasonably adequate to address the needs of the family; reasonably adequate to protect the child; and realistic under the circumstances.

If the court orders removal at the merits hearing, the court must approve a placement plan. The placement plan may be submitted by the Department at the merits hearing or within ten days after the merits hearing. A separate hearing may be held for review and approval of the placement plan. S.C. Code Ann. § 63-7-1680(A) (West Supp. 2008).

S.C. Code Ann. § 63-7-1680(B) sets forth the requirements for placement plans which must be written and must include:

1. specific reason(s) for removal;

2. other conditions of the home that warrant state intervention but would not alone merit removal and the changes that must be made in order to terminate intervention;

3. services to be provided or made available to the parent or guardian to assist the parent or guardian in accomplishing the objectives;

4. financial responsibilities and obligations of the parent or guardian for support;

5. visitation rights during placement;

6. nature and location of child's placement unless it is determined that disclosure would be contrary to the best interest of the child;

7. social and supporting services for the child and foster parents;

8. if parent or guardian was not involved in the development of the plan, the nature of the agency's efforts to secure parental participation;

9. notice to the parent or guardian that failure to substantially accomplish the objectives stated in the plan within the time frames provided may result in termination of parental rights.

Table Five sets forth the required findings of South Carolina Code § 63-7-1680(D) when the court approves a placement plan.

Table Five. Required Findings on Placement Plan.

1. The plan is consistent with the court's order placing the child in the custody of the Department.
2. The plan is consistent with the requirements for the content of a placement plan.
3. If the parent or guardian did not participate in the development of the plan, that the Department made reasonable efforts to secure their participation.
4. The plan is meaningful and designed to address facts and circumstances upon which the court based the removal.

Central Registry of Child Abuse and Neglect

In addition to determining the issues related to removing a child from his or her home, a family court must make other determinations if the court makes a finding of physical or sexual abuse or willful or reckless neglect. If the court makes such a finding, the court must order that the name of the person who is found to have physically or sexually abused a child or who willfully or recklessly neglected a child be placed in the Department's Central Registry of Child Abuse and Neglect.

Entry of the perpetrator's name in the registry cannot be waived by any party or by the court. In cases involving excessive corporal punishment, the court may order that the perpetrator's name be placed in the central registry only if circumstances indicate that the perpetrator would present a significant risk if in a position of caring for children outside the home. (As an example, the perpetrator has an employment history of working at daycare facilities.) S.C. Code Ann. § 63-7-1940(A) (West Supp. 2008).

The court may order a person's name entered in the Central Registry if the court finds that the person has abused or neglected a child in any manner, including corporal punishment, and finds that the nature and circumstances of the abuse indicate the person would present a significant risk of committing physical or sexual abuse or willful or reckless conduct if the person were in a position or setting outside the person's home that involves care of or substantial contact with children. S.C. Code Ann. 63-7-1940(2).

Judicial Review Hearing

If the court determines at the merits hearing that a child shall be returned to or remain in the home, with the Department providing continued protective services, the Department must submit to the court a treatment plan which the court must review and approve. A treatment plan submitted to the court at the removal hearing must be reviewed by the judge who may either approve the plan or order the plan amended. S.C. Code Ann. § 63-7-1670(A) (West Supp. 2008).

If the judge orders the plan amended, the Department must submit a revised plan to the court within two weeks of the hearing at which the judge ordered the plan amended. The Department must provide copies of the amended plan to the parties, the parties' lawyers, and the guardian. Any dispute regarding the amended plan must be resolved by the court. S.C. Code Ann. § 63-7-1670(B).

The terms of the plan must be included in the court's order. The court order shall specify a date when treatment goals must be achieved and when the court jurisdiction ends. Should the court find that the case must be brought back for further review before the case may be closed, the court must specify a time for holding the next hearing. S.C. Code Ann. § 63-7-1670(B).

Unless the services are to terminate earlier, the Department shall schedule a review hearing before the court at least every twelve months. The purpose of the review hearing is to establish whether the conditions which required intervention exist. If the court finds at a review hearing that the

conditions no longer exist, the court shall order termination of protective services and the court's jurisdiction shall end. If the court finds that the conditions are still present, the court shall establish:

1. What services have been offered to or provided to the parents.

2. Whether the parents are satisfied with the delivery of services.

3. Whether the Department is satisfied with the cooperation given the Department by the parents.

4. Whether additional services should be ordered and additional treatment goals established.

5. The date when treatment goals must be achieved and court jurisdiction ends.

S.C. Code Ann. § 63-7-1670.

A guardian must understand that he or she may request a judicial review hearing if the guardian believes a child is not receiving necessary services. In that regard, a guardian must consider whether an approved plan continues to meet a child's needs or if some additional services are necessary for the child. A guardian should not hesitate to request a judicial review when the guardian believes it is in the child's best interests to do so.

Unless the case is closed as set forth above, the court shall specify a date upon which jurisdiction will terminate. That date must not be more than eighteen months from the initial date of intervention. However, if the court finds, upon motion of a party, that there is clear and convincing evidence that the child will be threatened with harm if services do not continue, the court may order that the

case remain open past the statutory eighteen month limit. S.C. Code Ann. § 63-7-1670.

Initial Permanency Planning Hearing

Permanency planning involves a number of issues and considerations. Appendix 8 of this Resource Manual contains the basics of permanency planning, and guardians should consult Appendix 8 as they perform their duties following a removal hearing resulting in a child remaining in foster care.

When a child is removed from the home through emergency protective custody procedures or non-emergency removal proceedings and the child remains out of the home beyond the merits hearing, a permanency planning hearing must be held no later than twelve months from the date the child entered foster care. S.C. Code Ann. § 63-7-1640(A) (West Supp. 2007).

The Department initiates a permanency planning hearing by filing and serving a notice and motion for permanency planning. The motion should be supported by a supplemental report prepared by the Department. The supplemental report describes the services offered to the parents, discusses the parent's response to services offered, and explains the steps the Department is taking toward implementation of a permanency plan for the child. The hearing notice, notice of motion, motion, and supplemental report must be served on all parties at least ten days before the permanency planning hearing. S.C. Code Ann. § 63-7-1700(B).

A named party, a child's guardian, or a local foster care review board may file a motion for review of the case at any time. S.C. Code Ann. § 63-7-1700(L).

At the permanency planning hearing, the judge must order one of the following:

1. Return home: if the court determines there would not be unreasonable risk of harm to the child's life, physical health or safety, or mental well-being, the child must be returned home. In determining whether unreasonable risk exists, the court shall consider all evidence including whether the parent substantially complied with the placement plan. Following the child's return home, the Department's supervision and services may be ordered for a specified time up to one year.

2. Extension of time for reunification: if the child is likely to be returned home and if additional services are provided to the parents, the court can extend the placement plan or order compliance with a modified plan. The plan can be extended for a reasonable time not to exceed eighteen months after the child came into foster care. The court must find, at the time of the hearing, that termination of parental rights is not in the best interests of the child and that the best interest of the child will be served by extending the plan.

3. Relative or non-relative custody/guardianship: if the Department, after assessing the viability of adoption, demonstrates that termination of parental rights is not in the child's best interests and the court finds that the best interest of the child would be served, the court may award legal guardianship or custody or both to a suitable, fit and willing relative or non-relative. A home study must be conducted prior to the award of custody or legal guardianship or both. The court

may order a period of visitation or trial placement prior to receiving the home study and may order supervision and services for up to one year.

4. Termination of parental rights (TPR): if the child cannot be returned to the parent or guardian, the court must order the Department to file a TPR complaint within sixty days of the Department's receipt of the order. The Department shall exercise every reasonable effort to promote and expedite adoptive placement and adoption, including a thorough adoption assessment and child-specific recruitment for all children including those with "special needs". An adoption may not be delayed or denied just because a child has special needs.

5. "Another planned permanency living arrangement" (APPLA): APPLA is a case designation for children in out-of-home placement for whom there is no goal for placement with a legal, permanent family. APPLA allows a child to remain with a specific foster care family or group home setting based on the child's specific needs. Such a plan may only be approved when there are compelling reasons not to establish another plan.

S.C. Code Ann. § 63-7-1700 (West Supp. 2008).

NOTE: federal regulations recognize only three options for permanent plans: reunification with parents; adoption; and legal guardianship. Those regulations may impact the Department's permanency plan for a child.

Table Six sets forth the requirements of South Carolina Code §63-7-1700(I) for the court's order when the court does not return a child to the parent or guardian.

Table Six. Contents of Court Order Following Initial Permanency Planning Hearing When Child Not Returned Home.

1. What services have been provided to or offered to the parent to facilitate reunification.
2. Whether all parties complied or did not comply with the approved plan.
3. Reason why visitation or support has not occurred or has been infrequent.
4. Whether previous services should continue and whether additional services are needed, including identifying the services and specifying the expected date for completion not to exceed eighteen months.
5. Whether return of the child can be expected and identification of changes parent must make to remedy the causes of the child's placement or retention in foster care.
6. Whether the child's foster care is to continue for a specified time and if so how long.
7. If the child has attained age sixteen, the services needed to assist the child to make a transition to independent living.
8. Whether the child's current placement is safe and appropriate.
9. Whether the Department has made reasonable efforts to assist the parents in remedying the causes of the child's placement or retention in foster care.
10. Steps the Department is taking to promote or expedite the adoptive placement and to finalize adoption of the child.

Follow-Up Permanency Planning Hearings

Following the initial permanency planning hearing, follow-up permanency planning hearings are required if the child is remains in foster care.

If the Department is required to initiate termination of parental rights proceedings, the TPR hearing may serve as the next permanency planning hearing so long as it is held no later than one year from the date of the previous permanency planning hearing. S.C. Code Ann. § 63-7-1700(I)(1) (West Supp. 2007).

If, at the initial permanency planning hearing, the court ordered extended foster care for the purpose of reunification with the parent, the court must select a permanent plan for the child other than another extension at the next permanency planning hearing. The hearing must be held on or before the date specified in the plan for expected completion of the plan. In no case may the hearing be held any later than six months from the date of the last order. S.C. Ann. §63-7-1700(I)(2).

Intervention Hearing

The Department has authority to intervene in the home and to provide protective services in circumstances that do not require the Department to remove a child from the home. South Carolina Code Ann. §63-7-1650 (West Supp. 2008) sets forth the authority and procedures for filing for an intervention hearing.

In order to begin intervention proceedings, the Department must file a summons and petition and must serve all respondents. The petition must include:

1. full description of the basis for the Department's belief that a child cannot be protected adequately without the Department's intervention;
2. description of the condition of the child;
3. statement of any previous efforts by the Department to work with the parent or guardian;
4. statement of treatment programs which have been offered and proven inadequate;
5. statement of the parent's attitude or of the guardian towards intervention and protective services.

The family court must schedule a hearing within thirty-five days of the receipt of the petition. The Department must notify respondents concerning their right to counsel and of the hearing date and time. Personal jurisdiction is obtained if the respondents (parent or guardian) are served seventy-two hours

before the hearing. Responsive pleadings are not required, and a party may waive service or appear voluntarily.

In order to grant the Department's petition, the court must find, by a preponderance of the evidence, that: the child is abused or neglected as defined in S.C. Code Ann. § 63-7-20 (West Supp. 2008); and the child cannot be protected from further harm without intervention.

The Department will present a treatment plan to the court, and the court will include the provisions of the treatment plan in the court order.

Table Seven sets forth the requirements of South Carolina Code Ann. § 63-7-1670(B) (West Supp. 2008) for the contents of a treatment plan.

Table Seven. Contents of Treatment Plan.

1. Changes in parental behavior or home conditions that must be made.
2. Services that will be provided to the family.
3. Must be developed with the participation of the parent, child, and other agencies or individuals that will provide services.

If the court orders any changes to the plan, the Department must submit a revised plan to the court within two weeks of the hearing with copies to the parties and counsel. The court must set a specific date when treatment goals must be completed. S.C. Code Ann. § 63-7-1670(B).

Unless services are scheduled to be terminated within twelve months, the Department must schedule a review hearing.

The court must set a specific date when court jurisdiction will end. That date shall not exceed eighteen months after the initial intervention absent clear

and convincing evidence that the child is threatened with harm unless services continue. S.C. Code Ann. § 63-7-762(C).

Termination of Parental Rights (TPR)

South Carolina law establishes procedures for the reasonable and compassionate termination of parental rights in cases involving children who are abused, neglected, or abandoned. TPR proceedings are conducted in order to protect the health and welfare of these children and to make them eligible for adoption. Adoption by a suitable caregiver is one method by which a child in foster care may achieve permanence.

Except in the case of stepparent adoption, a child may be adopted only when both natural parents have no parental rights with respect to the child. A parent's rights may be terminated in the following ways: death of a parent; a parent's voluntary relinquishment of parental rights and consent to adoption; a court order for TPR following a TPR proceeding in family court; or a combination of the foregoing (for example, natural father has died and the court has terminated the natural mother's parental rights).

Except for the right of inheritance, TPR forever severs the rights, privileges, duties, and obligations that exist between a child and a natural parent. A right of inheritance is terminated only by a final order of adoption.

Because TPR has permanent effects, it is perhaps the most serious decision a family court judge makes. A judge must liberally construe statutes governing TPR in the interest of freeing children from the custody and control of their parents. When there is a conflict between the interests of a child and the interests of a parent, the interests of the child shall prevail.

Representation by Counsel and Appointment of a Guardian

A parent who is named as a defendant in a TPR action is entitled to be represented by counsel. If a parent is not able to afford counsel, the family court must appoint counsel to represent the parent, unless the parent is in default. In addition, pursuant to SCRCP 17, a court must appoint a guardian for a parent if the parent suffers from a disability such as mental illness or retardation, or if the parent is incarcerated outside the state of South Carolina.

The court must also appoint a guardian for the child in a TPR proceeding. In the court's discretion, the guardian for the child in an underlying abuse and neglect action may be appointed to serve as guardian for the child in the TPR proceeding. If the child's guardian is not an attorney and guardian believes that appointment of counsel is necessary to protect the rights and interests of the child, an attorney must be appointed to represent the guardian.

In all contested TPR proceedings, the court must appoint a lawyer to represent a guardian who is not a lawyer. If the guardian is a lawyer, the court determines on a case-by-case basis whether representation by counsel is necessary.

Responsibilities and Duties of a Guardian in a Termination of Parental Rights (TPR) Case

The statute requiring appointment of a guardian in a termination of parental rights case, S.C. Code Ann. § 63-7-2560 (West Supp. 2008), does not set forth specific statutory duties for a guardian. There is no prohibition against a guardian appointed in a termination of parental rights case meeting the responsibilities and duties set forth in S.C. Code Ann. § 63-11-530

(West Supp. 2008). In fact, absent other statutory or case law guidance, a guardian in a termination of parental rights case should strive to meet the requirements of that Code section.

Jurisdiction

TPR is within the exclusive jurisdiction of the family court. The Department, any interested party, or a guardian may file a complaint for TPR. If the Department has a permanency plan for reunification, the Department does not have to obtain the family court's approval to change that permanent plan before filing a complaint for TPR. The Department also does not have to obtain the court's approval to amend a child's placement plan before filing a petition for TPR. In its discretion, the Department may file a complaint for TPR anytime there are statutory grounds AND TPR is in the best interests of the child.

In some instances, the Department is required to file a complaint for TPR or must join in a petition for TPR.

The Department is required to petition the family court for TPR or must join in a petition to TPR when:

1. a child has been in foster care for 15 of the most recent 22 months;
2. an infant has been abandoned;
3. a parent has committed murder or voluntary manslaughter of another child of the parent; or
4. a parent has committed felony assault that results in serious bodily injury to the child.

The Department need not initiate a termination proceeding if the family court has determined that TPR is not in the child's best interests. In addition, the Department is not required to petition for TPR if the Department has not offered services to the parents in a manner that is consistent with timely completion of the placement plan, or if court hearings have been delayed in such a manner as to interfere with the timely completion of the placement plan.

Procedures for TPR

A TPR case is a separate case from an abuse and neglect case and a summons and complaint for TPR must be filed in the family court. All parties, including the child, must be served with the summons, complaint, notice of the right to counsel, and notice to appoint a guardian.

The complaint to terminate parental rights must contain the following: basis for the court's jurisdiction; the child's name, sex, date, and place of birth; the plaintiff's name, address, and relationship to the child; the parents' names, dates of birth, and addresses, if known; the name and address of the child's legal guardian — or the person or agency having custody of the child; and the grounds supporting TPR, as well as the underlying factual circumstances.

Standard of Proof

Eleven grounds for TPR are found in S.C. Code Ann. § 63-7-2570 (West Supp. 2008). In *Santosky v. Kramer,* 455 U.S. 745 (1982), the United States Supreme Court held that due process requires clear and convincing evidence to terminate parental rights. In order for a South Carolina family court to order termination of parental rights, the court must find clear and convincing evidence that **termination is in the best interests of the child** AND clear and convincing evidence of **at least one of the eleven grounds**.

Note: If the child belongs to a federally recognized tribe the requirements of the Indian Child Welfare Act (ICWA) apply. Under the ICWA termination of parental rights must be supported by evidence beyond a reasonable doubt and must include an expert's opinion. See 25 USC § 1901 et. seq. and 25 C.F.R. Part 23.

Best Interest of the Child in TPR Proceedings

The best interest of the child in a TPR case must be determined by considering the facts and circumstances in each case.

South Carolina cases addressing best interests of the child in the context of TPR cases hold that best interest of the child may be determined based upon such factors as: the length of time a child has lived with prospective adoptive parents; the stability of the child's current placement; the bond between the children in a sibling group; and the importance of maintaining a sibling group in the same placement. See *South Carolina Dept. of Soc. Servs. v. Richardson,* 378 S.E.2d 601 (S.C. Ct. App. 1989); *Hooper v. Rockwell,* 513 S.E.2d 358 (S.C. 1999); and *McCutcheon v. Charleston County Dept. of Soc. Servs.,* 396 S.E.2d 115 (S.C. Ct. App. 1990).

Determination of best interest of the child also involves an analysis of the bond between the child and his or her natural parents or siblings, the bond between the child and prospective adoptive parents, and the child's progress while in the Department's care. See *Charleston County Dept. of Soc. Servs. v. King,* 631 S.E.2d 239 (S.C. 2006).

A court may also consider whether the child is placed with an adoptive resource, as well as the Department's efforts to engage a parent in rehabilitative efforts or the Department's response to a parent's efforts to be involved with the child. See *Charleston County Dept. of Soc. Servs. v. Jackson,* 627 S.E.2d 765 (S.C. Ct. App. 2006).

Table Eight sets forth the factors the court may consider in determining whether TPR is in the child's best interest.

Table Eight. Best Interest Factors for TPR Determination.

1. The opinion of experts, including psychologists and therapists.
2. The opinion of the child's caseworker.
3. The opinion of the child's guardian.
4. Whether witnesses have interviewed the child's parents and, if appropriate, the child.
5. The bond that exists between siblings.
6. The availability of an adoptive resource.
7. The child's view of the natural parent.
8. The natural parent's participation in rehabilitation efforts.
9. Risk of harm to the child if the child is returned to the natural parent.
10. Permanence of child's current placement.
11. The child's relations with extended relatives.
12. Whether the child has special needs, ethnic or cultural considerations.
13. The child's wishes.
14. Services offered to a parent who was not involved in the initial removal.
15. Grounds for TPR.
16. The parent's efforts to eliminate risks of harm.
17. The parent's efforts to establish and maintain a relationship with the child.
18. The length of time the child has been in foster care.

Confidentiality

All TPR records are confidential. Court records must be sealed and may be opened only by order of the court, upon a showing of good cause.

Grounds for TPR

South Carolina Code Ann. § 63-7-2570 (West Supp. 2008) lists the grounds for TPR. There are a number of South Carolina appellate court cases addressing TPR and the grounds for TPR. Summaries of the significant cases are set forth in this Resource Manual's appendix of cases.

Grounds for TPR include:

1. The child or another child in the home has been harmed as defined in S.C. Code Ann. § 63-7-20 (West Supp. 2008), and because of the severity or repetition of the abuse or neglect, it is not reasonably likely that the home can be made safe within 12 months. In determining the likelihood that the home can be made safe, the parent's previous abuse or neglect of the child or another child in the home may be considered.

2. The child has been removed from the parent pursuant to S.C. Code Ann. §63-7-1610 (West Supp. 2008) and has been out of the home for a period of six months following the adoption of a placement plan by court order or by agreement between the department and the parent, and the parent has not remedied the conditions which caused the removal of the child from the home.

3. The child has lived outside the home of the parent for a period of six months, and, during that time, the parent has willfully failed to visit the child. The court may attach little or no weight to incidental visitations, but it must be shown that the parent was not prevented from visiting by the party having custody or by

court order. The distance of the child's placement from the child's home must be considered when determining the ability to visit.

4. The child has lived outside the home of either parent for a period of six months, and, during that time, the parent has willfully failed to support the child. Failure to support means that the parent has failed to make a material contribution to the child's care. A material contribution consists of either financial contributions according to the parent's means or contributions of food, clothing, shelter, or other necessities for the care of the child consistent with the parent's means. The court may consider all relevant circumstances in determining whether or not a parent has willfully failed to support a child, including requests for support by a parent with custody of the child and the ability of a parent to provide support.

5. The presumptive legal father is not the biological father of the child, and the welfare of the child can best be served by termination of presumptive legal father's parental rights.

6. The parent has a diagnosable condition unlikely to change within a reasonable period of time. Diagnosable conditions include, but are not limited to: alcohol or drug addiction; mental deficiency; mental illness; or extreme physical incapacity when the incapacity makes the parent unlikely to provide minimally acceptable care for the child. If substance abuse is the basis for pleading this ground, it is presumed that the parent's condition is unlikely to change within a reasonable time upon proof: that the parent has been required by the Department or the family court to participate in a treatment program for alcohol or

drug addiction; and the parent has failed two or more times to complete the program successfully or has refused at two or more separate meetings with the department to participate in a treatment program.

7. The child has been abandoned as defined in S.C. Code Ann. § 63-7-20(1).

8. The child has been in foster care under the responsibility of the state for 15 of the most recent 22 months.

9. The physical abuse of a child resulted in the death or admission to the hospital for inpatient care of that child and the abuse is the act for which the child's parent has been convicted of, or pled guilty or nolo contendere to: committing, aiding, abetting, conspiring to commit, or soliciting an offense against the person as provided for in Title 16, Chapter 3; criminal domestic violence as defined in S.C. Code Ann. § 16-25-20 (West 2003); criminal domestic violence of a high and aggravated nature as defined in S.C. Code Ann. § 16-25-65 (West 2003); or common law assault and battery of a high and aggravated nature.

10. A parent of the child pleads guilty or nolo contendere to or is convicted of the murder of the child's other parent.

11. Conception of a child as a result of the criminal sexual conduct of a biological parent, as found by a court of competent jurisdiction, is grounds for terminating the rights of that biological parent, unless the sentencing court makes specific findings on the record that the conviction resulted from consensual sexual conduct where neither the victim nor the actor were younger than fourteen years of age nor older than eighteen years of age at the time of the offense.

Court grants TPR

If the court finds that at least one of the grounds for TPR exists AND finds that it is in the best interest of the child, the court has discretion to issue an order forever terminating the rights, obligations, and responsibilities between the parent and child.

The effect of an order terminating parental rights is that the child is legally free for adoption, provided that the termination decision is not appealed. The Department is required to file a plan for permanency within thirty days of the court ordering TPR. Within an additional sixty days, the Department must submit a report on the implementation of the permanency plan. The court, on its own motion, may schedule a hearing to review the progress of the implementation of the plan.

Note: Termination of parental rights is perhaps the most common method by which a foster child is made legally free for adoption. However, a child is also legally free for adoption when a parent dies or if both parents execute a voluntary relinquishment for the purpose of adoption pursuant to S.C. Code Ann. §§ 63-7-310(B)(1) and 63-9-30(8) (West Supp. 2008).

While a parent's rights must be terminated before a court may order adoption, it is not necessary to file a separate TPR action to terminate the parental rights of a parent who has voluntarily relinquished custody for the purpose of adoption. The court's order of adoption may include a provision terminating a parent's rights.

TPR Granted: Effect on Permanency Planning

If the parent rights of a child's parent are terminated, the child is placed with the entity petitioning for TPR if the entity is an authorized agency or is placed with another child-placing entity and the placement is for adoption. The court shall require submission of a permanent placement plan within thirty days of the close of the TPR proceedings. Within an additional sixty days, the agency must submit a report for implementation of the plan to the court, and the court may on its own motion schedule a hearing to review progress of the implementation of the plan. S.C. Code Ann. § 63-7-1574(A) (West Supp. 2008).

Permanency planning hearings must be held annually starting with the date of the TPR hearing. No further permanency planning hearings are required after filing a decree of adoption of the child. S.C. Code Ann. § 63-7-1700(I)(3)(West Supp. 2008).

TPR Denied: Effect on Permanency Planning

If the court denies TPR, the order must specify a new permanent plan for the child or order a hearing on a new permanent plan. This hearing must be held within fifteen days of the date of the order denying TPR and must be held before the judge who denied TPR if reasonably possible. S.C. Code Ann. §§ 63-7-1574(B) and (D).

The court may return custody of the child to the parent, but only if the parent has counterclaimed for custody and the court finds that returning custody would not place the child at risk of harm. The court may also require the

Department to provide protective services for a period not to exceed twelve months after the child is returned.

If the court grants custody or guardianship to a parent, relative, or suitable non-relative and orders a period of supervision, the services and supervision automatically terminate on the date specified in the court order.

During the period of supervision, the Department or the guardian may file a motion for a review hearing. A motion for review hearing stays the termination of the case. If the court finds by clear and convincing evidence that a child will be threatened with harm if services or supervision do not continue, the court may order an extended period of services and supervision for a specified time. The court's order must specify the services and supervision necessary to reduce or eliminate the risk of harm to the child. S.C. Code Ann. §63-7-1700(I)(4).

Guidelines for Guardians in Abuse and Neglect and TPR Cases

Both the South Carolina Bar's *Guidelines for Guardians ad Litem for Children in Family Court* and the American Bar Association's *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* provide detailed guidelines for guardians (both are reproduced as appendices in this Resource Manual). Guardians appointed in abuse and neglect and termination of parental rights cases should consult and be guided by each publication.

Tasks for the Guardian

With respect to conducting an investigation on the child's behalf, the guardian must complete a number of tasks, several of which are described below.

Pleadings, Notices, and Orders

The guardian must obtain all pleadings, notices, and orders. Most of those documents may be obtained from the court file but counsel for the Department and for the respondent(s) may also provide those documents to the guardian.

Records, Reports and other Information

The guardian must review the Department's file to obtain any records, reports, and other information that the file may contain. Following a review of the Department's file, the guardian must assess the case to determine if the guardian needs to review additional records, reports, or information. Such records may include records of prior Department contact with a child's siblings, medical records, psychiatric records, school records (including report cards, disciplinary records, Individual Education Programs, behavior intervention plans, and accommodation plans), and law enforcement records (including incident reports).

In order to expedite obtaining necessary records and reports, a guardian should have a court order allowing access to such records and reports (normally authority is granted by the court in the order appointing a guardian) and should obtain proper releases from the child's parent or guardian.

Interviews

Unless it is not in a child's best interest or is not developmentally appropriate based on the child's age or developmental level, a guardian must interview the child. A guardian must observe a child, even if the child is an infant. This Resource Manual has an appendix on interviewing and child development which provides information on interviewing children.

The guardian should interview the child's parent, guardian and caretakers unless doing so is not in the best interest of the child. With respect to interviewing a child's parent or guardian, a guardian must understand that a child's parent or guardian may be represented by a lawyer. A guardian should contact the lawyer and request permission to interview the lawyer's client.

The guardian should also interview the foster parents or other people with whom the child has been placed. The guardian should also interview extended family members, teachers, coaches, scout leaders and other people who routinely have contact with the child.

Report

South Carolina Code § 63-11-510(5)(West Supp. 2008)

sets forth the requirement for the guardian's written report:

> Provide the family court with a written report, consistent with the rules of evidence and the rules of court, which includes without limitation evaluation and assessment of the issues brought before the court and recommendations for the case plan, the wishes of the child, if appropriate, and subsequent disposition of the case.

There are a variety of formats for a guardian's written report and this Resource Manual provides a report format in the forms appendix. Part Three of

this manual addresses the responsibilities of a guardian in a private custody or visitation case and Part Three also has a section on guardian reports.

While the responsibilities of a guardian appointed in an abuse and neglect case or a TPR case differ from those of a guardian in a private case, the guardian report section of Part Three contains useful general guidance on the contents of a guardian’s report.

Decisions to Consider

Child's Participation in the Family Court Process

South Carolina Family Court Rule 23 provides:

(a) Presence in Courtroom. Generally, in actions of parents against each other, or where the conduct of either parent is an issue, the children should not be allowed in the courtroom during the taking of testimony.
(b) Testimony. Children should not be offered as witnesses as to the misconduct of either parent, except in the discretion of the court, it is essential to establish the facts alleged.

S.C. Code Ann. § 19-1-180 (West Supp. 2007) provides for the admission of the out of court statements of children who are under twelve or who function under the age of twelve. The statute has a number of requirements which must be met in order for the out of court statements to be admitted, and those requirements have been addressed by South Carolina appellate courts.

In an abuse and neglect or a TPR case, the initial decision as to whether the child testifies or whether §19-1-180 will be invoked will be made by the Department's lawyer responsible for trying the case. A guardian should consult with the Department's lawyer to make sure the best interest of the child is protected. Moreover, the guardian, advocating the child's best interest, may consider an approach which differs from that of the Department's lawyer with respect to the child's participation in the process.

Should a guardian believe a child should participate in the proceedings, the guardian should ensure the child is properly prepared for court. Such preparation should include an orientation to the court room and to people who

may be present in court. The guardian should also explain to the child the probable sequence of events during the hearing.

Services and Resources for the Child

The Department will routinely have access to a variety of services and resources for the child. A guardian must ensure the services and resources offered to the child are consistent with the child's best interests. A guardian should be ready to identify additional services and resources for the child and should be ready to ensure those services and resources are available to meet all the child's needs.

Guardians should consider services and resources in the following areas: paternity determination; delinquency or status offense matters; family preservation services; family reunification services; domestic violence prevention and treatment; medical, dental and mental health treatment; drug and alcohol abuse prevention and treatment; parenting classes; independent living planning and resource; social services; education, including special education and related services; SSI and other governmental benefits and services; and therapeutic services including residential or outpatient treatment.

A guardian must also assess and plan for potential outcomes for the child including: visitation; child support; and permanency planning outcomes including long-term foster care, TPR, adoption, and independent living.

This Resource Manual has appendices listing resources available in South Carolina.

A guardian should use the appendices of this Resource Manual as a start in collecting information and using resources available to assist the guardian. A guardian should continuously update and supplement the appendices as the guardian identifies additional resources and services.

Reduce Delays in Case Processing

While permanency planning for children has a number of statutorily mandated timelines for case processing, there is inevitable delay. Delay may be caused by lack of court time, scheduling problems among the parties, lawyers and, and lack of expeditious access to necessary services.

A guardian must be mindful of the statutorily mandated timelines and must make every effort consistent with the child's best interest to move the case forward. It is generally in the child's best interest to be expeditiously reunified with the child's family or to be permanently placed in a safe and protective home.

The guardian must be prepared, competent, diligent, and attentive to the times within which proceedings must occur. Moreover, a guardian must be prepared to file motions for appropriate relief in the event the proceedings become bogged down or in the event essential services for the child are not expeditiously provided. Guardians should also be ready to oppose unnecessary continuances and delays in the proceedings.

Payment for Services

A guardian who is an attorney and who seeks reimbursement for services and costs may apply to the Commission on Indigent Defense. The Commission's procedures for reimbursement are an appendix to this Resource Manual.

GUARDIANS IN PRIVATE CUSTODY AND VISITATION CASES

Appointment of a Guardian in a Private Case

The Overview section of this Resource Manual briefly addresses the differences between the duties and responsibilities a guardian in a private case and in an appointed case. This section addresses the duties and responsibilities of a guardian in a private case.

A family court judge may appoint a guardian in a private custody or visitation action when the judge determines that:

1. without a guardian, the court will likely not be fully informed about the facts of the case; and,

2. there is a substantial dispute which necessitates appointment of a guardian.

S.C. Code Ann.§ (West Supp. 2008).

In addition to the authority of a family court judge to appoint a guardian based on the determinations set forth above, a judge may appoint a guardian when both parties consent and the guardian is approved by the court. S.C. Code Ann. § 63-3-810(A)(2).

A family court judge has absolute discretion in determining who will be appointed as a guardian, and a guardian must be appointed by court order. S.C. Code Ann. § 63-3-810(B). A guardian may be removed from an action in the discretion of the court. S.C. Code Ann. § 63-3-870.

Often in family court cases, one or both sides will seek the appointment of a guardian in the initial pleadings when issues of custody and visitation will be part of the litigation. In many cases, the only thing the parties may agree on before a temporary hearing is the appointment of a guardian and the decision of who should be the guardian.

If a guardian is not sought in the pleadings but the court believes that a guardian is necessary, the court may ask the parties through their attorneys to agree on a guardian. If the parties are unable to agree on a guardian, the court will appoint one. In some counties, the court's appointment may be made from a list that is maintained in the clerk's office. In other counties, the court may make a selection based on the nature of the case and the judge's knowledge of the guardians that work in that circuit.

Many times the order appointing a guardian will not set forth all the provisions concerning the guardian's rights and responsibilities as the statute requires. These provisions include the scope of the guardian's duties, compensation (including hourly rate for fees), initial amounts to be paid to the guardian by the parties, and compensation cap. When an appointing order does not address those aspects of appointment, either one of the attorneys or the guardian should prepare a supplementary order which provides for those matters. Once prepared, the order may be signed by the guardian and lawyers representing the parties, and submitted to the court as a consent order (the forms appendix of this Resource Manual contains a sample order).

The appointment of the guardian lasts until the case concludes, and the court issues a final order from which there has been no request for reconsideration or appeal. Prior to the court's issuing a final order, either party or the guardian may file a motion to have the guardian dismissed or relieved. Only the court has authority to dismiss a guardian. However, if the parties and the guardian agree, a consent order may be submitted to the court, signed by the judge, and filed. Such a consent order ends the guardian's involvement in a case.

Qualifications of Guardians in Private Actions

Either an attorney or a non-attorney (lay guardian) may be appointed as a guardian in a private custody or visitation action but the appointee must have the following qualifications:

1. must be twenty-five years of age or older;

2. must possess a high school diploma or its equivalent;

3. if an attorney guardian, must complete annually a minimum of six hours of family law continuing education credit in the areas of custody and visitation; and this requirement may be waived by the court;

4. if a lay guardian, for initial qualification, must complete a minimum of nine hours of continuing education in the areas of custody and visitation and three hours of continuing education related to substantive law and procedure in family court; and the courses must be approved by the Supreme Court Commission on Continuing Legal Education and Specialization;

5. a lay guardian must observe three contested merits hearings prior to serving as guardian and must maintain a certificate reflecting the completion of the three observations. The certificate shall: be on a form approved by Court Administration; set forth the names of the cases, the dates, and the presiding judges; and be attested to by the presiding judges;

6. lay guardians must complete annually six hours of continuing education courses in the areas of custody and visitation.

S. C. Code Ann. § 63-7-820(A)(6) (West Supp. 2008).

A person may not serve as a guardian if the person has been convicted of certain crimes (those crimes are set forth in the statute and include offenses against the person, offenses against morality and decency, criminal domestic violence, narcotics and controlled substance offenses, and contributing to the delinquency of a minor). S.C. Code Ann. § 63-3-820(B). A person may not be appointed as a guardian if the person is or ever has been on the Department of Social Services Central Registry of Abuse and Neglect. S.C. Code Ann. § 63-3-820(C).

The court may appoint an attorney for a non-lawyer guardian or appointment of a lawyer may be by consent order. The appointing order must set forth the reasons for appointment and include a method for compensating the attorney for the guardian. Generally, the parties will be required to pay the attorney for the guardian.

S.C. Code Ann. § 63-3-820(E).

Upon appointment to a case, a guardian must provide an affidavit to the court and to the parties attesting to compliance with the statutory qualifications. The affidavit must include, but is not limited to, the following:

1. a statement affirming that the guardian completed the prescribed training requirements;

2. a statement affirming that the guardian has complied with the requirements of the statute, including a statement that the person has not been convicted of a crime specified in the statute; and

3. a statement affirming that the guardian is not and has never been on the Department of Social Services Central Registry of Child Abuse and Neglect. S.C. Code Ann. §63-3-820(D) The court may appoint an attorney for a lay guardian, and a party or the lay guardian may petition the court by motion for the appointment of an attorney for the lay guardian. The appointment may also be by consent order. The order appointing the attorney must set forth the reasons for the appointment and must establish a method for compensating the attorney. S.C. Code Ann. § 63-3-820(E)

Role of a Guardian in a Private Case

A guardian is appointed by the court when the court finds that it will likely not be fully informed about the facts of the case and there is substantial dispute which necessitates a guardian. S.C. Code Ann. § 63-3-810 (West Supp. 2008). Those statutory provisions mandate that a guardian fully inform the court about the facts of the case as related to issues concerning the children.

The court appoints a guardian when there are disputes over custody and visitation.

However, the Private Guardian ad Litem Statute, S.C. Code Ann. § 63-3-830 (West Supp. 2008) states at length the responsibilities of the Guardian. A guardian must remember that the best interest of the child is the paramount concern. A guardian must inform the court of the guardian's interests and concerns for the child. Further, a guardian must consider all avenues to protect the child's best interest. A child's best interest may be protected by recommending services such as counseling or even recommending that a child be removed from a parent.

There is no set formula for how a guardian performs his or her role. A guardian must investigate and take action with the thought in mind that the guardian is not the child's attorney who makes decisions based on what the child wants. Rather, a guardian's actions are guided by best interest of the child based on all the circumstances determined by the guardian following investigation.

The Private Guardian ad Litem Statute, S.C. Code Ann. § 63-3-830, sets forth the duties and responsibilities of a guardian. In addition to protecting the child's best interest, a guardian is expected: to undertake an investigation of the matters before the court that relate to the child; to attend all hearings involving the child; to maintain a complete file of notes and records (which is considered work product and not subject to discovery requests); and may submit memoranda or briefs as necessary.

Guardian Order of Appointment

The court has absolute discretion in its appointment of a guardian. The appointment order should include the responsibilities of the guardian as enumerated in the statute. The statute is clear as to what the guardian's duties include and notes that the guardian must perform a fair and balanced investigation. The statute also notes that the guardian must consider the best interest of the children.

A guardian needs access to information in order to complete the investigation. The order appointing the guardian should include provisions directing medical, educational, mental health providers, and other professionals to make any and all information regarding the children available to the guardian.

The statute provides that the order appointing the guardian should include the hourly rate the guardian may charge and the total amount or cap on charges the guardian may charge for the entire case. Finally, the order should set forth how much each party will be responsible for paying the guardian at the outset of the case. The order may include how often the guardian may bill the parties and a requirement that the parties keep the guardian's bill current.

Often a temporary order appointing a guardian may be silent on many of the above-noted requirements. When that happens, it is appropriate for the guardian to submit a consent order appointing the guardian and setting forth the statutorily required provisions. Once the guardian and the parties, through their attorneys, have signed the order, the order may be submitted to the court for the presiding judge's signature and filing. Once filed, copies of the order should be

provided to all parties in the case through their attorneys. (A sample consent order is included in the forms appendix of this Resource Manual.)

Guardian Affidavit

As set forth above, the Private Guardian ad Litem Statute requires the guardian to submit an affidavit to the court and the parties indicating that the guardian has complied with the statutory requirements for appointment (a sample affidavit in included with the forms appendix to this Resource Manual). The affidavit should include the facts that: the guardian has completed the required training; has not been not convicted of any of the crimes that the statute sets forth; and is not and has not been on the Department's Central Registry of Abuse and Neglect.

The statute also requires that the guardian notify the parties of any potential conflict with the parties or attorneys in the case. It is important to disclose any relationship, experience, or other matter that is or may be seen as a potential problem. For example, if the guardian has volunteered with domestic violence organizations and the case for which the guardian is to be appointed has allegations of domestic abuse, the parties and attorneys should be informed. They then have the opportunity to timely object to the guardian's appointment so there will not be any delays due to an undisclosed issue.

A guardian should also disclose potential conflicts to the parties' attorneys and note those potential conflicts in the affidavit so that the guardian's associations or motives are not questioned as the case progresses. The

guardian must be perceived to be fair and balanced in his or her approach to the case. Full disclosure is necessary to foster this fairness and balance.

Court Documents

Cases in family court are initiated by the plaintiff filing a summons and complaint. Additional documents or pleadings may be filed as the case progresses. A case concludes when the court issues a final order. While a final order may be appealed to the South Carolina Court of Appeals, most cases are concluded with the final order which is signed by the presiding judge and filed with the court (in the clerk of court's office). Appellate procedures are set forth in Part Four of this Resource Manual.

Summons: The summons notifies the defendant of the lawsuit and directs the defendant as to how to respond to the allegations of the complaint. The summons also identifies the plaintiff and the plaintiff's attorney.

Complaint: Sets forth the relief sought by the plaintiff.

Answer and Counterclaim: Sets forth the defendant's answer to the plaintiff's claims set forth in the complaint. The counterclaim sets forth the relief sought by the defendant.

Reply: Sets forth the plaintiff's answer to the defendant's counterclaims

Notice of Motion and Motion for Temporary Relief: For private actions involving custody and visitation, the family court routinely holds temporary hearings under the authority of Rule 21, SCRFC. To request a temporary hearing, a written notice of motion and motion for temporary relief and notice of the temporary hearing must be filed and served. Service on the opposing party must be no later than five days before the time specified for the hearing. In an

emergency situation, the family court may issue an order based on an ex parte application for temporary relief. Evidence at a temporary hearing is limited to pleadings (such as a complaint and answer), affidavits, and financial declarations. Upon a showing of good cause, the family court may allow additional evidence or testimony. Family Court Rule 21(c) is an important provision which provides that affidavits filed at the temporary hearing need not be served on the opposing party prior to the temporary hearing.

This expeditious procedure is in place to protect the best interest of the children and establish procedures necessary to protect assets during the time a case is proceeding. At a temporary hearing, the court reads and considers affidavits provided by the parties and the parties' financial declarations. The court may hear brief oral arguments of the attorneys representing the parties.

There may be instances where the temporary hearing takes place after the parties have agreed to appointment of a guardian who has had an opportunity to do a preliminary investigation into the matters before the court. In other instances, a temporary hearing may be continued for a brief period time so that a guardian can be appointed to conduct a preliminary investigation and to make a preliminary report to the court.

In either case, a guardian participating in a temporary hearing is limited by time and may only be able to conduct a very narrow investigation focused on the immediate issues identified by the court and the parties. In such a case, the court is looking for an expeditious initial assessment concerning what may be in the best interest of the children at the beginning of the case.

Judges have varying expectations as to what they are seeking from the guardian at a temporary hearing. In some instances, a judge may ask for direction from the guardian as to what would be the best situation for the child while the case is pending. The court may be looking for guidance on custody and visitation. While a guardian cannot make recommendations on custody to the Court at the final hearing, some judges seek recommendations at a temporary hearing.

In other instances, a judge will identify specific questions for the guardian to address. Those questions may have been raised by the affidavits submitted by the parties to the court. In either instance, the judge will likely require the guardian to submit an initial report.

The temporary hearing will result in a temporary order that will set forth the court's rulings on the issues before the court at the temporary hearing. This order remains in effect until changed by the court. A temporary order may be in effect throughout the case until a final order is issued by the court following a contested trial or an agreement reached between parties and approved by court.

A case which has been filed but not scheduled for hearing within one year of the date of filing is administratively stricken from the docket. Once a case is stricken, all orders in that case are also stricken and they have no further force or effect. For example, a temporary order establishing child custody and child support is no longer valid once the case has been stricken. It is important that the guardian keep track of the case to make sure the final hearing is requested in a timely manner. Doing so protects the best interest of the child by insuring that

child support and the child's living situation continue and are not jeopardized by the lack of an order protecting the child.

Temporary Orders: Following consideration of the evidence admitted at the temporary hearing, the family court judge issues a temporary order. The temporary order resolves, on a temporary basis, the issues presented to the court by the parties. Because the family court trial dockets are very busy, it is not unusual for an initial temporary order to be effective for the duration of a family court action which may encompass many months. Guardians in private child custody and visitation cases must be aware that a decision on child custody and visitation contained in a temporary order may be difficult to alter prior to the final hearing in a case. Rule 26(c), SCRFC, requires that an order, including a temporary order, be issued not later than thirty (30) days after a hearing absent exceptional circumstances.

Two family court rules pertaining to children are particularly noteworthy. Rule 22, SCRFC, allows a family court judge, in the judge's discretion, to talk to the children individually or together in a private conference. Upon timely request, the family court judge, in the judge's discretion, may allow the guardian and/or the attorneys representing the parties to be present during the interview. Rule 23(a), SCRFC, provides that children should generally not be present in the courtroom in a proceeding between the parents when the conduct of either parent is an issue. Rule 23(b), SCRFC, provides that children should not be offered as witnesses as to the misconduct of either parent except as allowed by the family court judge when essential to establish the facts alleged.

Notice of Motion and Motion: While the case is pending, it may be necessary to ask the court issue orders for additional relief. Requesting an order of the court is accomplished by filing a notice of motion and motion setting forth the relief requested from the court. The notice of motion sets forth the date, time, and location for the court's hearing on the relief requested, and all parties and the guardian receive notice of the date, time, and location of the hearing. These hearings may take place when there are significantly changed circumstances that occur following a temporary hearing and those circumstances require the court to readdress matters that had been temporarily resolved. These hearings may not be heard less than ten days before the date of service on the other party unless the court grants an emergency or expedited hearing.

Based on the nature of the changed circumstances, the guardian may or may not be required to provide a report or other information to the court. If an additional report is required, the report will be considered an initial or supplemental report as it will not provide the court the results of the guardian's entire investigation. The investigation may not be completed until before shortly before the final hearing to insure all relevant and available information is considered and included appropriately in the report.

Other relief may be granted at a temporary hearing, including: an increase of the guardian's fee cap; access to medical records for those other than the children; psychological or custody evaluations; drug testing of the parties; or any other aspect of the case that needs the court's attention before the final hearing. Motion hearings may address other than children's issues. For example, there

may be a request for asset evaluation, payment of bills, or a need to have some aspect of the case decided by the court before a final hearing is held. It is up to the discretion of the guardian as to whether his or her presence is required at these hearings.

Contempt Complaint: When an order is not followed, a party or a guardian may file a contempt complaint seeking the court's power of enforcement. In the contempt complaint, the party seeking enforcement of the order states how the order was not followed and seeks to enforce the order by asking the court to hold the violator of the order in contempt. The contemnor may be required to pay a fine, spend time in jail, or undergo community service. However, if the court finds the party did not willfully fail to comply with a court order, there will be no finding of contempt. After a final hearing, contempt actions may be filed to enforce compliance with the final order. There are occasions when guardians may have to file a contempt action to have court-awarded guardian fees paid.

Rule to Show Cause: When the court receives a contempt complaint, the court may issue a rule to show cause directing that the individual alleged to have violated a court order to appear in court and show cause, if any, why he or she should not be held in contempt for noncompliance with a court order.

Affidavit: A statement sworn to before a notary and presented to the court on behalf of a party to the case.

Order: The written record of a court's decision in a case, including findings of facts and conclusions of law. A court issues an order following a motion hearing, a rule to show cause hearing, a merits hearing, or other hearing. The

court may issue an oral order from the bench immediately after a hearing but will order an attorney for one of the parties to draft a written order which is submitted to the judge within thirty days of the hearing. Every hearing that comes before the court results in a written order which is signed by the presiding judge and is filed in the clerk of court's office.

Final Order: The final order is issued at the end of the case. It resolves all of the issues brought before the court. If not appealed, the final order becomes the law of the case which means the parties are bound by the factual determinations and by the legal conclusions contained in the order. A final order granting a divorce is known as a divorce decree. Issuance of a final order usually ends the case and relieves the guardian of further responsibilities.

Guardians need to review the final order to make sure that it addresses the guardian fees. The order should approve a specific amount of fees and costs and order either or both parties to pay specific amounts of a guardian's fees. When a final order properly provides for payment of the fees, the guardian has an order that can be enforced through a contempt action should a party not pay the fees as ordered.

Motions for Reconsideration:

Generally, motions for reconsideration are filed only after the court issues a final order. Either party or the guardian may make a motion for reconsideration which requests the court to reconsider or change the ruling the court has made. A motion for reconsideration must be filed and served no later than ten (10) days after a party receives written notice of the final order. The motion should set forth

specifically which part of the order the court is being asked to reconsider and the basis for a party's requesting reconsideration

At the hearing on the motion for reconsideration, the moving party may argue his or her justification for asking the court to reconsider the ruling. The other party and guardian may argue their positions as well.

The Investigation

The Private Guardian ad Litem statute requires that a guardian conduct a fair and balanced investigation. However, fair and balanced does not necessarily mean that a guardian must deal with each party exactly the same way a guardian conducts the investigation with the other party. For example, because a guardian may have spoken with one party does not mean the guardian must immediately call the other to insure that each party is spoken to the same number of times. It is however, important to be responsive to requests and concerns of both parties.

A guardian's records should reflect who initiated any phone calls and for what purpose. A guardian must keep records showing who called and why. However, if one party raises an issue about the children and the other party, the guardian might consider calling the other party to hear the other side of the story so it does not appear that only one party has the ear of the guardian. A guardian must listen to and respond appropriately to both parties.

S. C. Code Ann. § 63-3-830 (West Supp. 2008) states that the guardian's impartial investigation is to determine the facts relevant to the child and family. The statute goes on to list what the investigation must include but adds that the investigation need not be limited to just those issues included in the statute. (A copy of the Private Guardian ad Litem Statute may be found in the Appendix 11).

Documents

The statute states that a guardian should review all relevant documents. Relevant documents include the pleadings of both parties. Affidavits from each of the parties offer a great deal of information as to how each party feels about the short comings of the other. This information as well as additional information provided by supporting affidavits provided by family members and other interested parties can generate the basis for the questions to be answered throughout the investigation.

Other relevant documents that may provide a wealth of information include: medical reports on the child; and school records that can be monitored throughout the time the case is pending to insure that a child's education is not being adversely affected by the situation in which the child finds himself or herself. In reviewing this information, a guardian may find it necessary to recommend additional services for a child such as counseling, tutoring or tests for educational deficiencies or emotional problems.

Access to a child's records and information is given to a guardian by the formal order appointing the guardian (a sample order is included in the forms and formats appendix). However, in an abundance of caution, parties are often asked to sign a release that is used by the medical or mental health provider which can be retained in the provider's file for easy reference.

Other sources of information are daycare records that show who picks up and delivers the child and at what time. Often such records may include any physical or emotional problems the child might be experiencing. Should such

problems persist as the case progresses, a guardian should investigate those problems.

Children may provide documents including letters to the guardian or others, pictures, and other statements. It is the responsibility of a guardian to determine the circumstances surrounding the creation of these documents and whether there may be a reason to question the validity of the documents.

There are other documents that might be useful and should be reviewed. These may include the medical and mental records of the parents. If the parents are not immediately forthcoming or the parties will not sign releases for access to this information, a guardian may find it necessary to seek a court order to gain access to the information (a sample motion for medical and emotional records is included in the appendix containing the sample forms and formats).

Whether or not these documents can actually be introduced at trial depends on the actual documents. Medical and educational records may be admissible, but letters and other documents, including documents generated by children, may be hearsay and are generally not admissible. However, a guardian's report may reference these documents. It is important that a guardian maintain a list of reviewed documents and include on the list every document that was considered, particularly if the report references the document or information from a document. Any and all sources of information should be considered if it will aid in the investigation into the child's best interest.

The statute is clear that, generally, financial information is not relevant to a guardian's investigation. If information is provided to a guardian, the guardian

should assume that the information is relevant and the guardian may charge the parties for the time taken to review the information. However, in an abundance of caution, a guardian should remind the parties and attorneys in the guardian's initial letter or contact that <u>any</u> information that the guardian is given will be considered by the guardian to be relevant. The guardian should also clearly state that any time and effort expended to review information provided will result in charges to the parties.

Contact with Parents

While a guardian's concern is the child, a child's parents will be major sources of information about the child. A guardian should explain at the initial interview the guardian's role in relation to the parties. This discussion should include: what the guardian expects with respect to contact between the parents and guardian; how the guardian bills for time and expenses; and, most importantly, that the guardian does not represent the party but has been appointed by the court to investigate issues before the court and determine the best interest of the child.

Before the interview, a guardian should receive the pleadings and all relevant information from both sides. Once a guardian reviews the information provided, the guardian is in a better position to prepare the questions that the guardian needs to ask the parties. Questions may include: What was said about this party in the affidavits? What is his or her response to that statement? What did a party mean when he or she made a statement about the other party in the party's affidavit?

A guardian may also ask, "why do you believe you should have custody?" A parent interview is also an opportunity for the guardian to determine the very real concerns one parent has about custody of the children and or visitation by the children with the other party.

Parental questionnaires are included in the appendix of forms and formats of this Resource Manual but the questionnaires are a starting point. A guardian must investigate all factors in determining a child's best interest - not the least of which is whether a parent knows and understands the needs and wants of the child.

Not all of the information a guardian may require can be unearthed during an initial interview. It may be necessary to have future meetings or phone conversations about information that a guardian may need. Such information should not be obtained in presence of the child. There may be situations during a home visit when a parent wants to tell the guardian something about the other parent. At all times it is paramount that the child neither be present nor within earshot when one parent expresses concerns about the other parent.

Both parents need to be reminded of this fact. If the guardian believes a child is being enlisted to side with one parent against the other parent, the guardian should bring that issue to the attention of the parties and the attorneys. A guardian may also seek to obtain counseling for the child so the child has a professional to assist him or her in dealing with the conflicts created by one or both parents.

Interviews - Child Contact

The statute states that a child (or children) should be observed on at least one occasion. The amount of contact with a child will be determined by many factors not the least of which is the age of the child. An infant will not be able to provide a great deal of information about the infant's situation. However, if a guardian has questions about a parent's ability to adequately care for an infant, the guardian should observe the parent providing actual care for the child. Factors to consider include: Can the parent appropriately feed the child? Change a diaper? Handle a child when he or she is crying or fussy?

Older children are able to provide a great deal of information about their situations. However, older children may have greater loyalty issues. Appendix 6 (Child Development and Interviewing) of this Resource Manual discusses the developmental age of a child and the relevance of that age to a guardian's investigation.

It is important for a guardian to consider when the guardian would like to meet with a child. Generally, a guardian's meeting with the child will take place after the guardian has met with the child's parents. The guardian may ask the parents to tell the child that the guardian will be speaking with the child and the child should be encouraged to be open and honest with the guardian.

A guardian should consider where the guardian would like to meet with the child. Generally, daycares and schools are cooperative and will help arrange a private place for a guardian to conduct an interview. If a guardian has **any**

concerns about being with a child, the guardian may ask a guidance counselor or other school official to sit in on the interview.

A guardian should consider that an older child, such as a high school student, may be embarrassed by being taken out of class. Those children may be more comfortable meeting with the guardian at the guardian's office, and it might be best to meet there. Younger children are often intimidated by the formal setting of an office and may be more open in familiar surroundings such as school or daycare.

If a child is interviewed or visited at the home of one party, the child may be reluctant to be as forthcoming as he or she might be in a more neutral setting. A guardian should remember that the investigation must be fair and balanced. If a child is interviewed and visited at one parent's home, the child should be interviewed and visited at the other parent's home.

How much contact a guardian should have with a child is determined by the child's age, child's needs, the guardian's responsibility to meet those needs, and the level of contact that will best further the investigation. Depending on the child's age and maturity level, a guardian may provide the child a contact telephone number so that the child is able to reach the guardian with questions or concerns.

It is important that a guardian not over promise what a guardian can do for a child. However, many children are concerned that they will have to "choose" which parent they want to live with or that they will have to go to court and talk to

the judge. A guardian should determine a child's concerns and should address those concerns with the child.

The statute also notes that, if appropriate, the wishes of a child as to what he or she would like to see happen needs to be ascertained. Determining a child's wishes requires that a measure of trust be developed between the guardian and child. The child needs to feel that he or she has not been made to choose and that the guardian has not violated a trust. Therefore, in drafting the guardian report, it is important to avoid stating, "the child wants to live with this or that parent." Rather the child's preferences needs to be shared with the court in the context of the information gathered during the investigation and of the situation the child was in before family court proceeding began. In that context, a guardian may state that it appears that the child may prefer remaining with one parent or the other parent.

Home Visits

Whether or not a guardian conducts a home visit is left to the discretion of the guardian. However, if there are allegations that the home is unfit, the guardian should, as part of the investigation, conduct a home visit. Generally, in the interest of a fair and balanced investigation, if the guardian visits the home of one parent, the guardian should visit the home of the other parent.

Other Interviews

The statute suggests that the guardian interview other parents, caregivers, school officials, law enforcement, and others with knowledge of the facts and circumstances. It is appropriate for a guardian to ask the parents at the initial

interview whom they believe the guardian should interview. The guardian should also ask the parent why the person is important to the guardian's investigation and what the person will add to the guardian's investigation.

There may have been a temporary hearing at which affidavits of the parties and others were submitted to the court in support of their position. Many of the affidavits may have come from friends and family members. A guardian must decide whether it is efficient and effective to expend time and resources to interview those people either by phone or in person. If a party believes that a person can give the guardian additional, unbiased information, the guardian may want to interview the person by phone or in person.

Generally, school teachers and daycare providers can provide valuable information. They have a great deal of access a child and spend time with the child when neither parent is present. Teachers may be willing to discuss a child but may be reluctant to provide negative information about the parents of a child.

If either party was previously married, former spouses may be a good source of information especially if children were involved in the prior relationship. The situations of those children may be relevant to a guardian's investigation. The focus of the investigation is the best interest of the child and not the short comings of one parent or the other in a prior relationship.

A guardian may be contacted by someone who wants to talk to the guardian. There is no reason for a guardian not to speak to someone who has contacted the guardian. It is important to include this person in the guardian's

report and to include the circumstances under which the guardian had contact with the person.

As noted above, a child may be in counseling with or without the child's parents. The counselor may have important information that will aid the guardian in understanding the family situation. However, the information a guardian receives must be handled delicately in the guardian's communications with the parties, their attorneys, and the court. A guardian does not want to jeopardize the counseling relationship between the counselor and his or her clients. If the parties grant permission, there is no reason why a guardian cannot attend counseling sessions with the parties and/or the children. A guardian may gain great insight into the situation within this family in this manner.

Finally, if there are allegations of criminal activity on the part of either party, a guardian may find it very useful to conduct a criminal records check. A guardian must ascertain where any criminal activity may have occurred so that the request will be made to an appropriate law enforcement entity in a specific geographical area.

Criminal behavior alone, particularly when the behavior occurred in the distant past, does not automatically determine any custody or visitation issue. As with all other aspects of a guardian's investigation, the best interest of the child is paramount and any criminal behavior is one factor among many a guardian investigates.

Either or both attorneys for the parties can be helpful in providing information and should be contacted for that purpose. It is also important to

remember that a guardian does not work for one party or the other party. There may be occasions where an attorney requests a guardian to complete a task that will assist the attorney in proving some aspect of the case. A guardian is not a private investigator and must not undertake an investigation for one party's attorney or the other party's attorney.

Psychological and Custody Evaluations

There will be occasions where one or both parties raise concerns about the mental health of the other party. In that situation, the parties may request and the court may order psychological evaluations. A guardian may also ask the court to order that the parties undergo evaluation. A psychological evaluation provides information to the court on the mental health of the parties. The court may ask an evaluator to address specific concerns. A psychological evaluation may include a custody evaluation.

In addition to ordering a psychological evaluation, a court may order a custody evaluation. A custody evaluator considers the relative fitness of both parties to parent their children. The evaluator will consider many variables which will include the needs and connections of the children with one parent or the other. As with a psychological evaluation, the court may order that the evaluation address specific issues.

A guardian may request a psychological and/or custody evaluation at any time. In many circumstances the parties, through their attorneys, will agree to evaluations. However, if the parties do not agree, a guardian may request that the court order the parties to undergo the evaluations. A guardian makes the

request to the court by way of a Notice of Motion and Motion (a form notice of motion and motion is included in the forms and formats appendix).

Generally, an evaluation is done by a licensed psychologist who has undergone specific forensic evaluation training. Licensed professional counselors may be qualified to do such evaluations, but they must have undergone specific training.

An evaluation is based upon a forensic interview by the evaluator with a party. Each party may be observed with the children. The parties may be required to undergo a battery of tests designed to assess specific areas of concern. For example, if one party is accused of drug or alcohol dependency, one evaluation will be to determine if substance dependency is an issue. A psychological evaluation is wide-ranging, and the American Psychological Association has promulgated guidelines as to what should be included in an evaluation.

Best Interest of the Child

Black's Law Dictionary gives a very basic description of what the term "best interest of the child means".

> **best interest of the child.** Family law. A standard by which a court determines what arrangements would be to a child's greatest benefit, often used in deciding child custody and visitation matters and in deciding whether to approve an adoption or a guardianship. A court may use many factors, including the emotional tie between the child and the parent or guardian, the ability of a parent or guardian to give the child love and guidance, the ability of a parent or guardian to provide necessaries, the established living arrangement between a parent or guardian and the child, the child's preference if the child is old enough that the court will consider that preference in making a custody award, and a parent's ability to foster a healthy relationship between the child and the other parent.

Black's Law Dictionary (8th ed. 2004).

Custody and Visitation Factors

As set forth above, a court may use many factors in determining what is in a child's best interest when deciding custody and visitation issues. A guardian may begin an investigation by determining who has been the child's primary caregiver throughout the child's life. The primary caregiver may have been different people at different times in the child's life. From there, an investigation may branch out to extended family, and to a consideration of all the factors that may impact the child's life. The determination comes down to the resolution of custody and visitation issues most suited to provide a child the best chance to flourish and realize his or her potential.

A guardian should remember to consider what is in a child's best interest, not what the guardian might prefer for a child or what a guardian might prefer for some other child. The circumstances of the child whom the guardian has been appointed to represent guide the investigation and determine that child's best interest.

While the best interest analysis may change depending on the age and maturity of the child, a South Carolina family court will consider, "the psychological, physical, environmental, spiritual, educational, medical, family, emotional and recreational aspects of each child's life." *Woodall v. Woodall*, 471 S.E.2d 154 (S.C. 1996).

The South Carolina family court and appellate court rulings identify and apply many factors to determine what is in the best interest of a child. Past cases identify factors impacting a child's best interest, and new cases identify

factors as important in a custody or visitation decision. While many factors are listed separately below, a guardian must consider the totality of the circumstances when considering the best interests of a child. A court may give some factors more weight than others, but rarely does one factor alone support a court's determination of a child's best interest.

Abduction - one parent might remove the child from the jurisdiction contrary to the child's best interest. Of particular concern is the parent who is of foreign birth and threatens to take the child back to his or her country. The child may be beyond the jurisdiction of any court because the country to which the child was taken is not a signatory of the Hague Convention which provides a court for foreign custody issues and there is no other means to return the child.

Adultery – adultery of a parent may become an issue when the parent exposes the child to adulterous behavior to the child's detriment; in such a case, a child's best interest may be served by ensuring the child is not exposed to the adulterous behavior.

Alcohol and/or Drug Abuse – use of illegal drugs or abuse of alcohol are factors in determining the child's best interest. Past and current use or abuse will be considered by the court and the court will consider proof of rehabilitation.

Alienation – alienation may occur when one parent interferes with child's relationship with the other parent or fails to encourage a relationship with the other parent.

Attachment - emotional and psychological bonds a child may have with one or both parents or emotional and psychological bonds a child may have with one parent and but not have with the other parent.

Bonding - attachment with a caregiver, siblings, step-siblings, extended family and friends; such extended familial attachments may be considered in determining a child's best interest.

Bohemian life style – a manner of living which may include living with persons of the opposite sex without marriage, drug use and alcohol abuse, multiple residential locations, and consorting with individuals whom children should not be around.

Caring parent - a parent who provides a safe, loving environment while respecting the relationship of the child with the other parent.

Child's Age – as the needs of a child may change as the child ages, the ability of one parent or another to better meet those needs is a persuasive factor for the court.

Child's Preference - a court will consider a child's preference but the weight a court gives the child's preference depends on the child's age and maturity; a court may consider a parent's attempts to pressure or bribe a child in order to influence a child's preference.

Child's Sex - as with the child's age, a child's needs as a girl or boy may be better met by one parent or another, but the court does not necessarily find that a child will be best raised by a same sex parent.

Criminal Record - a criminal record does not automatically make a parent unfit; a court may consider the nature of the offense, time of the offense, and other circumstances relating to the offense.

Defacto Parent - while not biologically related, a defacto parent is a person the child considers as a parent and who plays an important part in the child's life. Absent circumstances set forth in the Children's Code, the fact that a person is a defacto parent may not be considered for custody but may be a consideration for determining visitation with the child.

Domestic Violence - the court must give weight to evidence of domestic violence and may consider an abused parent's failure to move from the home after an incident of domestic violence is not alone a factor to deny custody.

Education – a parent's level of education is not a decisive factor in the custody decision

Emotional Health

Parent – a parent's health may be considered when it may affect the parent's ability to care for the child.

Child – a child's special needs, whether emotional, physical or other, should be considered with making a determination as to which parent may best meet those needs.

Environment - the actual living environment maintained by a parent is a factor in determining a child's best interest. Living environment considerations include: who resides in the marital home; who provides the most stable home environment; and other people residing in the home.

Ethnic Heritage - a parent's sensitivity to a child's ethnic heritage may be a factor to consider when determining a child's best interest.

Expert Testimony - information provided by such experts as psychologists, psychiatrists, counselors, and social workers may help the court determine a child's best interests.

Financial Condition - a court may consider financial ability to provide for the child as a positive factor but a parent's financial situation is generally not determinative as to custody.

Homosexuality – the fact that a parent is homosexual does not render that parent unfit to have custody of a child; a parent's association with homosexuals is not in itself an adverse factor in the best interest determination.

Illegitimate Child - having an illegitimate child is not by itself sufficient to determine whether a parent should have custody of a child nor is it sufficient by itself as a basis to change custody of a child.

Morality – morality is considered a general factor to the extent that a parent's morality influences and affects the child.

Relocation - any relocation must be assessed with respect to the impact of relocation on the child's best interests; in assessing relocation, consideration must be given to what is lost by altering the relationship between a child and the parent left behind versus what the child gains by the move.

Remarriage - remarriage alone is not a sufficient factor to justify a change in custody.

Physical Health

Parent - a parent's ability to adequately care for a child's physical needs is a factor and will depend on the parent's physical condition and mental condition, age of the child, and sources of assistance available to the parent for the child's care.

Child - any physical needs of a child must be assessed and consideration must be given to a parent's recognition of and ability to care for those needs.

Primary caretaker - the court will consider who has met the responsibilities of day to day care for the child. In determining who may be the child's primary caretaker, a court may consider, for example; who routinely takes the child to the doctor; who potty trained the child; who stays home when the child is sick; who otherwise cares for the child on a daily basis, and who does the child look to for his or her basic care.

Psychological evaluations - forensic evaluations give the court clinical information as to the mental health of the parties and, in combination with other information, may support a court's decision as to custody. A psychological evaluation alone will not be the sole factor in determining custody.

Relatives - extended family who love and support the child and the child's relationship with the child's parents are positive factors in the custody determination. Relatives who interfere with the child's relationship with the other parent may be negative factors when determining custody.

Religion - while the government is to be neutral with matters of religion, a court may consider whether the parents take care of the child's spiritual needs in determining custody.

School performance/attendance - a court will consider a parent's involvement with a child's educational needs as important factors in deciding custody. A court may consider school attendance, attention to a child's educational difficulties, and interest in the child's education as demonstrated by attendance at parent-teacher conferences.

Tender year's doctrine - a child's age is no longer a determinative factor in considering a child's mother as the appropriate person to have custody; elimination of the tender year's doctrine means both parents have the opportunity to demonstrate that the child's best interest is served by way of placement of the child with the parent.

Time for child - time a parent has spent with a child in the past and the time available to spend with the child in the future are factors the court may consider.

Custody - Definitions

South Carolina courts use specific terms to define different custodial arrangements. These terms will be used in an order issued by the court to describe the court's specific visitation or parenting plan.

CHILD: defined by S.C. Code Ann. §63-1-40(1)(Lawyers Co-op 1985) as a person under eighteen years of age.

CUSTODY: the care, control, maintenance of a child awarded to a responsible adult or other entity.

PHYSICAL CUSTODY: an adult or other entity that has caregiving authority over the child.

LEGAL CUSTODY: an adult or other entity that has decision making authority with respect to a child's care.

SOLE CUSTODY: one party has physical and legal custody and makes decisions about a child or children.

JOINT CUSTODY: one parent has physical custody but child rearing decisions are made by both parents.

SHARED CUSTODY: living arrangement for a child in which the child spends nearly equal time with each parent.

SPLIT CUSTODY: siblings are divided between the two parents-visitation usually structured to insure the siblings have time together

Initial Report of the Guardian

There maybe occasions where the court may ask a guardian to conduct a preliminary investigation either before or shortly after a temporary order is entered. As with a final report submitted to the court by a guardian prior to the final hearing on the merits, an initial report should contain the same basic information. Individuals contacted and information reviewed should be listed. All other actions the guardian has taken – including visiting schools, meeting with children, or home visits should be included. Usually, there is only a short period of time to conduct a preliminary investigation so it is important for the guardian to make it clear to court the source of the information being provided.

A preliminary report may or may not include a specific recommendation as to custody, but, as this is not a final recommendation and may be implemented only for the duration of the litigation, a recommendation is not precluded by statute. If a guardian makes such a recommendation, it must be based on the information provided and the investigation conducted to date. It is appropriate to include as a disclaimer in this report that the recommendation is based only on the preliminary investigation and that the guardian reserves the right to make any changes to the report as the investigation proceeds. Doing so gives the guardian the right to address more fully in the final report the issues that have been preliminarily investigated. Guardians must remember that a recommendation on custody may be requested by the court for an initial report but the final report must not contain a recommendation on custody absent specific request of the court for reasons set forth in court.

Final Report of the Guardian

The guardian's report is due twenty days before trial, or such other time designated by the court. The statute allows the report to be submitted as late as ten days before a merits hearing. However, even the ten day requirement may be waived by mutual agreement of the parties. Any agreement for submission of a report less than twenty days before trial should be in writing and signed by the guardian and by the attorneys for the parties. A guardian provides the report to the parties through their attorneys and files the report with the court.

A guardian's final report in a private visitation and custody case must not include a recommendation as to who should receive custody. Only if the court requests a recommendation, setting forth the reasons why the court is seeking the recommendation, may a guardian make a recommendation on custody to the court. Generally, the request by the court will be made during the trial with the judge stating in open court and on the record the justification for asking the guardian to make a recommendation. The guardian's response to the judge's request becomes part of the record of the trial. The recommendation should not be contained in the guardian's written report.

A guardian's final report should include the date of the guardian's appointment. The statute requires that the report contain the name, address and phone number of each person interviewed for the report. All documents that were provided to the guardian or obtained by some other means and reviewed by the guardian should be listed in the report.

The report should reflect a guardian's investigation of the matters before the court. For example, if one party alleges that a child is not receiving adequate medical treatment, then that allegation should be investigated and the results of that investigation should be included in the report.

Hearsay should not appear in the report. As in any court proceeding, only those statements made by the parties can be referred to or included in the report. However, a guardian's findings may be included in the report without setting forth in the report what someone other than a party actually said.

A guardian should include any pertinent documents such as school records that support the guardian's findings. If documents pertaining to the children are to be included in the report, the report must be made clearly state why such information should be included.

Drafting a guardian's report will require that a guardian review the guardian's entire file and organize the information so that it is useful to the court. A possible framework is included in the forms and formats appendix to this Resource Manual. That framework provides guidance concerning the information usually contained in a report.

Finally, while a guardian may not make a specific recommendation as to custody, a guardian is not precluded from including recommendations about issues when those recommendations will assist the court in determining the family's future needs following the court's determination. For example, if there is a great deal of animosity between the parents, a guardian's recommendations may include that the parents undergo some reconciliation counseling in an effort

to facilitate communication between them in the best interest of the child. In other cases, a guardian may recommend that a child would benefit from counseling to help the child cope with changes in the child's live.

A guardian may have been concerned about a child's academic progress and believe the child needs to be evaluated for learning disabilities. A guardian's recommendation to address that concern is in the best interest of the child and is not a recommendation on custody.

A guardian's report represents the care and concern that a guardian has for a child. It demonstrates the efforts a guardian has made, should justify a guardian's fees and expenses, and should provide the court a basis on which to order that a guardian be paid for the guardian's work on the case. The report should be well written, concise and understandable. The report should present the results of the guardian's investigation into the matters before the court. A sample report is provided in the forms and formats appendix of this Resource Manual.

Mediation

While mediation and other forms or alternate dispute resolution are favored by the courts, a guardian may not serve as a mediator in custody and visitation dispute for a case where he or she is the guardian.

S. C. Code Ann. § 63-3-840(West Supp. 2008)(guardian as mediator) states:

> A guardian ad litem must not mediate, attempt to mediate, or act as a mediator in a case to which he has been appointed. However, nothing in this section shall prohibit a guardian ad litem from participating in a mediation or settlement conference with the consent of the parties.

A mediator serves as a neutral who works with the parties to reach an agreement on the issues. A guardian as an advocate for the best interests of the child cannot function as a neutral.

If a guardian participates in mediation, the guardian does so as a proponent of the child's best interest. By making clear that he or she represents the best interests of the child, the guardian may be able to provide information that will allow the parties to reach agreement.

A guardian's participation in mediation may be accomplished in two ways. A guardian maybe physically present or be available by phone. The second option may result in financial savings to the parties. Regardless of which option a guardian considers, the parties and attorneys must agree on how the guardian will participate.

Record Keeping and Billing

In every order appointing a guardian, the court sets forth the compensation (normally an hourly rate), initial payments due from the parties, and the maximum amount the guardian may charge in the investigation of this case. Therefore, at the outset of the case, the initial amount the guardian is given is usually apportioned between the parties and the guardian uses that initial amount to begin the investigation. Guardians must ensure that the initial funds and all other funds collected during the case are strictly justified and accounted for. Most attorneys maintain an escrow account where funds that have not been earned are deposited. As an attorney earns the funds, the funds are transferred from the escrow account into an operating or working account from which expenses and salaries are paid. Guardians must establish a means of keeping escrowed funds and available or earned funds separate.

A guardian's major contribution to the case is his or her time and the commitment to work in the best interest of a child. Therefore, a guardian must accurately record all time spent on a case. A guardian must maintain records, including the amount of time spent on the activities of the investigation including: phone calls; appointments; visits; court time; report writing; and all other activities. While a case is pending, a guardian should provide updated bills to the parties through their attorneys. The parties should pay the guardian's bills as the parties receive them and keep their accounts current. However, it is up to the guardian as to how he or she wants to be compensated. In many instances other

than the initial payment ordered by the court, a guardian may receive no other payments until after the final hearing.

The records of a guardian's fees must be sufficiently detailed to allow the guardian to prepare an affidavit of fees and costs at the conclusion of the case. The affidavit must accurately and completely reflect the time and effort the guardian has put into the case. There may be instances where a guardian will have to testify about the fees and costs incurred.

Included in the forms and formats appendix of this Resource Manual is a simple sheet that allows for the date, name of the case, information about the activity (phone call, letter, visit) and the amount of time spent.

A guardian must indicate whom the guardian contacted - whether it was parent, an attorney, or a witness related to the case. The court may want to allocate payment of fees between the parties based the amount of time each party demanded of the guardian.

In an effort to avoid misunderstandings at the end of the case, a guardian must explain to the parties at the initial interview that the guardian plans to charge for ALL the guardian's time spent on the case - whether it is a phone call, message, visit, letter or any other activity of the guardian, including writing the final report (a sample time sheet and bill are contained in forms and formats appendix of this Resource Manual).

Unauthorized Practice of Law

A guardian not licensed to practice law in the state of South Carolina must avoid the unauthorized practice of law. The practice of law, "embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts." *In re Duncan*, 65 S.E. 210, 211 (S.C. 1909).

To be a licensed attorney in South Carolina, a person must have attended a law school that has received accreditation from the American Bar Association, passed the South Carolina Bar Examination, met the licensing requirements of the State, and be a member in good standing with the South Carolina Bar.

The unauthorized practice of law includes:

- Preparing pleadings on behalf of another for filing in a court of this State.
- Instructing others in the manner in which to prepare and execute such documents.
- Managing court proceeding.
- Giving advice, consultation, explanation, or recommendations on matters of law.

The unauthorized practice of law has been defined and strictly prohibited to protect the public from the negative consequences of erroneously prepared legal documents and to protect the public from inaccurate legal advice. *Linder v. Ins. Claims Consultants, Inc.,* 560 S.E. 2d 612 (S.C. 2002).

APPEALS

Appeals

Introduction

Appellate practice in South Carolina is complicated and a complete discussion of appellate practice is beyond the scope of this manual. This section will address only basic preliminary rules which govern appeals.

Appeal from an order, judgment or decree of the family court is governed by the South Carolina Rules of Appellate Procedure (SCRAP). The right to appeal a family court order is governed by the same rules, practices, and procedures that govern appeals from the circuit court. Appendix B SCRAP is an Appeals Chart which sets forth the actions required for appeals and the time limits for those actions. The chart provides an overview and quick reference for appeals.

Guidance for Non-Lawyer Guardians

There will be occasions where either or both parties are not satisfied with the court's ruling. In this case, the party or parties may appeal the case to the next highest court which for family court cases is the South Carolina Court of Appeals. While the final hearing represents the end of a guardian's involvement in a case, if a case does go to an appeal, the guardian is deemed to continue to serve in that capacity until such time as a withdrawal of the guardian is approved and notice by the court is given.

Generally, the parties, through their attorneys, will initially ask the family court to reconsider its decision in a motion for reconsideration. In that motion the parties set forth what issues they are asking the court to reconsider and why.

When the family court decides the motion to reconsider, the parties may then seek a review of the case in the court of appeals. The court of appeals is provided with a transcript of the trial, the supporting pleadings, evidence, anything else the parties believe would support their position and a copy of the final order. The parties will also prepare a brief which will set forth the areas of the trial court's order with which they do not agree and a justification as to why they believe the trial court erred in its decision.

In many instances the guardian is not involved directly with the appellate process. However, that is up to the guardian and the facts of a case. If the guardian does not want to participate in the appellate process, the guardian may notify the clerk of the court of appeals that the guardian is aware that an appeal is in process but the guardian will not be submitting a brief or other documents to the court in this matter.

However, if a guardian feels strongly that the family court has erred and it is in the best interests of the children for the guardian to present information to the court of appeals, a guardian is not precluded from preparing a brief and submitting it to the court for consideration.

The guardian is not allowed to make a recommendation as to custody so any disagreement with the family court's decision could be considered a statement as to custody.

If the parties are not satisfied with ruling from the court of appeals, they may ask the South Carolina Supreme Court to review the case. The supreme court has the right to deny the review of a case that is brought before it. If the

supreme court does so, the ruling of the court of appeals stands. If the supreme court decides that the case needs to be reviewed, it can take the case, review the record of trial court, consider the written and oral arguments of the attorneys, and make the final ruling in the matter.

The guardian's role at the supreme court would be similar to the guardian's role at the court of appeals.

Relief Pending Appeal

As a general rule, service of a notice of appeal automatically stays certain matters decided in an order. The appeal of a family court order, however, will not automatically: suspend the order concerning a child; discharge the child from the custody of the court, person, institution or agency to whom the child was committed; or suspend support payments for the child. S.C. Code Ann. § 63-3-630 (West Supp. 2008).

A guardian may believe relief pending appeal is appropriate on one of the matters not automatically stayed in family court. In that situation, the guardian should seek specific relief on that matter in the motion filed in the family court pursuant to Rule 59 SCRCP as discussed below. The reason for doing so is Rule 225(d)(1) SCRAP's requirement that, absent extraordinary circumstances, the request for an order for supersedeas first be made to the family court which entered the order on which supersedeas is sought.

Supersedeas

If the guardian believes immediate action is necessary to have the family court order stayed or held in abeyance, the guardian may move for an order imposing a supersedeas on the matters decided in the family court order. Rule 225 (c)(1) SCRAP. A guardian may request relief from the court of appeals or from an individual judge of the court of appeals. A single judge may issue a temporary order granting or denying the request, may refer the matter to the appellate court to hear and determine the matter, or may issue a final order.

Should the individual judge issue a final order, the aggrieved party may request review by the full appellate court. Rule 225(d)(2) SCRAP.

Procedures for Supersedeas

The party seeking a writ of superdeas must file a written petition verified by the client. In addition to the petition and verification, the party must file a certified copy of the order of the family court and a copy of the notice of appeal with proof of service. Rule 225(d)(3) SCRAP. The written petition must contain:

1. facts supported by affidavits or sworn statements;
2. grounds with legal arguments;
3. a showing that relief was requested in the family court or a statement of extraordinary circumstances making it impracticable to make a request in family court.

Rule 225(d)(4) SCRAP.

The petition and accompanying documents must be served on the opposing party. The court of appeals may issue a supersedeas ex parte as set forth in Rule 225(d)(6) SCRAP.

Requesting Reconsideration

A guardian should consider seeking reconsideration or appeal of a family court order, judgment, or decree if the guardian believes the family court judge: made a legal error; or did not properly apply the law to the evidence in the case. Appeals are costly and time-consuming as they proceed through the appellate court.

There are a number of legal rules which control how an appellate court considers a family court judge's decision. Because of expense, time, and the nature of appellate practice, an appeal should not be taken only because a guardian is unhappy with a family court judge's decision. A guardian's responsibility is to protect the best interest of the child. Any decisions to appeal must be governed by that responsibility and by the guardian's view that the family court judge erred or did not apply the law to the evidence in the case.

Motion for Reconsideration

Prior to filing a notice of appeal (which is explained below), a guardian must file a motion for reconsideration and for relief from the family court's order. Such a motion is filed in the family court and requests the family court judge who heard the case to reconsider the decision. A motion for reconsideration may be filed citing Rule 59 SCRCP, Rule 60 SCRCP, or both.

Motion for New Trial, Rehearing and Amendment of Judgment

Rule 59(a) SCRCP allows a party to file a motion for a new trial or rehearing. Rule 59(e) SCRCP allows a party to file a motion to alter or amend a judgment. In ruling on a motion under Rule 59(a), a family court judge may open

the judgment, take additional testimony, amend findings of fact and conclusions of law, make new findings of fact and conclusions of law, and direct entry of a new judgment.

Time for Rule 59 Motion

A motion under Rule 59 must be made within ten days after receipt of written notice of entry of judgment or of filing of an order disposing of the action.

General Rules for Post Trial Motions

A party may not file a Rule 59(a) motion for new trial or rehearing to raise an issue which the party could have raised at trial but did not. *Hickman v. Hickman*, 392 S.E.2d 481 (S.C. Ct. App. 1990). On the other hand, when a party raises an issue at trial and the judge rules against the party, the party must file a motion under Rule 59(e) in order to preserve the issue for appeal. *Cox v. Cox*, 425 S.E.2d 761 (S.C. Ct. App. 1992).

When a party raises an issue at trial but the judge does not address the issue in the final order, the party must file a Rule 59(e) motion on the judge's failure to address the issue in order to preserve the issue for appeal. *Summer v. Carpenter*, 492 S.E.2d 55 (S.C. 1997).

Stay of Time for Filing Appeal After Rule 59 Motion

A very significant provision of Rule 59 is Rule 59(f) which stays the time for filing an appeal. Under 59(f), time for filing an appeal is stayed and the time for filing an appeal runs from the receipt of written notice of entry of the order granting or denying the Rule 59 motion.

Relief From Judgment or Order

Rule 60(a) SCRCP provides for correction of clerical errors in judgments and orders, and Rule 60(b) provides for relief from a final judgment based on five grounds. Those grounds include: mistake, inadvertence, surprise or neglect; newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59; fraud, misrepresentation or other misconduct of an adverse party; the judgment is void; the judgment has been satisfied, released or discharged or for additional grounds set forth in the Rule.

In addition to establishing one of the grounds required by Rule 60, a party seeking relief must establish a meritorious claim or defense. *Bowers v. Bowers*, 403 S.E.2d 127, 129 (S.C. Ct. App. 1991).

Time for Filing Rule 60 Motion

A motion for relief based on the first three grounds must be filed not more than one year after the judgment, order or decree was entered or taken. South Carolina appellate courts have noted that Rules 59 and 60(b) must be read together. For example, a party may discover new evidence after the party files a motion for reconsideration under Rule 59 (the time for filing that motion was ten days of receipt of written notice of entry of judgment). Having discovered such evidence, the party may move under Rule 60 and may move to amend the party's Rule 59 motion to include allegations based on the new evidence. *See Gray v. Bryant*, 379 S.E.2d 894 (S.C. 1989).

A guardian seeking reconsideration of a family court's ruling should file a motion citing Rules 59(a), 59(e), 60(b) in order to fully protect the child's interest. A party moving under Rule 60(b) has the burden to present evidence, usually by affidavit, proving the facts essential to entitle the party to relief. *Bowers v. Bowers*, 403 S.E.2d 127 (S.C. Ct. App. 1991).

Notice of Appeal

If the guardian's motions under Rules 59 and 60 are not successful and the guardian wishes to appeal, the guardian must serve and file a notice of appeal. Rule 203 SCRAP. The notice of appeal must be served on all respondents within thirty days after receipt of written notice of the entry of judgment or order. Rule 203(b)(3) SCRAP.

The notice of appeal must be filed with the clerk of the family court and with the Clerk of the Court of Appeals within ten days after the notice of appeal is served on respondents. Rule 203(d)(1)(A) and (B) SCRAP.

The form and contents for a notice of appeal are set forth in Rule 203(d)(1)(C) SCRAP. Appendix C of the SCRAP contains Form 1 which is the format for a notice of appeal in a family court case.

Transcript of Proceedings

In order to appeal a family court order, the appellant must order a transcript of the trial from the court reporter. The transcript must be ordered within ten days after the date of service of the notice of appeal. Arrangements for payment of the court reporter for producing and delivering the transcript must be in writing and must be accomplished within the same time as ordering the transcript (ten days of after the date of service of the notice of appeal). Rule 207(a)(1) SCRAP.

Unless the court reporter receives an extension from the Office of Court Administration, the court reporter has sixty days after the date of the request to transcribe and deliver the transcript. Rule 207(a)(2) SCRAP.

An appellant must furnish to all counsel of record, Office of Court Administration, and the clerk of the appellate court all correspondence between the appellant and the court reporter concerning the transcript.

Process After Receipt of Transcript

Within thirty days after receiving the transcript, an appellant must serve an initial brief on all parties to the appeal and file a copy of the brief with proof of service with the Clerk of the Court of Appeals. Rule 208(a)(1) SCRAP. There are a number of additional formal procedures required for pursuing an appeal but discussion of them is beyond the scope of this Resource Manual.

Costs on Appeal

Unless the appellate court orders otherwise or the parties otherwise agree, costs of the appeal are awarded to the prevailing party. Rule 222(a) SCRAP. Costs may include: filing fee; cost of transcript; premiums paid for bonds obtained to preserve rights pending appeal; cost of printing the record on appeal; cost of printing the prevailing party's final brief; and attorney's fees as set by the South Carolina Supreme Court (currently $1000.00). Rule 222(b) SCRAP.

A motion for costs must be served and filed within fifteen days of the issuance of the remittitur to the lower court. Rule 222(d) SCRAP.

Attorney's fees may be requested by a guardian who participates in the appeal. *Nash v. Byrd*, 381 S.E.2d 913 (S.C. Ct. App. 1989).

Indigents and Appeals Deemed to Lack Merit

In *Ex parte Cauthen*, 354 S.E.2d 381 (1987), the South Carolina Supreme Court provided guidance for a lawyer who represented and was the guardian for a parent whose parental rights had been terminated by the family court. The parent wanted to appeal the order terminating his parental rights. The lawyer petitioned the South Carolina Supreme Court to be relieved as attorney and as guardian for the parent based on the grounds that the appeal lacked merit and that the lawyer could not bear the cost of appeal. The supreme court denied the lawyer's petition but provided procedural guidance for lawyers who find themselves similarly situated in the future. The procedures are:

1. The lawyer must file a motion to be allowed to proceed without costs along with the notice of intent to appeal.

2. The lawyer must serve a copy of the motion on all parties and, unless the person's status as indigent is challenged within ten days of service of the motion, the person is deemed indigent. No filing fees are assessed.

3. The lawyer shall order a copy of the entire trial transcript and SCDSS shall pay for the transcript.

4. The lawyer shall review the transcript and either: serve a proposed case and exceptions (if the lawyer determines there are meritorious issues); or docket the transcript with the appellate court within thirty days of receipt (if the lawyer determines there are no meritorious issues). SCDSS shall bear all reasonable costs of perfecting the appeal.

5. If the lawyer dockets the transcript, along with the transcript the lawyer shall file an affidavit stating his belief that the appeal lacks merit.

6. The appellate court reviews the entire transcript, makes determinations concerning whether or not there are meritorious issues, and may order further action by the lawyer.

Should a lawyer docket the transcript and should the court of appeals determine that there are no meritorious issues, the lawyer has no obligation to petition the South Carolina Supreme Court for certiorari. *South Carolina Department of Social Services v. Hickson*, 565 S.E.2d 763 (S.C. 2002).

APPENDIX ONE

CHECKLIST FOR PRIVATE GUARDIANS

APPENDIX 1

Checklist for Private Guardians

Custody Cases

Case caption:____
Docket Number:____
Children:____

Parties:
________________________________Relationship_____________________
________________________________Relationship______________________
________________________________Relationship______________________
________________________________Relationship______________________

Issues:

yes / no	Divorce

yes/ no	Custody

yes / no	Visitation

yes/ no	Support

yes / no	Restraining order

yes / no	Equitable division

yes / no	Attorney fees

yes / no	Guardian ad litem fees

Other: ____

Practice Pointer: Obtain prior orders relative to custody or divorce. A motion to intervene may be filed at any point.

Order:	Date:	Docket Number:

____
____
____

Temporary Order/Appointment Order:
Date: ________________Filed by:
____
Results:
____
Practice Pointer: This is where much of the initial case information will be found.
Motions:

Date: ___________ Filed by: _____________________
Type:__________________Results:___________________________________
____

Date: ___________ Filed by: ________________________
Type:__________________Results:___________________________________
____

Date: ____________Filed by: _______________________
Type__________________ Results: __________________________________

Rules:

Date: _____________Filed by: ______________________
Type__________________ Results: __________________________________

Date: ____________ Filed by: ______________________
Type__________________ Results: __________________________________

Date: ____________ Filed by: ______________________
Type:_________________ Results: __________________________________

Pretrial Hearing:
Date:______________Results:____________________________

Status Conference: Date:
___________Results:______________________________

Discovery:
____
____
____
Interrogatories:____
____
____

Practice Pointer: Need for attorney for non-lawyer guardian triggered here.

Depositions:
Date:____________Who:____
Date:____________Who:____

Mediation: Mediator:______________________ Phone: __________________
Address:____
Results:
____
____

Practice Pointer: Full investigation may be delayed until the mediation process is completed.

Psychologist:____________________________Phone:___________________
Address: ____
____
Report
received:____

Practice Pointer: If any party has already obtained an evaluation, you may wish to consider an independent evaluator.

Custodial History:

Except when living with both parents, record child's custodian, noting date, reason for change, and whether by order, written agreement, or informal arrangement.

Current Custodian:
____
Previous Custodians:
____
____
____

Other related pending actions:

Note any related actions in which any parent, party, or child is involved.
Type action: Comments:

_____DSS ____
_____Criminal ____
_____Other ____
______ DJJ ____

GAL Actions:

Practice Pointer: Keep detailed records of time spent by billable hours.

____________ Received signed appointment order.

____________ Review documents filed with the court.

____________ If you are not a lawyer, determine whether an attorney is needed.

Practice pointer: A lawyer is needed to draft pleadings and motions, examine witnesses in court, give legal advice. If hiring a lawyer determine fee arrangement at this point.

_____________Review or request evaluations if appropriate.

Evaluations may be needed f there are reports of substance abuse, mental illness, or aberrational behavior.

____________ Obtain information release forms

____________ Obtain other documents, such as medical records, school records, DSS records

Interviews:

Attach notes or prepare file memo for each contact. Caution: Guardian ad litem notes pursuant to statute are considered work product and cannot be subpoenaed (S.C. Code Ann.§ 63-3-830(A)(5))

If allegations of abuse or neglect arise, consider whether a report to DSS is needed.

Interview parties formulating the questions based on the information provided by the pleadings, affidavits and other sources. Forms can be used that represent the questions to be asked in typical cases. You may need to ask additional questions addressing unique issues in each specific case.

Explain the guardian's role and what you as the guardian expect from the parties.

Explain fee structure to each party.

Marital History:
Current marriage:
Spouse____

Date of marriage: ____
Date of separation: ____
Date of Divorce: ____
Grounds:____

Children:
______________________________DOB______________________________
______________________________DOB______________________________
______________________________DOB______________________________

Previous marriage: Spouse ___________________________________
Date of marriage:____
Date of separation: ____
Date of divorce: ____

Child - initial interview:

Date: _________Location: ______________
Others present: ____

Child - subsequent interviews:

Date: ________ Location: _________________
Others present:____

Date: ________ Location: _________________
Others present:____

Date: _________ Location: _________________
Others present:____

It is helpful to see child in the beginning of the case and again prior to the final hearing. Interview the child alone and see the child in the presence of each parent, at that parent's home.

Note the degree of comfort at each location. Observe sleeping quarters. Observe home environment and neighborhood.

Additional interviews may be necessary to determine the child's interests, to investigate parties' claims, and to identify potential witnesses. Sources of information will be determined by *the issues in each case. Possible contacts include relatives, teachers, physicians, mental professionals, neighbors, day care providers, babysitters, and others.*

Other interviews:

Name: ________________ Relationship: ______________ Date:_________
Name: ________________ Relationship: ______________ Date:_________
Name: ________________ Relationship: ______________ Date:_________
Name: ________________ Relationship: ______________ Date:_________
Develop an Analysis of the Best Interests of the Child:

Practice pointer: Recommendations as to who should have custody must not be made unless the court states on the record why it is seeking a recommendation from the Guardian.

Factors to consider in considering best interests of the child include: fitness of parents; caretaker; conduct; attributes and resources of parents; opinions of third parties; guardians and experts; preference of child; age, health, and sex of child.

See *Moore v. Moore*, 386 S.E.2d 456 (1989) for factors to consider in custody situations.

1. Can a parent meet the basic physical needs of the child?
2. Can a parent meet the emotional needs of the child?
3. Can a parent meet the educational needs of the child?
4. What is the parent's relationship with the child?
5. What role has the parent played in the child's life before litigation?
6. What role has the parent played since the onset of litigation?
7. What is the parent's ability to foster the relationship between the child and other the other parent?
8. How flexible is the parent? How cooperative is the parent?
9. Will the parent communicate with the other parent?
10. Does the parent involve the child in the adult issues in the litigation?
11. Is the parent attempting to manipulate the child?
12. What is the parent's emotional stability?
13. How stable is the parent's lifestyle?
14. Does the child have special needs that can be met by the parent?
15. Does the parent provide supervision, consistency and appropriate discipline for the child?
16. Has the child become the caretaker of the parent?
17. How much time would the parent have with the child outside of work?
18. Is the child angry with a parent?
19. Does the child have behavioral problems, academic problems, emotional problems, physical problems?
20. Does the child feel secure with the parent?
21. Who has been the primary parent for the child?
22. What are the child's wishes? Concerns?
23. Should a joint custody arrangement be considered? Is it in the child's best interest? Are there reasons to believe it would be workable?
24. What is the evidentiary basis for your recommendations?

Issues to consider for visitation:

1. Are there special holiday traditions?
2. Are there special activities that the child is involved in?
3. Are there certain activities that the child does with one parent and not the other?
4. Does visitation need to be coordinated so that the child can spend time with half- or step- siblings?
5. If the child is in school, should school holidays preceding or following weekend visitation be included in the visitation?
6. Should weekday visitation be included?
7. What are the parents' work schedules?
8. How far apart do the parents live?
9. Restrictions on visitation?
10. Do any of the parties live out-of-state?
11. Should the visitation schedule allow flexibility, or be strictly defined?

Other issues in recommendations:

1. Restraining orders?
2. Counseling for parents or children?
3. Telephone contact between parent and child?
4. Exchange of medical or educational information, notice of extracurricular activities.
5. Transportation to and from visitation.

Closure:

Get final order.
Organize and maintain file.
Consider whether issues subject to appeal exist.
Finalize billing matters.

APPENDIX TWO

SC BAR GUIDELINES FOR GUARDIANS AD LITEM IN FAMILY COURT

APPENDIX 2

SC Bar Guidelines for Guardians *ad Litem* for Children in Family Court

Preamble

The following are guidelines for attorneys and non-lawyer **volunteers** appointed as guardians *ad litem* for children in most family court cases such as child protection and adoption. **For private custody and visitation cases, see additional statutory requirements**. It is emphasized that these are guidelines and not standards of conduct for guardians *ad litem* in all proceedings. To begin with, decisions to be made on behalf of children by a guardian *ad litem* are always affected by the particular facts and circumstances. Moreover, such decision-making by definition calls for a guardian *ad litem* to exercise judgment and discretion, functions that are not easily standardized.

These guidelines are offered to orient attorneys and non-attorneys to the roles they are called upon to play as a guardian *ad litem* for a child in court proceedings. They are also offered to guide decision-making by a child's guardian *ad litem* and help formulate the relationship between the child and the guardian *ad litem*. Because they are guidelines, however, they are not intended to serve as a basis for a standard of care or to create a legal duty.

Finally, these guidelines are not intended to supplant the rules of professional conduct for lawyers appointed as attorneys to represent children. Reference is made to Rule 1.14 of the Rules of Professional Conduct, at Rule 407 of the South Carolina Appellate Court Rules. Counsel appointed as an attorney for a child is governed by the rules of professional conduct in ways that might depart from these guidelines. For example, while neither South Carolina law nor these guidelines recognize the existence of a client privilege for the benefit of a child with a guardian *ad litem*, an attorney will be guided by the rules of professional conduct, which recognizes such a privilege.

I. Qualifications

A. A guardian *ad litem* must be an adult who:

1. is able to make independent, mature decisions on issues involved in the

case.

2. employs impartiality, open-mindedness and fairness in determining what is in the best interest of the child.

3. has not represented a person or party in pending or past litigation involving the child.

4. has not been convicted of any crime listed in Chapter 3 of Title 16, Offenses Against the Person; in Chapter 15 of Title 16, Offenses Against Morality and Decency; in Article 3 of Chapters 53 of Title 44, Narcotics and Controlled Substances; or for the crime of contributing to the delinquency of a minor, provided for in Section 16-17-490.

5. has received appropriate training.

II. Training

A. Appropriate training of the guardian *ad litem* includes instruction in these subjects:

1. the court process, including alternative dispute resolution and testifying
2. interviewing techniques
3. support services available to guardians *ad litem*
4. report drafting
5. recordkeeping
6. investigation and assessment skills
7. attorney/guardian *ad litem* roles and duties including ethical issues
8. negotiation skills
9. methods for minimizing the potential stress to the child or the child's family caused by the court process
10. cultural, ethnic, economic and social differences
11. social, emotional, physical, developmental, educational, vocational and psychological stages and needs of children
12. services and benefits available for children, i.e., school related issues; special education; health care issues; and government benefits
13. role and procedures of relevant agencies
14. relevant statutes, i.e., Child Welfare Reform and Adoption Act.

B. The appointing judge may waive the training qualifications if a finding is made that the person being appointed is qualified due to prior experience as a guardian *ad litem*, or is otherwise competent. Such finding shall be reflected in the appointment order.

III. Role

A. A guardian *ad litem* for a minor child is a special guardian appointed by the court in particular litigation. The guardian *ad litem* is lawfully invested with the power and charged with the duty of protecting the child's interests in the litigation.

B. A child becomes a party by virtue of the appointment of the guardian *ad litem*. The guardian *ad litem* is subject to all the rules of the court and shall receive all pleadings, notices, discovery, correspondence relating to the child, orders and notices of appeal.

IV. Process and Duties

A. A guardian *ad litem* should conduct an independent assessment to determine what is in the best interest of the child.

B. A guardian *ad litem* should interview the parties, parents and caretakers of the child, unless it would be contrary to the child's interests or otherwise inappropriate under the circumstances. Consent of the parents' attorneys, if any, should be obtained by the guardian *ad litem* before communicating with the parents. Unless the parents' interests conflict with those of the child, the guardian *ad litem* should give deference to their wishes, absent a good reason to do otherwise.

C. A guardian *ad litem* should communicate with the child as appropriate in light of the child's age and maturity. The guardian *ad litem* should explain the role that he or she will play in the particular litigation and the nature of the relationship the child should expect to have with the guardian *ad litem*. The guardian *ad litem* should be careful not to raise false hopes or unreasonable expectations, and keeping in mind the temporary nature of the relationship, should not facilitate overdependence. A guardian *ad litem* should keep the child informed about the status of the litigation and the child's interests that may be affected by the litigation. A guardian *ad litem* should explain what he or she thinks is best for the child, even if it conflicts with the child's wishes.

D. A guardian *ad litem* should strive to protect confidential communications with the child and should help the child understand that anything that the child tells the guardian *ad litem* may be revealed. A guardian *ad litem* should carefully explain to a child under what circumstances he or she is allowed, or may be compelled, to disclose the child's confidences. Prior to disclosure, the guardian *ad litem* should discuss with the child any intention to disclose a confidential communication and the reasons for doing so. A guardian *ad litem* should give deference to the wishes of the child in deciding whether to disclose a confidential communication, absent an appropriate reason for doing otherwise.

E. A guardian *ad litem* should consult with the child and make

decisions with the child about the outcome of the proceedings affecting the child, commensurate with the child's age, experience, maturity and judgment. A guardian *ad litem* should recognize that children have varying degrees of competence and, to the extent a child is able to articulate an opinion about the ultimate outcome of the proceeding, the child's opinion is entitled to weight. In any case in which the guardian *ad litem* must make important decisions on behalf of the child, the guardian *ad litem* should consider all the surrounding circumstances and act with care to safeguard and advance the best interest of the child.

F. When circumstances suggest the need for independent legal representation of the child, for example, when a child of sufficient age and maturity disagrees with the position of the guardian *ad litem* regarding the proceedings, the guardian *ad litem* should move for a hearing on the issue. If the court finds that the child is capable of mature and independent decisions, the guardian *ad litem* should be dismissed and an attorney appointed for the child. The guardian *ad litem* duties shall continue in addition to the child's attorney in cases where required by statute. (§ 63-7-1620)

G. A guardian *ad litem* should inform the court of the relevant wishes of the child, irrespective of the child's age. If the child does not have his or her own attorney, the guardian *ad litem* should assist the child in conveying the child's wishes to the court through appropriate means, such as testimony or the introduction of evidence. This is a responsibility of the guardian *ad litem* regardless of whether the child's expressed wishes coincide with those of the guardian *ad litem*'s opinions of the best interest of the child.

H. A guardian *ad litem* should perform assigned duties competently and should be prompt, diligent and attentive to details to assure that the matter undertaken is completed without avoidable harm to the child's best interest.

I. A guardian *ad litem* should recognize areas of expertise beyond his or her competence and make efforts to obtain sufficient information, training or assistance in those areas.

J. If an attorney is appointed or hired to represent the guardian *ad litem*, the guardian *ad litem* is the client and is owed the same duties and has the same rights as any other client, including the right to determine the objectives of the litigation, to receive legal advice and counseling and to guide the efforts of the attorney. It is the responsibility of the guardian *ad litem* to request the appointment of an attorney.

K. In judicial proceedings involving issues affecting a child's interest, a guardian *ad litem* should (through counsel unless the guardian *ad litem* is an attorney) introduce evidence, examine and cross-examine witnesses, and

present the child's positions to the court. The guardian *ad litem* should otherwise participate in the proceedings to the degree necessary to protect the child's interest. If the guardian *ad litem* becomes aware of benefits and services to which the child is entitled, the guardian *ad litem* should bring these issues to the attention of the court.

L. A guardian *ad litem* may advocate a position in court on any issue concerning the interests of the child. Any recommendation to the court must be based on evidence in the record. A guardian *ad litem* may submit briefs, memoranda, affidavits or other documents on behalf of the child the same as any other party. Any report or recommendation of a guardian *ad litem* must be submitted in a manner consistent with the rules of evidence.

M. In child protection cases, written reports including recommendations should be submitted to the court pursuant to the statute. In other types of cases, a guardian *ad litem* should submit a written report only when required to do so by the court or by statute.

N. **In some types of cases, a guardian *ad litem* shall be paid the fees ordered by the court or agreed upon between the parties and the guardian *ad litem*. At the earliest possible time, the guardian *ad litem* should notify the parties of the proposed fee. A guardian *ad litem* should submit itemized statements based on the time and expense records schedule. In child protection cases, the volunteer guardians *ad litem* do not receive fees.**

O. In dealing with an unrepresented party, the guardian *ad litem* should take steps to assure that the party understands the guardian *ad litem*'s purpose and that he or she is not serving as an attorney for any party. A guardian *ad litem* should not give advice to unrepresented parties but may answer questions about resources and procedures for obtaining an attorney. If the guardian *ad litem* believes that an unrepresented party may be incompetent this suspicion should be brought to the attention of the court as soon as reasonably possible with notice to the other parties.

P. The duties of the guardian *ad litem* continue until relieved by the court or upon an unappealed final order. The guardian *ad litem* should be mindful that the litigation may not be concluded until all appeals and subsequent proceedings are final. The level of participation in the appeals process is to be determined by the guardian *ad litem* based on the facts and circumstances and in light of the best interest of the child.

Q. Guardians *ad litem* should recognize the need for continuity of representation in a child's life and be prepared to serve throughout all stages of the case. Guardians *ad litem* who are unable to continue to serve should cooperate fully with successor guardians *ad litem*.

Statutory Requirements for Guardians *ad Litem* in Private Custody and Visitation Cases

Although the qualifications, responsibilities and processes revolving around private guardians ad litem are similar in many ways to those of other types of guardians ad litem, there are distinct and specific statutory differences and requirements. These special instructions are provided to interested persons to enable them to understand the full scope of the qualifications and responsibilities.

§ 63-3-810 Private Guardians *ad Litem*

Guardians *ad litem* are appointed by court order in private action before the family court in which custody or visitation of a minor child is an issue only when the court determines that:
(1) without a guardian *ad litem,* the court will likely not be fully informed about the facts of the case, and there is a substantial dispute which necessitates a guardian *ad litem*; or
(2) both parties consent to the appointment of a guardian *ad litem* who is approved by the court.

The court has absolute discretion in determining who will be appointed as a guardian *ad litem* in each case.

§ 63-3-820 Qualifications

A guardian *ad litem* may be either an attorney or a layperson and must have the following qualifications:

(1) must be 25 years of age or older.
(2) must possess a high school diploma or its equivalent.
(3) an attorney guardian *ad litem* must annually complete a minimum of six hours of family law continuing legal education credit in the areas of custody and visitation; however, this requirement may be waived by the court.
(4) for initial qualification, a lay guardian *ad litem* must have completed a minimum of nine hours of continuing education in the areas of custody and visitation and three hours of continuing education related to substantive law and procedure in family court. The courses must be approved by the Supreme Court Commission on Continuing Legal Education and Specialization.
(5) a lay guardian *ad litem* must observe three contested custody merits hearings prior to serving as a guardian *ad litem*. The lay guardian must maintain a certificate showing that observation of these hearings has been completed. This certificate, which shall be on a form approved by Court Administration, shall state

the names of the cases, the dates and the judges involved and shall be attested to by the respective judge.
(6) lay guardians *ad litem* must annually complete six hours of continuing education courses in the areas of custody and visitation.
(7) must not have been convicted of any crime listed in Chapter 3 of Title 16, Offenses Against the Person; in Chapter 15 of Title 16, Offenses Against Morality and Decency; in Chapter 25 of Title 16, Criminal Domestic Violence; in Article 3 of Chapter 53 of Title 44, Narcotics and Controlled Substances; or convicted of the crime of contributing to the delinquency of a minor, provided for in Section 16-17-490.
(8) must not have ever been on the Department of Social Services Central Registry of Abuse and Neglect.
(9) Upon appointment to a case, a guardian *ad litem* must provide an affidavit to the court and to the parties attesting to compliance with the statutory qualifications. The affidavit must include, but is not limited to, the following:
(i) a statement affirming that the guardian *ad litem* has completed the training requirements;
(ii) a statement affirming that the guardian *ad litem* has complied with the requirements of this section, including a statement that the person has not been convicted of a crime; and
(iii) a statement affirming that the guardian *ad litem* is not nor has ever been on the Department of Social Services Central Registry of Child Abuse and Neglect.

Appointment of an Attorney for the Lay Guardian

A party or the guardian *ad litem* may petition the court by motion for the appointment of an attorney for the guardian *ad litem*. This appointment may be by consent order. The order appointing the attorney must set forth the reasons for the appointment and must establish a method for compensating the attorney.

§ 63-3-830 Responsibilities and Duties

The responsibilities and duties of a guardian *ad litem* include, but are not limited to:

(1) representing the best interest of the child.
(2) conducting an independent, balanced and impartial investigation to determine the facts relevant to the situation of the child and the family. An investigation must include, but is not limited to:
(i) obtaining and reviewing relevant documents, except that a guardian *ad litem* must not be compensated for reviewing documents related solely to financial matters not relevant to the suitability of the parents as to custody, visitation or child support. The guardian *ad litem* shall have access to the child's school records and medical records. The guardian *ad litem* may petition the family court for the medical records of the parties.
(ii) meeting with and observing the child on at least one occasion.

(iii) visiting the home settings if deemed appropriate.
(iv) interviewing parents, caregivers, school officials, law enforcement and others with knowledge relevant to the case.
(v) obtaining the criminal history of each party when determined necessary.
(vi) considering the wishes of the child, if appropriate.
(3) advocating for the child's best interest by making specific and clear suggestions, when necessary, for evaluation, services and treatment for the child and the child's family. Evaluations or other services suggested by the guardian *ad litem* must not be ordered by the court, except upon proper approval by the court or by consent of the parties.
(4) attending all court hearings related to custody and visitation issues, except when attendance is excused by the court or the absence is stipulated by both parties. A guardian must not be compensated for attending a hearing related solely to a financial matter if the matter is not relevant to the suitability of the parents as to custody, visitation or child support. The guardian must provide accurate, current information directly to the court, and that information must be relevant to matters pending before the court.
(5) maintaining a complete file, including notes. A guardian's notes are his work product and are not subject to subpoena.
(6) presenting to the court and all parties clear and comprehensive written reports including, but not limited to, a final written report regarding the child's best interest. The final written report may contain conclusions based upon the facts contained in the report. The final written report must be submitted to the court and all parties no later than 20 days prior to the merits hearing, unless that time period is modified by the court, but in no event later than 10 days prior to the merits hearing. The 10-day requirement for the submission of the final written report may only be waived by mutual consent of both parties. The final written report must not include a recommendation concerning which party should be awarded custody, nor may the guardian *ad litem* make a recommendation as to the issue of custody at the merits hearing unless requested by the court for reasons specifically set forth on the record. The guardian *ad litem* is subject to cross-examination on the facts and conclusions contained in the final written report. The final written report must include the names, addresses and telephone numbers of those interviewed during the investigation.
(7) A guardian *ad litem* may submit briefs, memoranda, affidavits or other documents on behalf of the child. A guardian *ad litem* may also submit affidavits at the temporary hearing. Any report or recommendation of a guardian *ad litem* must be submitted in a manner consistent with the South Carolina Rules of Evidence and other state law.

§ 63-3-840 Guardian *ad Litem* as Mediator

A guardian *ad litem* must not mediate, attempt to mediate or act as a mediator in a case to which he has been appointed. However, nothing in this section shall prohibit a guardian *ad litem* from participating in a mediation or a settlement conference with the consent of the parties.

§ 63-3-850 Compensation

At the time of appointment of a guardian *ad litem*, the family court judge must set forth the method and rate of compensation for the guardian *ad litem*, including an initial authorization of a fee based on the facts of the case. If the guardian *ad litem* determines that it is necessary to exceed the fee initially authorized by the judge, the guardian must provide notice to both parties and obtain the judge's written authorization or the consent of both parties to charge more than the initially authorized fee.

A guardian appointed by the court is entitled to reasonable compensation, subject to the review and approval of the court. In determining the reasonableness of the fees and costs, the court must take into account:
(1) the complexity of the issues before the court;
(2) the contentiousness of the litigation;
(3) the time expended by the guardian;
(4) the expenses reasonably incurred by the guardian;
(5) the financial ability of each party to pay fees and costs; and
(6) any other factors the court considers necessary.

The guardian *ad litem* must submit an itemized billing statement of hours, expenses, costs and fees to the parties and their attorneys pursuant to a schedule as directed by the court. At any time during the action, a party may petition the court to review the reasonableness of the fees and costs submitted by the guardian *ad litem* or the attorney for the guardian *ad litem*.

§ 63-3-860 Disclosure

When a guardian *ad litem* is appointed, he or she must provide written disclosure to each party of the nature, duration and extent of any relationship the guardian *ad litem* or any member of the guardian's immediate family residing in the guardian's household has with any party. He or she must also disclose any interest adverse to any party or attorney that might cause the impartiality of the guardian *ad litem* to be challenged and any membership or participation in any organization related to child abuse, domestic violence or drug and alcohol abuse.

§ 63-3-870 Removal of the Guardian *ad Litem*

A guardian *ad litem* may be removed from a case at the discretion of the court.

APPENDIX THREE

ABA STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES

APPENDIX 3
ABA STANDARDS

AMERICAN BAR ASSOCIATION STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES

Approved by the American Bar Association House of Delegates, February 5, 1996

PREFACE

All children subject to court proceedings involving allegations of child abuse and neglect should have legal representation as long as the court jurisdiction continues. These Abuse and Neglect Standards are meant to apply when a lawyer is appointed for a child in any legal action based on: (a) a petition filed for protection of the child; (b) a request to a court to change legal custody, visitation, or guardianship based on allegations of child abuse or neglect based on sufficient cause; or (c) an action to terminate parental rights.

These Standards apply only to lawyers and take the position that although a lawyer *may* accept appointment in the dual capacity of a "lawyer/guardian ad litem," the lawyer's primary duty must still be focused on the protection of the legal rights of the child client. The lawyer/guardian ad litem should therefore perform all the functions of a "child's attorney," except as otherwise noted.

These Standards build upon the ABA-approved JUVENILE JUSTICE STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES (1979) which include important directions for lawyers representing children in juvenile court matters generally, but do not contain sufficient guidance to aid lawyers representing children in abuse and neglect cases. These Abuse and Neglect Standards are also intended to help implement a series of ABA-approved policy resolutions (in Appendix) on the importance of legal representation and the improvement of lawyer practice in child protection cases.

In support of having lawyers play an active role in child abuse and neglect cases, in August 1995 the ABA endorsed a set of RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES produced by the National Council of Juvenile and Family Court Judges. The RESOURCE GUIDELINES stress the importance of quality representation provided by competent and diligent lawyers by supporting: 1) the approach of vigorous representation of child clients; and 2) the actions that courts should take to help assure such representation.

These Standards contain two parts. Part I addresses the specific roles and responsibilities of a lawyer appointed to represent a child in an abuse and neglect case. Part II provides a set of standards for judicial administrators and trial judges to assure high quality legal representation.

PART I– STANDARDS FOR THE CHILD'S ATTORNEY

A. DEFINITIONS

A-1. The Child's Attorney. The term "child's attorney" means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

Commentary

These Standards explicitly recognize that the child is a separate individual with potentially discrete and independent views. To ensure that the child's independent voice is heard, the child's attorney must advocate the child's articulated position. Consequently, the child's attorney owes traditional duties to the child as client consistent with ER 1.14(a) of the Model Rules of Professional Conduct. In all but the exceptional case, such as with a preverbal child, the child's attorney will maintain this traditional relationship with the child/client. As with any client, the child's attorney may counsel against the pursuit of a particular position sought by the child. The child's attorney should recognize that the child may be more susceptible to intimidation and manipulation than some adult clients. Therefore, the child's attorney should ensure that the decision the child ultimately makes reflects his or her actual position.

A-2. Lawyer Appointed as Guardian Ad Litem. A lawyer appointed as "guardian ad litem" for a child is an officer of the court appointed to protect the child's interests without being bound by the child's expressed preferences.

Commentary

In some jurisdictions the lawyer may be appointed as guardian ad litem. These Standards, however, express a clear preference for the appointment as the "child's attorney." These Standards address the lawyer's obligations to the child as client.

A lawyer appointed as guardian ad litem is almost inevitably expected to perform legal functions on behalf of the child. Where the local law permits, the lawyer is expected to act in the dual role of guardian ad litem and lawyer of record. The chief distinguishing factor between the roles is the manner and method to be followed in determining the legal position to be advocated. While a guardian ad litem should take the child's point of view into account, the child's preferences are not binding, irrespective of the child's age and the ability or willingness of the child to express preferences. Moreover, in many states, a

guardian ad litem may be required by statute or custom to perform specific tasks, such as submitting a report or testifying as a fact or expert witness. These tasks are not part of functioning as a "lawyer."

These Standards do not apply to nonlawyers when such persons are appointed as guardians ad litem or as "court appointed special advocates" (CASA). The nonlawyer guardian ad litem cannot and should not be expected to perform any legal functions on behalf of a child.

A-3. Developmentally Appropriate. "Developmentally appropriate" means that the child's attorney should ensure the child's ability to provide client-based directions by structuring all communications to account for the individual child's age, level of education, cultural context, and degree of language acquisition.

Commentary

The lawyer has an obligation to explain clearly, precisely, and in terms the client can understand the meaning and consequences of action. See DAVID A. BINDER & SUSAN C. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH (1977). A child client may not understand the legal terminology and for a variety of reasons may choose a particular course of action without fully appreciating the implications. With a child the potential for not understanding may be even greater. Therefore, the child's attorney has additional obligations based on the child's age, level of education, and degree of language acquisition. There is also the possibility that because of a particular child's developmental limitations, the lawyer may not completely understand the child's responses. Therefore, the child's attorney must learn how to ask developmentally appropriate questions and how to interpret the child's responses. See ANNE GRAFFAM WALKER, HANDBOOK ON QUESTIONING CHILDREN: A LINGUISTIC PERSPECTIVE (ABA Center on Children and the Law 1994). *The child's attorney may work with social workers or other professionals to assess a child's developmental abilities and to facilitate communication.*

B. GENERAL AUTHORITY AND DUTIES

B-1. Basic Obligations. The child's attorney should:

(1) Obtain copies of all pleadings and relevant notices;

(2) Participate in depositions, negotiations, discovery, pretrial conferences, and hearings;

(3) Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child‘s family;

(4) Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;

(5) Counsel the child concerning the subject matter of the litigation, the

child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;

(6) Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and

(7) Identify appropriate family and professional resources for the child.

Commentary

The child's attorney should not be merely a fact-finder, but rather, should zealously advocate a position on behalf of the child. (The same is true for the guardian ad litem, although the position to be advocated may be different). In furtherance of that advocacy, the child's attorney must be adequately prepared prior to hearings. The lawyer's presence at and active participation in all hearings is absolutely critical. See, RESOURCE GUIDELINES, at 23.

Although the child's position may overlap with the position of one or both parents, third-party caretakers, or a state agency, the child's attorney should be prepared to participate fully in any proceedings and not merely defer to the other parties. Any identity of position should be based on the merits of the position, and not a mere endorsement of another party's position.

While subsection (4) recognizes that delays are usually harmful, there may be some circumstances when delay may be beneficial. Section (7) contemplates that the child's attorney will identify counseling, educational and health services, substance abuse programs for the child and other family members, housing and other forms of material assistance for which the child may qualify under law. The lawyer can also identify family members, friends, neighbors, or teachers with whom the child feels it is important to maintain contact; mentoring programs, such as Big Brother/Big Sister; recreational opportunities that develop social skills and self-esteem; educational support programs; and volunteer opportunities which can enhance a child's self-esteem.

B-2. Conflict Situations. (1) If a lawyer appointed as guardian ad litem determines that there is a conflict caused by performing both roles of guardian ad litem and child's attorney, the lawyer should continue to perform as the child's attorney and withdraw as guardian ad litem. The lawyer should request appointment of a guardian ad litem without revealing the basis for the request.

(2) If a lawyer is appointed as a "child's attorney" for siblings, there may also be a conflict which could require that the lawyer decline representation or withdraw from representing all of the children.

Commentary

The primary conflict that arises between the two roles is when the child's expressed preferences differ from what the lawyer deems to be in the child's best interests. As a practical matter, when the lawyer has established a trusting relationship with the child, most conflicts can be avoided. While the lawyer should be careful not to apply undue pressure to a child, the lawyer's advice and

guidance can often persuade the child to change an imprudent position or to identify alternative choices if the child's first choice is denied by the court.

The lawyer-client role involves a confidential relationship with privileged communications, while a guardian ad litem-client role may not be confidential. Compare Alaska Bar Assoc. Ethics Op. #854 (1985) (lawyer-client privilege does not apply when the lawyer is appointed to be child's guardian ad litem) with Bentley v. Bentley, 448 N.Y.S.2d 559 (App. Div. 1982) (communication between minor children and guardian ad litem in divorce custody case is entitled to lawyer-client privilege). Because the child has a right to confidentiality and advocacy of his or her position, the child's attorney can never abandon this role. Once a lawyer has a lawyer-client relationship with a minor, he or she cannot and should not assume any other role for the child, especially as guardian ad litem. When the roles cannot be reconciled, another person must assume the guardian ad litem role. See Arizona State Bar Committee on Rules of Professional Conduct, Opinion No. 86-13 (1986).

B-3. Client Under Disability. The child's attorney should determine whether the child is "under a disability" pursuant to the Model Rules of Professional Conduct or the Model Code of Professional Responsibility with respect to each issue in which the child is called upon to direct the representation.

Commentary

These Standards do not accept the idea that children of certain ages are "impaired," "disabled," "incompetent," or lack capacity to determine their position in litigation. Further, these Standards reject the concept that any disability must be globally determined.

Rather, disability is contextual, incremental, and may be intermittent. The child's ability to contribute to a determination of his or her position is functional, depending upon the particular position and the circumstances prevailing at the time the position must be determined. Therefore, a child may be able to determine some positions in the case but not others. Similarly, a child may be able to direct the lawyer with respect to a particular issue at one time but not at another. This Standard relies on empirical knowledge about competencies with respect to both adults and children. See, e.g., ALLEN E. BUCHANAN & DAN W. BROCK, DECIDING FOR OTHERS: THE ETHICS OF SURROGATE DECISION MAKING 217 (1989).

B-4. Client Preferences. The child's attorney should elicit the child's preferences in a developmentally appropriate manner, advise the child, and provide guidance. The child's attorney should represent the child's expressed preferences and follow the child's direction throughout the course of litigation.

Commentary

The lawyer has a duty to explain to the child in a developmentally

appropriate way such information as will assist the child in having maximum input in determination of the particular position at issue. The lawyer should inform the child of the relevant facts and applicable laws and the ramifications of taking various positions, which may include the impact of such decisions on other family members or on future legal proceedings. The lawyer may express an opinion concerning the likelihood of the court or other parties accepting particular positions. The lawyer may inform the child of an expert's recommendations germane to the issue.

As in any other lawyer/client relationship, the lawyer may express his or her assessment of the case, the best position for the child to take, and the reasons underlying such recommendation. A child, however, may agree with the lawyer for inappropriate reasons. A lawyer must remain aware of the power dynamics inherent in adult/child relationships. Therefore, the lawyer needs to understand what the child knows and what factors are influencing the child's decision. The lawyer should attempt to determine from the child's opinion and reasoning what factors have been most influential or have been confusing or glided over by the child when deciding the best time to express his or her assessment of the case.

Consistent with the rules of confidentiality and with sensitivity to the child's privacy, the lawyer should consult with the child's therapist and other experts and obtain appropriate records. For example, a child's therapist may help the child to understand why an expressed position is dangerous, foolish, or not in the child's best interests. The therapist might also assist the lawyer in understanding the child's perspective, priorities, and individual needs. Similarly, significant persons in the child's life may educate the lawyer about the child's needs, priorities, and previous experiences.

The lawyer for the child has dual fiduciary duties to the child which must be balanced. On one hand, the lawyer has a duty to ensure that the child client is given the information necessary to make an informed decision, including advice and guidance. On the other hand, the lawyer has a duty not to overbear the will of the child. While the lawyer may attempt to persuade the child to accept a particular position, the lawyer may not advocate a position contrary to the child's expressed position except as provided by these Abuse and Neglect Standards or the Code of Professional Responsibility.

While the child is entitled to determine the overall objectives to be pursued, the child's attorney, as any adult's lawyer, may make certain decisions with respect to the manner of achieving those objectives, particularly with respect to procedural matters. These Abuse and Neglect Standards do not require the lawyer to consult with the child on matters which would not require consultation with an adult client. Further, the Standards do not require the child's attorney to discuss with the child issues for which it is not feasible to obtain the child's direction because of the child's developmental limitations, as with an infant or

preverbal child.

(1) To the extent that a child cannot express a preference, the child's attorney shall make a good faith effort to determine the child's wishes and advocate accordingly or request appointment of a guardian ad litem.

Commentary

There are circumstances in which a child is unable to express a position, as in the case of a preverbal child, or may not be capable of understanding the legal or factual issues involved. Under such circumstances, the child's attorney should continue to represent the child's legal interests and request appointment of a guardian ad litem. This limitation distinguishes the scope of independent decision-making of the child's attorney and a person acting as guardian ad litem.

(2) To the extent that a child does not or will not express a preference about particular issues, the child's attorney should determine and advocate the child's legal interests.

Commentary

The child's failure to express a position is distinguishable from a directive that the lawyer not take a position with respect to certain issues. The child may have no opinion with respect to a particular issue, or may delegate the decision-making authority. For example, the child may not want to assume the responsibility of expressing a position because of loyalty conflicts or the desire not to hurt one of the other parties. The lawyer should clarify with the child whether the child wants the lawyer to take a position or remain silent with respect to that issue or wants the preference expressed only if the parent or other party is out of the courtroom. The lawyer is then bound by the child's directive. The position taken by the lawyer should not contradict or undermine other issues about which the child has expressed a preference.

(3) If the child's attorney determines that the child's expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer's opinion of what would be in the child's interests), the lawyer may request appointment of a separate guardian ad litem and continue to represent the child's expressed preference, unless the child's position is prohibited by law or without any factual foundation. The child's attorney shall not reveal the basis of the request for appointment of a guardian ad litem which would compromise the child's position.

Commentary

One of the most difficult ethical issues for lawyers representing children occurs when the child is able to express a position and does so, but the lawyer believes that the position chosen is wholly inappropriate or could result in serious injury to the child. This is particularly likely to happen with respect to an

abused child whose home is unsafe, but who desires to remain or return home. A child may desire to live in a dangerous situation because it is all he or she knows, because of a feeling of blame or of responsibility to take care of the parents, or because of threats. The child may choose to deal with a known situation rather than risk the unknown world of a foster home or other out-of-home placement.

In most cases the ethical conflict involved in asserting a position which would seriously endanger the child, especially by disclosure of privileged information, can be resolved through the lawyer's counseling function. If the lawyer has taken the time to establish rapport with the child and gain that child's trust, it is likely that the lawyer will be able to persuade the child to abandon a dangerous position or at least identify an alternate course.

If the child cannot be persuaded, the lawyer has a duty to safeguard the child's interests by requesting appointment of a guardian ad litem, who will be charged with advocating the child's best interests without being bound by the child's direction. As a practical matter, this may not adequately protect the child if the danger to the child was revealed only in a confidential disclosure to the lawyer, because the guardian ad litem may never learn of the disclosed danger.

Confidentiality is abrogated for various professionals by mandatory child abuse reporting laws. Some states abrogate lawyer-client privilege by mandating reports. States which do not abrogate the privilege may permit reports notwithstanding professional privileges. The policy considerations underlying abrogation apply to lawyers where there is a substantial danger of serious injury or death. Under such circumstances, the lawyer must take the minimum steps which would be necessary to ensure the child's safety, respecting and following the child's direction to the greatest extent possible consistent with the child's safety and ethical rules.

The lawyer may never counsel a client or assist a client in conduct the lawyer knows is criminal or fraudulent. See ER 1.2(d), Model Rules of Professional Conduct, DR 7-102(A)(7), Model Code of Professional Responsibility. Further, existing ethical rules requires the lawyer to disclose confidential information to the extent necessary to prevent the client from committing a criminal act likely to result in death or substantial bodily harm, see ER 1.6(b), Model Rules of Professional Conduct, and permits the lawyer to reveal the intention of the client to commit a crime. See ER 1.6(c), Model Rules of Professional Conduct, DR 4-101(C)(3), Model Code of Professional Responsibility. While child abuse, including sexual abuse, are crimes, the child is presumably the victim, rather than the perpetrator of those crimes. Therefore, disclosure of confidences is designed to protect the client, rather than to protect a third party from the client. Where the child is in grave danger of serious injury or death, the child's safety must be the paramount concern.

The lawyer is not bound to pursue the client's objectives through means

not permitted by law and ethical rules. See DR-7-101(A)(1), Model Code of Professional Responsibility. Further, lawyers may be subject personally to sanctions for taking positions that are not well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

B-5. Child's Interests. The determination of the child's legal interests should be based on objective criteria as set forth in the law that are related to the purposes of the proceedings. The criteria should address the child's specific needs and preferences, the goal of expeditious resolution of the case so the child can remain or return home or be placed in a safe, nurturing, and permanent environment, and the use of the least restrictive or detrimental alternatives available.

Commentary

A lawyer who is required to determine the child's interests is functioning in a nontraditional role by determining the position to be advocated independently of the client. The lawyer should base the position, however, on objective criteria concerning the child's needs and interests, and not merely on the lawyer's personal values, philosophies, and experiences. The child's various needs and interests may be in conflict and must be weighed against each other. Even nonverbal children can communicate their needs and interests through their behaviors and developmental levels. See generally JAMES GARBARINO & FRANCES M. STOTT, WHAT CHILDREN CAN TELL US: ELICITING, INTERPRETING, AND EVALUATING CRITICAL INFORMATION FROM CHILDREN (1992). The lawyer may seek the advice and consultation of experts and other knowledgeable people in both determining and weighing such needs and interests.

A child's legal interests may include basic physical and emotional needs, such as safety, shelter, food, and clothing. Such needs should be assessed in light of the child's vulnerability, dependence upon others, available external resources, and the degree of risk. A child needs family affiliation and stability of placement. The child's developmental level, including his or her sense of time, is relevant to an assessment of need. For example, a very young child may be less able to tolerate separation from a primary caretaker than an older child, and if separation is necessary, more frequent visitation than is ordinarily provided may be necessary.

In general, a child prefers to live with known people, to continue normal activities, and to avoid moving. To that end, the child's attorney should determine whether relatives, friends, neighbors, or other people known to the child are appropriate and available as placement resources. The lawyer must determine the child's feelings about the proposed caretaker, however, because familiarity does not automatically confer positive regard. Further, the lawyer may need to balance competing stability interests, such as living with a relative in another town versus living in a foster home in the same neighborhood. The individual

child's needs will influence this balancing task.

In general, a child needs decisions about the custodial environment to be made quickly. Therefore, if the child must be removed from the home, it is generally in the child's best interests to have rehabilitative or reunification services offered to the family quickly. On the other hand, if it appears that reunification will be unlikely, it is generally in the child's best interests to move quickly toward an alternative permanent plan. Delay and indecision are rarely in a child's best interests.

In addition to the general needs and interests of children, individual children have particular needs, and the lawyer must determine the child client's individual needs. There are few rules which apply across the board to all children under all circumstances.

C. ACTIONS TO BE TAKEN

C-1. Meet With Child. Establishing and maintaining a relationship with a child is the foundation of representation. Therefore, irrespective of the child's age, the child's attorney should visit with the child prior to court hearings and when apprised of emergencies or significant events impacting on the child.

Commentary

Meeting with the child is important before court hearings and case reviews. In addition, changes in placement, school suspensions, in-patient hospitalizations, and other similar changes warrant meeting again with the child. Such in-person meetings allow the lawyer to explain to the child what is happening, what alternatives might be available, and what will happen next. This also allows the lawyer to assess the child's circumstances, often leading to a greater understanding of the case, which may lead to more creative solutions in the child's interest. A lawyer can learn a great deal from meeting with child clients, including a preverbal child. See, e.g., JAMES GARBARINO, ET AL, WHAT CHILDREN CAN TELL US: ELICITING, INTERPRETING, AND EVALUATING CRITICAL INFORMATION FROM CHILDREN (1992).

C-2. Investigate. To support the client's position, the child's attorney should conduct thorough, continuing, and independent investigations and discovery which may include, but should not be limited to:

(1) Reviewing the child's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case;

Commentary

Thorough, independent investigation of cases, at every stage of the proceedings, is a key aspect of providing competent representation to children. See,

RESOURCE GUIDELINES, AT 23. The lawyer may need to use subpoenas or other discovery or motion procedures to obtain the relevant records, especially those records which pertain to the other parties. In some jurisdictions the statute or the order appointing the lawyer for the child includes provision for obtaining certain records.

(2) Reviewing the court files of the child and siblings, case-related records of the social service agency and other service providers;

Commentary

Another key aspect of representing children is the review of all documents submitted to the court as well as relevant agency case files and law enforcement reports. See, RESOURCE GUIDELINES, at 23. Other relevant files that should be reviewed include those concerning child protective services, developmental disabilities, juvenile delinquency, mental health, and educational agencies. These records can provide a more complete context for the current problems of the child and family. Information in the files may suggest additional professionals and lay witnesses who should be contacted and may reveal alternate potential placements and services.

(3) Contacting lawyers for other parties and nonlawyer guardians ad litem or court-appointed special advocates (CASA) for background information;

Commentary

The other parties' lawyers may have information not included in any of the available records. Further, they can provide information on their respective clients' perspectives. The CASA is typically charged with performing an independent factual investigation, getting to know the child, and speaking up to the court on the child's "best interests." Volunteer CASAs may have more time to perform their functions than the child's attorney and can often provide a great deal of information to assist the child's attorney. Where there appears to be role conflict or confusion over the involvement of both a child's attorney and CASA in the same case, there should be joint efforts to clarify and define mutual responsibilities. See, RESOURCE GUIDELINES, at 24.

(4) Contacting and meeting with the parents/legal guardians/ caretakers of the child, with permission of their lawyer;

Commentary

Such contact generally should include visiting the home, which will give the lawyer additional information about the child's custodial circumstances.

(5) Obtaining necessary authorizations for the release of information;

Commentary

If the relevant statute or order appointing the lawyer for the child does not provide explicit authorization for the lawyer's obtaining necessary records, the lawyer should attempt to obtain authorizations for release of information from the agency and from the parents, with their lawyer's consent. Even if it is not required, an older child should be asked to sign authorizations for release of his or her own records, because such a request demonstrates the lawyer's respect for the client's authority over information.

(6) Interviewing individuals involved with the child, including school personnel, child welfare case workers, foster parents and other caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses;

Commentary

In some jurisdictions the child's attorney is permitted free access to agency case workers. In others, contact with the case worker must be arranged through the agency's lawyer.

(7) Reviewing relevant photographs, video or audio tapes and other evidence; and

Commentary

It is essential that the lawyer review the evidence personally, rather than relying on other parties' or counsel's descriptions and characterizations of the evidence.

(8) Attending treatment, placement, administrative hearings, other proceedings involving legal issues, and school case conferences or staffings concerning the child as needed.

Commentary

While some courts will not authorize compensation for the child's attorney to attend such collateral meetings, such attendance is often very important. The child's attorney can present the child's perspective at such meetings, as well as gather information necessary to proper representation. In some cases the child's attorney can be pivotal in achieving a negotiated settlement of all or some issues. The child's attorney may not need to attend collateral meetings if another person involved in the case, such as a social worker who works the lawyer, can get the information or present the child's perspective.

C-3. File Pleadings. The child's attorney should file petitions, motions, responses or objections as necessary to represent the child. Relief requested may include, but is not limited to:

(1) A mental or physical examination of a party or the child;
(2) A parenting, custody or visitation evaluation;

(3) An increase, decrease, or termination of contact or visitation;
(4) Restraining or enjoining a change of placement;
(5) Contempt for non-compliance with a court order;
(6) Termination of the parent-child relationship;
(7) Child support;
(8) A protective order concerning the child's privileged communications or tangible or intangible property;
(9) Request services for child or family; and
(10) Dismissal of petitions or motions.

Commentary

Filing and arguing necessary motions is an essential part of the role of a child's attorney. See, RESOURCE GUIDELINES, at 23. Unless the lawyer is serving in a role which explicitly precludes the filing of pleadings, the lawyer should file any appropriate pleadings on behalf of the child, including responses to the pleadings of the other parties. The filing of such pleadings can ensure that appropriate issues are properly before the court and can expedite the court's consideration of issues important to the child's interests. In some jurisdictions, guardians ad litem are not permitted to file pleadings, in which case it should be clear to the lawyer that he or she is not the "child's attorney" as defined in these Standards.

C-4. Request Services. Consistent with the child's wishes, the child's attorney should seek appropriate services (by court order if necessary) to access entitlements, to protect the child's interests and to implement a service plan. These services may include, but not be limited to:

(1) Family preservation-related prevention or reunification services;
(2) Sibling and family visitation;
(3) Child support;
(4) Domestic violence prevention, intervention, and treatment;
(5) Medical and mental health care;
(6) Drug and alcohol treatment;
(7) Parenting education;
(8) Semi-independent and independent living services;
(9) Long-term foster care;
(10) Termination of parental rights action;
(11) Adoption services;
(12) Education;
(13) Recreational or social services; and
(14) Housing.

Commentary

The lawyer should request appropriate services even if there is no hearing scheduled. Such requests may be made to the agency or treatment providers, or if such informal methods are unsuccessful, the lawyer should file a motion to bring the matter before the court. In some cases the child's attorney should file

collateral actions, such as petitions for termination of parental rights, if such an action would advance the child's interest and is legally permitted and justified. Different resources are available in different localities.

C-5. Child With Special Needs. Consistent with the child's wishes, the child's attorney should assure that a child with special needs receives appropriate services to address the physical, mental, or developmental disabilities. These services may include, but should not be limited to:

(1) Special education and related services;
(2) Supplemental security income (SSI) to help support needed services;
(3) Therapeutic foster or group home care; and
(4) Residential/in-patient and out-patient psychiatric treatment.

Commentary

There are many services available from extra-judicial, as well as judicial, sources for children with special needs. The child's attorney should be familiar with these other services and how to assure their availability for the client. See generally, THOMAS A. JACOBS, CHILDREN & THE LAW: RIGHTS & OBLIGATIONS (1995); LEGAL RIGHTS OF CHILDREN (2d ed. Donald T. Kramer, ed., 1994).

C-6. Negotiate Settlements. The child's attorney should participate in settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child. The child's attorney should use suitable mediation resources.

Commentary

Particularly in contentious cases, the child's attorney may effectively assist negotiations of the parties and their lawyers by focusing on the needs of the child. If a parent is legally represented, it is unethical for the child's attorney to negotiate with a parent directly without the consent of the parent's lawyer. Because the court is likely to resolve at least some parts of the dispute in question based on the best interests of the child, the child's attorney is in a pivotal position in negotiation.

Settlement frequently obtains at least short term relief for all parties involved and is often the best resolution of a case. The child's attorney, however, should not become merely a facilitator to the parties' reaching a negotiated settlement. As developmentally appropriate, the child's attorney should consult the child prior to any settlement becoming binding.

D. HEARINGS

D-1. Court Appearances. The child's attorney should attend all hearings and participate in all telephone or other conferences with the court unless a particular

hearing involves issues completely unrelated to the child.

D-2. Client Explanation. The child's attorney should explain to the client, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.

D-3. Motions and Objections. The child's attorney should make appropriate motions, including motions *in limine* and evidentiary objections, to advance the child's position at trial or during other hearings. If necessary, the child's attorney should file briefs in support of evidentiary issues. Further, during all hearings, the child's attorney should preserve legal issues for appeal, as appropriate.

D-4. Presentation of Evidence. The child's attorney should present and cross examine witnesses, offer exhibits, and provide independent evidence as necessary.

Commentary

The child's position may overlap with the positions of one or both parents, third-party caretakers, or a child protection agency. Nevertheless, the child's attorney should be prepared to participate fully in every hearing and not merely defer to the other parties. Any identity of position should be based on the merits of the position (consistent with Standard B-6), and not a mere endorsement of another party's position.

D-5. Child at Hearing. In most circumstances, the child should be present at significant court hearings, regardless of whether the child will testify.

Commentary

A child has the right to meaningful participation in the case, which generally includes the child's presence at significant court hearings. Further, the child's presence underscores for the judge that the child is a real party in interest in the case. It may be necessary to obtain a court order or writ of habeas corpus ad testificandum to secure the child's attendance at the hearing.

A decision to exclude the child from the hearing should be made based on a particularized determination that the child does not want to attend, is too young to sit through the hearing, would be severely traumatized by such attendance, or for other good reason would be better served by nonattendance. There may be other extraordinary reasons for the child's non-attendance. The lawyer should consult the child, therapist, caretaker, or any other knowledgeable person in determining the effect on the child of being present at the hearing. In some jurisdictions the court requires an affirmative waiver of the child's presence if the child will not attend. Even a child who is too young to sit through the hearing may benefit from seeing the courtroom and meeting, or at least seeing, the judge who will be making the decisions. The lawyer should provide the court with any

required notice that the child will be present. Concerns about the child being exposed to certain parts of the evidence may be addressed by the child's temporary exclusion from the court room during the taking of that evidence, rather than by excluding the child from the entire hearing.

The lawyer should ensure that the state/ custodian meets its obligation to transport the child to and from the hearing. Similarly, the lawyer should ensure the presence of someone to accompany the child any time the child is temporarily absent from the hearing.

D-6. Whether Child Should Testify. The child's attorney should decide whether to call the child as a witness. The decision should include consideration of the child's need or desire to testify, any repercussions of testifying, the necessity of the child's direct testimony, the availability of other evidence or hearsay exceptions which may substitute for direct testimony by the child, and the child's developmental ability to provide direct testimony and withstand possible cross-examination. Ultimately, the child's attorney is bound by the child's direction concerning testifying.

Commentary

There are no blanket rules regarding a child's testimony. While testifying is undoubtedly traumatic for many children, it is therapeutic and empowering for others. Therefore, the decision about the child's testifying should be made individually, based on the circumstances of the individual child and the individual case. The child's therapist, if any, should be consulted both with respect to the decision itself and assistance with preparation. In the absence of compelling reasons, a child who has a strong desire to testify should be called to do so. See ANN M. HARALAMBIE, THE CHILD'S LAWYER: A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION, AND PROTECTION CASES ch. 4 (1993). If the child should not wish to testify or would be harmed by being forced to testify, the lawyer should seek a stipulation of the parties not to call the child as a witness or seek a protective order from the court. If the child is compelled to testify, the lawyer should seek to minimize the adverse consequences by seeking any appropriate accommodations permitted by local law, such as having the testimony taken informally, in chambers, without presence of the parents. See JOHN E.B. MYERS, 2 EVIDENCE IN CHILD ABUSE AND NEGLECT CASES ch. 8 (1992). The child should know whether the in-chambers testimony will be shared with others, such as parents who might be excluded from chambers, before agreeing to this forum. The lawyer should also prepare the child for the possibility that the judge may render a decision against the child's wishes which will not be the child's fault.

D-7. Child Witness. The child's attorney should prepare the child to testify. This should include familiarizing the child with the courtroom, court procedures, and what to expect during direct and cross-examination and ensuring that testifying will cause minimum harm to the child.

Commentary

The lawyer's preparation of the child to testify should include attention to the child's developmental needs and abilities as well as to accommodations which should be made by the court and other lawyers. The lawyer should seek any necessary assistance from the court, including location of the testimony (in chambers, at a small table etc.), determination of who will be present, and restrictions on the manner and phrasing of questions posed to the child.

The accuracy of children's testimony is enhanced when they feel comfortable. See, generally, Karen Saywitz, Children in Court: Principles of Child Development for Judicial Application, in A JUDICIAL PRIMER ON CHILD SEXUAL ABUSE 15 (Josephine Bulkley & Claire Sandt, eds., 1994). Courts have permitted support persons to be present in the courtroom, sometimes even with the child sitting on the person's lap to testify. Because child abuse and neglect cases are often closed to the public, special permission may be necessary to enable such persons to be present during hearings. Further, where the rule sequestering witnesses has been invoked, the order of witnesses may need to be changed or an exemption granted where the support person also will be a witness. The child should be asked whether he or she would like someone to be present, and if so, whom the child prefers. Typical support persons include parents, relatives, therapists, Court Appointed Special Advocates (CASA), social workers, victim-witness advocates, and members of the clergy. For some, presence of the child's attorney provides sufficient support.

D-8. Questioning the Child. The child's attorney should seek to ensure that questions to the child are phrased in a syntactically and linguistically appropriate manner.

Commentary

The phrasing of questions should take into consideration the law and research regarding children's testimony, memory, and suggestibility. See generally, Karen Saywitz, supra D -7; CHILD VICTIMS, CHILD WITNESSES: UNDERSTANDING AND IMPROVING TESTIMONY (Gail S. Goodman & Bette L. Bottoms, eds. 1993); ANN HARALAMBIE, 2 HANDLING CHILD CUSTODY, ABUSE, AND ADOPTION CASES 24.09v24.22 (2nd ed. 1993); MYERS, supra D-6, at Vol. 1, ch 2; Ellen Matthews & Karen Saywitz, Child Victim Witness Manual, 12/1 C.J.E.R.J. 40 (1992).

The information a child gives in interviews and during testimony is often misleading because the adults have not understood how to ask children developmentally appropriate questions and how to interpret their answers properly. See WALKER, SUPRA, A-3 Commentary. The child's attorney must become skilled at recognizing the child's developmental limitations. It may be appropriate to present expert testimony on the issue and even to have an expert present during a young child's testimony to point out any developmentally inappropriate phrasing.

D-9. Challenges to Child's Testimony/Statements. The child's competency to testify, or the reliability of the child's testimony or out-of-court statements, may be called into question. The child's attorney should be familiar with the current law and empirical knowledge about children's competency, memory, and suggestibility and, where appropriate, attempt to establish the competency and reliability of the child.

Commentary

Many jurisdictions have abolished presumptive ages of competency. See HARALAMBIE, SUPRA D-8 AT 24.17. The jurisdictions which have rejected presumptive ages for testimonial competency have applied more flexible, case-by-case analyses. See Louis I. Parley, Representing Children in Custody Litigation, 11 J. AM. ACAD. MATRIM. LAW. 45, 48 (Winter 1993). Competency to testify involves the abilities to perceive and relate.

If necessary, the child's attorney should present expert testimony to establish competency or reliability or to rehabilitate any impeachment of the child on those bases. See generally, Karen Saywitz, supra D-8 at 15; CHILD VICTIMS, SUPRA D-8; Haralambie, supra D-8; J. MYERS, SUPRA D-8; Matthews & Saywitz, supra D-8.

D-10. Jury Selection. In those states in which a jury trial is possible, the child's attorney should participate in jury selection and drafting jury instructions.

D-11. Conclusion of Hearing. If appropriate, the child's attorney should make a closing argument, and provide proposed findings of fact and conclusions of law. The child's attorney should ensure that a written order is entered.

Commentary

One of the values of having a trained child's attorney is such a lawyer can often present creative alternative solutions to the court. Further, the child's attorney is able to argue the child's interests from the child's perspective, keeping the case focused on the child's needs and the effect of various dispositions on the child.

D-12. Expanded Scope of Representation. The child's attorney may request authority from the court to pursue issues on behalf of the child, administratively or judicially, even if those issues do not specifically arise from the court appointment. For example:

(1) Child support;
(2) Delinquency or status offender matters;
(3) SSI and other public benefits;
(4) Custody;
(5) Guardianship;
(6) Paternity;

(7) Personal injury;
(8) School/education issues, especially for a child with disabilities;
(9) Mental health proceedings;
(10) Termination of parental rights; and
(11) Adoption.

Commentary

The child's interests may be served through proceedings not connected with the case in which the child's attorney is participating. In such cases the lawyer may be able to secure assistance for the child by filing or participating in other actions. See, e.g., In re Appeal in Pima County Juvenile Action No. S-113432, 872 P.2d 1240 (Ariz. Ct. App. 1994). With an older child or a child with involved parents, the child's attorney may not need court authority to pursue other services. For instance, federal law allows the parent to control special education. A Unified Child and Family Court Model would allow for consistency of representation between related court proceedings, such as mental health or juvenile justice.

D-13. Obligations after Disposition. The child's attorney should seek to ensure continued representation of the child at all further hearings, including at administrative or judicial actions that result in changes to the child's placement or services, so long as the court maintains its jurisdiction.

Commentary

Representing a child should reflect the passage of time and the changing needs of the child. The bulk of the child's attorney's work often comes after the initial hearing, including ongoing permanency planning issues, six month reviews, case plan reviews, issues of termination, and so forth. The average length of stay in foster care is over five years in some jurisdictions. Often a child's case workers, therapists, other service providers or even placements change while the case is still pending. Different judges may hear various phases of the case. The child's attorney may be the only source of continuity for the child. Such continuity not only provides the child with a stable point of contact, but also may represent the institutional memory of case facts and procedural history for the agency and court. The child's attorney should stay in touch with the child, third party caretakers, case workers, and service providers throughout the term of appointment to ensure that the child's needs are met and that the case moves quickly to an appropriate resolution.

Generally it is preferable for the lawyer to remain involved so long as the case is pending to enable the child's interest to be addressed from the child's perspective at all stages. Like the JUVENILE JUSTICE STANDARDS, these ABUSE AND NEGLECT STANDARDS require ongoing appointment and active representation as long as the court retains jurisdiction over the child. To the extent that these are separate proceedings in some jurisdictions, the child's attorney should seek reappointment. Where reappointment is not feasible, the child's attorney should provide records and information about the case and

cooperate with the successor to ensure continuity of representation.

E. POST-HEARING

E-1. Review of Court's Order. The child's attorney should review all written orders to ensure that they conform with the court's verbal orders and statutorily required findings and notices.

E-2. Communicate Order to Child. The child's attorney should discuss the order and its consequences with the child.

Commentary

The child is entitled to understand what the court has done and what that means to the child, at least with respect to those portions of the order that directly affect the child. Children may assume that orders are final and not subject to change. Therefore, the lawyer should explain whether the order may be modified at another hearing, or whether the actions of the parties may affect how the order is carried out. For example, an order may permit the agency to return the child to the parent if certain goals are accomplished.

E-3. Implementation. The child's attorney should monitor the implementation of the court's orders and communicate to the responsible agency and, if necessary, the court, any non-compliance.

Commentary

The lawyer should ensure that services are provided and that the court's orders are implemented in a complete and timely fashion. In order to address problems with implementation, the lawyer should stay in touch with the child, case worker, third party caretakers, and service providers between review hearings. The lawyer should consider filing any necessary motions, including those for civil or criminal contempt, to compel implementation. See, RESOURCE GUIDELINES, at 23.

F. APPEAL

F-1. Decision to Appeal. The child's attorney should consider and discuss with the child, as developmentally appropriate, the possibility of an appeal. If after such consultation, the child wishes to appeal the order, and the appeal has merit, the lawyer should take all steps necessary to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the child during the pendency of the appeal.

Commentary

The lawyer should explain to the child not only the legal possibility of an appeal, but also the ramifications of filing an appeal, including the potential for delaying implementation of services or placement options. The lawyer should also explain whether the trial court's orders will be stayed pending appeal and

what the agency and trial court may do pending a final decision.

F-2. Withdrawal. If the child's attorney determines that an appeal would be frivolous or that he or she lacks the necessary experience or expertise to handle the appeal, the lawyer should notify the court and seek to be discharged or replaced.

F-3. Participation in Appeal. The child's attorney should participate in an appeal filed by another party unless discharged.

Commentary

The child's attorney should take a position in any appeal filed by the parent, agency, or other party. In some jurisdictions, the lawyer's appointment does not include representation on appeal. If the child's interests are affected by the issues raised in the appeal, the lawyer should seek an appointment on appeal or seek appointment of appellate counsel to represent the child's position in the appeal.

F-4. Conclusion of Appeal. When the decision is received, the child's attorney should explain the outcome of the case to the child.

Commentary

As with other court decisions, the lawyer should explain in terms the child can understand the nature and consequences of the appellate decision. In addition, the lawyer should explain whether there are further appellate remedies and what more, if anything, will be done in the trial court following the decision.

F-5. Cessation of Representation. The child's attorney should discuss the end of the legal representation and determine what contacts, if any, the child's attorney and the child will continue to have.

Commentary

When the representation ends, the child's lawyer should explain in a developmentally appropriate manner why the representation is ending and how the child can obtain assistance in the future should it become necessary. It is important for there to be closure between the child and the lawyer.

PART II– ENHANCING THE JUDICIAL ROLE IN CHILD REPRESENTATION

PREFACE

Enhancing the legal representation provided by court-appointed lawyers for children has long been a special concern of the American Bar Association [*see, e.g.,* JUVENILE JUSTICE STANDARDS RELATING TO *COUNSEL FOR PRIVATE PARTIES* (1979); ABA Policy Resolutions on Representation of Children (Appendix). Yet, no matter how carefully a bar association, legislature, or court defines the duties of lawyers representing children, practice will only improve if judicial administrators and trial judges play a stronger role in the selection, training, oversight, and prompt payment of court-appointed lawyers in child abuse/neglect and child custody/visitation cases.

The importance of the court's role in helping assure competent representation of children is noted in the JUVENILE JUSTICE STANDARDS RELATING TO COURT ORGANIZATION AND ADMINISTRATION (1980) which state in the Commentary to 3.4D that effective representation of parties is "essential" and that the presiding judge of a court "might need to use his or her position to achieve" it. In its RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES (1995), the National Council of Juvenile and Family Court Judges stated, "Juvenile and family courts should take active steps to ensure that the parties in child abuse and neglect cases have access to competent representation. . . ." In jurisdictions which engage nonlawyers to represent a child's interests, the court should ensure they have access to legal representation.

These Abuse and Neglect Standards, like the RESOURCE GUIDELINES, recognize that the courts have a great ability to influence positively the quality of counsel through setting judicial prerequisites for lawyer appointments including requirements for experience and training, imposing sanctions for violation of standards (such as terminating a lawyer's appointment to represent a specific child, denying further appointments, or even fines or referrals to the state bar committee for professional responsibility). The following Standards are intended to assist the judiciary in using its authority to accomplish the goal of quality representation for all children before the court in abuse/neglect related proceedings.

G. THE COURT'S ROLE IN STRUCTURING CHILD REPRESENTATION

G-1. Assuring Independence of the Child's Attorney. The child's attorney should be independent from the court, court services, the parties, and the state.

Commentary

To help assure that the child's attorney is not compromised in his or her independent action, these Standards propose that the child's lawyer be

independent from other participants in the litigation. "Independence" does not mean that a lawyer may not receive payment from a court, a government entity (e.g., program funding from social services or justice agencies), or even from a parent, relative, or other adult so long as the lawyer retains the full authority for independent action. For ethical conflict reasons, however, lawyers should never accept compensation as retained counsel for the child from a parent accused of abusing or neglecting the child. The child's attorney should not prejudge the case. The concept of independence includes being free from prejudice and other limitations to uncompromised representation.

JUVENILE JUSTICE STANDARD *2.1(d) states that plans for providing counsel for children "must be designed to guarantee the professional independence of counsel and the integrity of the lawyer-client relationship." The Commentary strongly asserts there is "no justification for . . . judicial preference" to compromise a lawyer's relationship with the child client and notes the "willingness of some judges to direct lawyers' performance and thereby compromise their independence."*

G-2. Establishing Uniform Representation Rules. The administrative office for the state trial, family, or juvenile court system should cause to be published and disseminated to all relevant courts a set of uniform, written rules and procedures for court-appointed lawyers for minor children.

Commentary

Although uniform rules of court to govern the processing of various types of child-related judicial proceedings have become common, it is still rare for those rules to address comprehensively the manner and scope of representation for children. Many lawyers representing children are unclear as to the court's expectations. Courts in different communities, or even judges within the same court, may have differing views regarding the manner of child representation. These Standards promote statewide uniformity by calling for written publication and distribution of state rules and procedures for the child's attorney.

G-3. Enhancing Lawyer Relationships with Other Court Connected Personnel. Courts that operate or utilize Court Appointed Special Advocate (CASA) and other nonlawyer guardians ad litem, and courts that administer nonjudicial foster care review bodies, should assure that these programs and the individuals performing those roles are trained to understand the role of the child's attorney. There needs to be effective coordination of their efforts with the activities of the child's attorney, and they need to involve the child's attorney in their work. The court should require that reports from agencies be prepared and presented to the parties in a timely fashion.

Commentary

Many courts now regularly involve nonlawyer advocates for children in various capacities. Some courts also operate programs that, outside of the courtroom, review the status of children in foster care or other out-of-home

placements. It is critical that these activities are appropriately linked to the work of the child's attorney, and that the court through training, policies, and protocols helps assure that those performing the nonlegal tasks. (1) understand the importance and elements of the role of the child's attorney, and (2) work cooperatively with such lawyers. The court should keep abreast of all the different representatives involved with the child, the attorney, social worker for government or private agency, CASA volunteer, guardian ad litem, school mediator, counselors, etc.

H. THE COURT'S ROLE IN APPOINTING THE CHILD'S ATTORNEY

H-1. Timing of Appointments. The child's attorney should be appointed immediately after the earliest of:

(1) The involuntary removal of the child for placement due to allegations of neglect, abuse or abandonment;
(2) The filing of a petition alleging child abuse and neglect, for review of foster care placement, or for termination of parental rights; or
(3) Allegations of child maltreatment, based upon sufficient cause, are made by a party in the context of proceedings that were not originally initiated by a petition alleging child maltreatment.

Commentary

These ABUSE AND NEGLECT STANDARDS take the position that courts must assure the appointment of a lawyer for a child as soon as practical (ideally, on the day the court first has jurisdiction over the case, and hopefully, no later than the next business day). The three situations are described separately because:

(1) A court may authorize, or otherwise learn of, a child's removal from home prior to the time a formal petition is instituted. Lawyer representation of (and, ideally, contact with) the child prior to the initial court hearing following removal (which in some cases may be several days) is important to protect the child's interests;
(2) Once a petition has been filed by a government agency (or, where authorized, by a hospital or other agency with child protection responsibilities), for any reason related to a child's need for protection, the child should have prompt access to a lawyer; and
(3) There are cases (such as custody, visitation, and guardianship disputes and family-related abductions of children) where allegations, with sufficient cause, of serious physical abuse, sexual molestation, or severe neglect of a child are presented to the court not by a government agency (i.e., child protective services) but by a parent, guardian, or other relative. The need of a child for competent, independent representation by a lawyer is just as great in situation (3) as with cases in areas (1) and (2).

H-2. Entry of Compensation Orders. At the time the court appoints a child's

attorney, it should enter a written order addressing compensation and expense costs for that lawyer, unless these are otherwise formally provided for by agreement or contract with the court, or through another government agency.

Commentary

Compensation and expense reimbursement of individual lawyers should be addressed in a specific written court order is based on a need for all lawyers representing maltreated children to have a uniform understanding of how they will be paid. Commentary to Section 2.1(b) of the JUVENILE JUSTICE STANDARDS observes that it is common for court-appointed lawyers to be confused about the availability of reimbursement of expenses for case-related work.

H-3. Immediate Provision of Access. Unless otherwise provided for, the court should upon appointment of a child's attorney, enter an order authorizing that lawyer access between the child and the lawyer and to all privileged information regarding the child, without the necessity of a further release. The authorization should include, but not be limited to: social services, psychiatric, psychological treatment, drug and alcohol treatment, medical, evaluation, law enforcement, and school records.

Commentary

Because many service providers do not understand or recognize the nature of the role of the lawyer for the child or that person's importance in the court proceeding, these Standards call for the routine use of a written court order that clarifies the lawyers right to contact with their child client and perusal of child-related records. Parents, other caretakers, or government social service agencies should not unreasonably interfere with a lawyer's ability to have face-to-face contact with the child client nor to obtain relevant information about the child's social services, education, mental health, etc. Such interference disrupts the lawyer's ability to control the representation and undermines his or her independence as the child's legal representative.

H-4. Lawyer Eligibility for and Method of Appointment. Where the court makes individual appointment of counsel, unless impractical, before making the appointment, the court should determine that the lawyer has been trained in representation of children and skilled in litigation (or is working under the supervision of an lawyer who is skilled in litigation). Whenever possible, the trial judge should ensure that the child's attorney has had sufficient training in child advocacy and is familiar with these Standards. The trial judge should also ensure that (unless there is specific reason to appoint a specific lawyer because of their special qualifications related to the case, or where a lawyer's current caseload would prevent them from adequately handling the case) individual lawyers are appointed from the ranks of eligible members of the bar under a fair, systematic, and sequential appointment plan.

Commentary

The JUVENILE JUSTICE STANDARDS 2.2(c) provides that where counsel is assigned by the court, this lawyer should be drawn from "an adequate pool of competent attorneys." In general, such competency can only be gained through relevant continuing legal education and practice-related experience. Those Standards also promote the use of a rational court appointment process drawing from the ranks of qualified lawyers. The Abuse and Neglect Standards reject the concept of ad hoc appointments of counsel that are made without regard to prior training or practice.

H-5. Permitting Child to Retain a Lawyer. The court should permit the child to be represented by a retained private lawyer if it determines that this lawyer is the child's independent choice, and such counsel should be substituted for the appointed lawyer. A person with a legitimate interest in the child's welfare may retain private counsel for the child and/or pay for such representation, and that person should be permitted to serve as the child's attorney, subject to approval of the court. Such approval should not be given if the child opposes the lawyer's representation or if the court determines that there will be a conflict of interest. The court should make it clear that the person paying for the retained lawyer does not have the right to direct the representation of the child or to receive privileged information about the case from the lawyer.

Commentary

Although such representation is rare, there are situations where a child, or someone acting on a child's behalf, seeks out legal representation and wishes that this lawyer, rather than one appointed by the court under the normal appointment process, be recognized as the sole legal representative of the child. Sometimes, judges have refused to accept the formal appearances filed by such retained lawyers. These Standards propose to permit, under carefully scrutinized conditions, the substitution of a court-appointed lawyer with the retained counsel for a child.

I. THE COURT'S ROLE IN LAWYER TRAINING

I-1. Judicial Involvement in Lawyer Training. Trial judges who are regularly involved in child-related matters should participate in training for the child's attorney conducted by the courts, the bar, or any other group.

Commentary

JUVENILE JUSTICE STANDARDS 2.1 indicates that it is the responsibility of the courts (among others) to ensure that competent counsel are available to represent children before the courts. That Standard further suggests that lawyers should "be encouraged" to qualify themselves for participation in child-related cases "through formal training." The Abuse and Neglect Standards go further by suggesting that judges should personally take part in educational programs, whether or not the court conducts them. The National Council of Juvenile and Family Court Judges has suggested that courts can play in important role in training lawyers in child abuse and neglect cases, and that

judges and judicial officers can volunteer to provide training and publications for continuing legal education seminars. See, RESOURCE GUIDELINES, at 22.

I-2. Content of Lawyer Training. The appropriate state administrative office of the trial, family, or juvenile courts should provide educational programs, live or on tape, on the role of a child's attorney. At a minimum, the requisite training should include:

(1) Information about relevant federal and state laws and agency regulations;
(2) Information about relevant court decisions and court rules;
(3) Overview of the court process and key personnel in child-related litigation;
(4) Description of applicable guidelines and standards for representation;
(5) Focus on child development, needs, and abilities;
(6) Information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in his or her home;
(7) Information concerning family dynamics and dysfunction including substance abuse, and the use of kinship care;
(8) Information on accessible child welfare, family preservation, medical, educational, and mental health resources for child clients and their families, including placement, evaluation/diagnostic, and treatment services; the structure of agencies providing such services as well as provisions and constraints related to agency payment for services; and
(9) Provision of written material (e.g., representation manuals, checklists, sample forms), including listings of useful material available from other sources.

Commentary

The ABUSE AND NEGLECT STANDARDS take the position that it is not enough that judges mandate the training of lawyers, or that judges participate in such training. Rather, they call upon the courts to play a key role in training by actually sponsoring (e.g., funding) training opportunities. The pivotal nature of the judiciary's role in educating lawyers means that courts may, on appropriate occasions, stop the hearing of cases on days when training is held so that both lawyers and judges may freely attend without docket conflicts. The required elements of training are based on a review of well-regarded lawyer training offered throughout the country, RESOURCE GUIDELINES, and many existing manuals that help guide lawyers in representing children.

I-3. Continuing Training for Lawyers. The court system should also assure that there are periodic opportunities for lawyers who have taken the "basic" training to receive continuing and "new developments" training.

Commentary

Many courts and judicial organizations recognize that rapid changes occur because of new federal and state legislation, appellate court decisions, systemic reforms, and responses to professional literature. Continuing education opportunities are critical to maintain a high level of performance. These Standards call for courts to afford these "advanced" or "periodic" training to lawyers who represent children in abuse and neglect related cases.

I-4. Provision of Mentorship Opportunities. Courts should provide individual court-appointed lawyers who are new to child representation the opportunity to practice under the guidance of a senior lawyer mentor.

Commentary

In addition to training, particularly for lawyers who work as sole practitioners or in firms that do not specialize in child representation, courts can provide a useful mechanism to help educate new lawyers for children by pairing them with more experienced advocates. One specific thing courts can do is to provide lawyers new to representing children with the opportunity to be assisted by more experienced lawyers in their jurisdiction. Some courts actually require lawyers to —second chair" cases before taking an appointment to a child abuse or neglect case. See, RESOURCE GUIDELINES, at 22.

J. THE COURT'S ROLE IN LAWYER COMPENSATION

J-1. Assuring Adequate Compensation. A child's attorney should receive adequate and timely compensation throughout the term of appointment that reflects the complexity of the case and includes both in court and out-of-court preparation, participation in case reviews and post-dispositional hearings, and involvement in appeals. To the extent that the court arranges for child representation through contract or agreement with a program in which lawyers represent children, the court should assure that the rate of payment for these legal services is commensurate with the fees paid to equivalently experienced individual court-appointed lawyers who have similar qualifications and responsibilities.

Commentary

JUVENILE JUSTICE STANDARDS 2.1(b) recognize that lawyers for children should be entitled to reasonable compensation for both time and services performed "according to prevailing professional standards," which takes into account the "skill required to perform...properly," and which considers the need for the lawyer to perform both counseling and resource identification/evaluation activities. The RESOURCE GUIDELINES, at 22, state that it is —necessary to provide reasonable compensation" for improved lawyer representation of children and that where necessary judges should —urge state legislatures and local governing bodies to provide sufficient funding" for quality legal representation.

Because some courts currently compensate lawyers only for time spent in court at the adjudicative or initial disposition stage of cases, these Standards clarify that compensation is to be provided for out-of-court preparation time, as well as for the lawyer's involvement in case reviews and appeals. "Out-of-court preparation" may include, for example, a lawyer's participation in social services or school case conferences relating to the client.

These Standards also call for the level of compensation where lawyers are working under contract with the court to provide child representation to be comparable with what experienced individual counsel would receive from the court. Although courts may, and are encouraged to, seek high quality child representation through enlistment of special children's law offices, law firms, and other programs, the motive should not be a significantly different (i.e., lower) level of financial compensation for the lawyers who provide the representation.

J-2. Supporting Associated Costs. The child's attorney should have access to (or be provided with reimbursement for experts, investigative services, paralegals, research costs, and other services, such as copying medical records, long distance phone calls, service of process, and transcripts of hearings as requested.

Commentary

The ABUSE AND NEGLECT STANDARDS expand upon JUVENILE JUSTICE STANDARDS *2.1(c) which recognizes that a child's attorney should have access to —investigatory, expert and other nonlegal services" as a fundamental part of providing competent representation.*

J-3. Reviewing Payment Requests. The trial judge should review requests for compensation for reasonableness based upon the complexity of the case and the hours expended.

Commentary

These Standards implicitly reject the practice of judges arbitrarily "cutting down" the size of lawyer requests for compensation and would limit a judge's ability to reduce the amount of a per/case payment request from a child's attorney unless the request is deemed unreasonable based upon two factors: case complexity and time spent.

J-4. Keeping Compensation Levels Uniform. Each state should set a uniform level of compensation for lawyers appointed by the courts to represent children. Any per/hour level of compensation should be the same for all representation of children in all types of child abuse and neglect-related proceedings.

Commentary

These Standards implicitly reject the concept (and practice) of different courts within a state paying different levels of compensation for lawyers

representing children. They call for a uniform approach, established on a statewide basis, towards the setting of payment guidelines.

K. THE COURT'S ROLE IN RECORD ACCESS BY LAWYERS

K-1. Authorizing Lawyer Access. The court should enter an order in child abuse and neglect cases authorizing the child's attorney access to all privileged information regarding the child, without the necessity for a further release.

Commentary

This Standard requires uniform judicial assistance to remove a common barrier to effective representation, i.e., administrative denial of access to significant records concerning the child. The language supports the universal issuance of broadly-worded court orders that grant a child's attorney full access to information (from individuals) or records (from agencies) concerning the child.

K-2. Providing Broad Scope Orders. The authorization order granting the child's attorney access to records should include social services, psychiatric, psychological treatment, drug and alcohol treatment, medical, evaluation, law enforcement, school, and other records relevant to the case.

Commentary

This Standard further elaborates upon the universal application that the court's access order should be given, by listing examples of the most common agency records that should be covered by the court order.

L. THE COURT'S ROLE IN ASSURING REASONABLE LAWYER CASELOADS

L-1. Controlling Lawyer Caseloads. Trial court judges should control the size of court-appointed caseloads of individual lawyers representing children, the caseloads of government agency-funded lawyers for children, or court contracts/agreements with lawyers for such representation. Courts should take steps to assure that lawyers appointed to represent children, or lawyers otherwise providing such representation, do not have such a large open number of cases that they are unable to abide by Part I of these Standards.

Commentary

THE ABUSE AND NEGLECT STANDARDS go further than JUVENILE JUSTICE STANDARD *2.2(b) which recognize the "responsibility of every defender office to ensure that its personnel can offer prompt, full, and effective counseling and representation to each (child) client" and that it "should not accept more assignments than its staff can adequately discharge" by specifically calling upon the courts to help keep lawyer caseloads from getting out of control. The Commentary to 2.2.(b) indicates that: Caseloads must not be exceeded where to do so would "compel lawyers to forego the extensive fact investigation required in both contested and uncontested cases, or to be less than*

scrupulously careful in preparation for trial, or to forego legal research necessary to develop a theory of representation." We would add: "...or to monitor the implementation of court orders and agency case plans in order to help assure permanency for the child."

L-2. Taking Supportive Caseload Actions. If judges or court administrators become aware that individual lawyers are close to, or exceeding, the levels suggested in these Standards, they should take one or more of the following steps:

(1) Expand, with the aid of the bar and children's advocacy groups, the size of the list from which appointments are made;

(2) Alert relevant government or private agency administrators that their lawyers have an excessive caseload problem;

(3) Recruit law firms or special child advocacy law programs to engage in child representation;

(4) Review any court contracts/agreements for child representation and amend them accordingly, so that additional lawyers can be compensated for case representation time; and

(5) Alert state judicial, executive, and legislative branch leaders that excessive caseloads jeopardize the ability of lawyers to competently represent children pursuant to state-approved guidelines, and seek funds for increasing the number of lawyers available to represent children.

Commentary

This Standard provides courts with a range of possible actions when individual lawyer caseloads appear to be inappropriately high.

APPENDIX FOUR

GUARDIAN AD LITEM INFORMATION PACKET

APPENDIX 4

GUARDIAN AD LITEM INFORMATION PACKET

Guardians ad Litem for Children in Family Court

This information packet provides an overview of the different types of guardians ad litem appointed for children in family court proceedings in South Carolina. It is designed for professionals and parties involved in the family court to enhance their understanding of the purpose and responsibilities of guardians ad litem. This document is organized by type of proceeding and serves as a reference; reading from beginning to end may be repetitive. South Carolina statutes, court rules, and case law governing the qualifications, roles, and duties of guardians ad litem are referenced where applicable.

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Introduction

Guardians ad litem are appointed for the limited purpose of litigation for persons who, because of age or other legal disability, may not be able to protect their own rights. Although parents might be expected to fill this role for their children, in

certain types of cases the parents' interests may conflict with the children's interests. In such cases, a guardian ad litem must be appointed to protect the child's interests.

The guardian ad litem must function independently, with allegiance to the child and not to any other party. The guardian ad litem assists the family court and promotes the best interests of the child by conducting an impartial assessment of the facts and by submitting recommendations or conclusions on behalf of the child.

Volunteers, attorneys, and private or lay persons serve as guardians ad litem for children in various types of family court cases. The court must appoint all guardians ad litem, although the initial selection process varies. A guardian ad litem's duty is always to protect the child's best interests, but the specific focus of the guardian may vary by type of proceeding. An order of appointment authorizes the guardian ad litem to obtain information, meet with the children involved, file motions and seek relief, and make recommendations or report conclusions to the court. These responsibilities continue until the court formally relieves the guardian ad litem.

The court is responsible for assuring that guardians ad litem are capable and discharge their duties competently. The South Carolina Court of Appeals held that:

The trial judge's duty to assure the child's best interests are protected requires as a minimum that: (1) he select a competent person to serve as guardian ad litem; (2) he select a person with no adverse interests to the minor; and (3) the person so selected is adequately instructed on the proper performance of his duties. Shainwald v. Shainwald, 302 S.C. 453, 395 S.E.2d 441 (S.C. Ct. App. 1990).

Guardians ad litem are accountable to the court. They are subject to cross-examination about their conclusions or recommendations and the methods used to develop them, and any reports they submit to the court. Upon good cause, a party to a proceeding may file a motion to have a guardian ad litem dismissed. Additional accountability measures vary by type of guardian ad litem and are discussed in subsequent sections.

The following chart illustrates the types of guardians ad litem appointed in various types of proceedings:

	Volunteer GAL	*Attorney GAL*	*Private or Lay GAL*	*Other**
Abuse & Neglect Cases	X	X		
Termination of Parental Rights	X	X		
Private Custody or Visitation		X	X	
Adoption		X		X
Name Changes		X		X
Actions Related to Paternity		X		
Abortion Consent		X		X

* As further explained in the sections on adoptions, name changes, and abortion consent, guardians ad litem in those proceedings may be non-attorneys acquainted with the family and may serve for a minimal or no fee.

Abuse and Neglect Cases

Federal and state law requires the appointment of a guardian ad litem for children in child protection cases that involve the court. CAPTA, 42 USCA § 5106a. S.C. Code Ann. § 63-7-1620(1)(Supp. 2008) A volunteer is usually appointed in this capacity, and family courts are encouraged to utilize the volunteer guardian ad litem program rather than appoint lawyers unnecessarily. Rule 608 G(3), S.C. Appellate Court Rules.

The South Carolina statute also requires the appointment of an attorney for the child when the guardian ad litem is a volunteer. The general practice in South Carolina is to construe the attorney's role as representing the guardian ad litem. *Brode v. Brode*, 278 S.C. 457, 298 S.E.2d. 443 (S.C. 1982).

When an attorney is appointed as guardian ad litem, the attorney must serve as both guardian ad litem and legal counsel for the child unless extraordinary circumstances exist. Act 199, 2008 S.C. Acts ___.

Volunteers in Abuse and Neglect Cases

Volunteer guardians ad litem serve without compensation in child protection and termination of parental rights cases involving the Department of Social Services. Either the South Carolina Guardian ad Litem Program or the Richland County

CASA (Court Appointed Special Advocates) supervises these guardians. The use of volunteers in this role reflects a national trend that began in 1977 and is endorsed by the National Council of Juvenile and Family Court Judges.

The South Carolina Guardian ad Litem Program, a division of the Governor's Office, was developed in 1984 as one of the first state-supported programs in the nation. It became operational in 45 counties in all 16 circuits in 1988. State statute authorizes this program, defines specific duties, establishes confidentiality requirements, provides qualified immunity, and sets forth those persons who may not be appointed. S.C. Code Ann. § 63-11-500 et. seq. (Supp. 2008).

Richland County CASA, which is independent of the state program, operates as a department within Richland County government. This program was established in 1983 through the efforts of the Junior League and later moved under the auspices of Richland County. A public/non-profit partnership, the program is funded through a combination of county funds, grants, and donations. The provisions of S.C. Code Ann. § 63-11-500 et. seq.
also apply to the Richland County program. Act No. 288, 2008 S.C. Acts ___.

Selection of volunteers is handled by circuit or county coordinators in the volunteer program. Volunteers are accepted into the program following a process involving a criminal records check, a S.C. DSS central registry check, character references, and a personal interview. Persons who have been convicted of certain offenses are prohibited from being appointed. S.C. Code Ann. § 63-11-520 (Supp. 2008). Program staff assign accepted volunteers who have completed their training requirements to particular cases based on availability, experience, and other relevant factors.

Training requirements include an initial 30-hour, pre-service session that addresses child development, child maltreatment, permanency needs of children, the legal system, and other topics. Volunteers are also expected to participate in ongoing continuing education.

Duties of volunteer guardians ad litem, specified in S.C. Code Ann. § 63-11-510 (Supp. 2008), include:

(1) represent the child's best interests;
(2) advocate for the child's welfare and rights;
(3) conduct an independent assessment of the facts, the child's needs, and the available resources within the family and community to meet those needs;
(4) maintain accurate, written case records;
(5) provide the family court with a written report, which should include evaluation and assessment of the relevant issues and recommendations for the case plan, the child's wishes, if appropriate, and subsequent disposition of the case;

(6) monitor compliance with the court orders and make the motions necessary to enforce the orders or seek judicial review; and
(7) protect and promote the child's best interests until formally relieved.

Volunteers are also expected by program policy to visit the child monthly while monitoring a case and submit monthly reports to their coordinator.

Volunteer guardians ad litem are authorized by S.C. Code Ann. § 63-11-530 (Supp. 2008) to:

(1) conduct an independent assessment of the facts;
(2) meet with and observe the child involved;
(3) interview persons involved in the case;
(4) participate on any multi-disciplinary evaluation teams for the case;
(5) make recommendations to the court concerning the child's welfare;
(6) make motions necessary to enforce the orders of the court, seek judicial review, or petition the court for relief on behalf of the child;
(7) through counsel, introduce, examine, and cross-examine witnesses and participate in the proceedings to any degree necessary to represent the child adequately.

Accountability is provided through the volunteer program. Questions or concerns about the conduct of a volunteer guardian ad litem in Richland County may be reported to Richland County CASA at (803) 576-1724. In other areas of the state, concerns may be reported to the county office of the S.C. Guardian ad Litem Program or to the state office at (803) 734-1695.

Liability is limited by statute. After completion of the training program, a volunteer is not liable for any civil damages for personal injury resulting from acts or omissions, provided that the volunteer is acting in good faith and is not grossly negligent. S.C. Code Ann. § 63-11-560 (Supp. 2008).

Fees are not applicable. Volunteers serve without compensation or reimbursement for expenses they incur.

Attorneys in Abuse and Neglect Cases

When a volunteer is not available, or when a conflict arises, an attorney is appointed as guardian ad litem.

Selection is in accordance with Rule 608, S.C. Appellate Court Rules, which requires active members of the South Carolina Bar to accept appointments for indigent persons. Under this rule, the next available attorney is taken from the civil appointment list maintained by the Clerk of Court in each county.

Training specific to the function of guardian ad litem is not required for appointment in abuse and neglect cases. Attorneys in South Carolina must

attend 14 hours of continuing legal education every year and maintain their licenses to practice law in order to remain eligible for appointments.

Duties for volunteers serving as guardians ad litem in abuse and neglect cases are delineated in S.C. Code Ann. § 63-11-510 (Supp. 2008), but that statute does not specifically delineate the duties of attorneys serving as guardians ad litem in abuse and neglect cases. Attorneys are obligated to protect the best interests of the child and that obligation may be fulfilled by meeting the responsibilities and duties set forth in S.C. Code Ann. § 63-11-510. The South Carolina Supreme Court has approved an optional form that family court judges may use to appoint a guardian ad litem and an attorney. This form lists specific duties and, when it is used, or, if the court directs other specific functions, the attorney is required to perform all functions ordered by the court. (The optional court order form may be obtained from the Children's Law Center's website http://childlaw.sc.edu .)

Accountability for lawyers appointed as guardians ad litem in abuse and neglect cases is the same as for attorneys practicing law. All attorneys are required to follow the Rules of Professional Conduct regardless of their role. Complaints may be made in writing to the Commission on Lawyers' Conduct, P.O. Box 11330, Columbia, S.C. 29211. Correspondence should include the lawyer's full name, the specific complaint about what the lawyer did or did not do, and any supporting documents that would help the investigation.

Liability does not apply as long as the attorney is acting within the scope of the duties of a guardian ad litem. The South Carolina Supreme Court found that guardians ad litem have immunity in a private custody case, and the reasoning in their decision does not appear to exclude abuse and neglect cases. *Fleming v. Asbill*, 326 S.C. 49, 483 S.E.2d 751 (S.C. 1997). This immunity does not protect an attorney who is acting outside of the scope of the duties of a guardian ad litem. *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350 (S.C. Ct. App. 2000).

Fees are authorized by Rule 41(a), S.C. Rules of Family Court. Appointed attorneys may file for reimbursement through the South Carolina Commission on Indigent Defense. Payments are set at an hourly rate and may not exceed a set limit unless the court orders additional reimbursement. The Commission may be contacted at (803) 734-1343.

Termination of Parental Rights Cases

A guardian ad litem must be appointed for the child in a termination of parental rights action. S.C. Code Ann. § 63-7-2560(B)(Supp. 2008).

If a volunteer guardian ad litem finds that appointment of counsel is necessary to assist the volunteer in protecting the rights of the child, an attorney must be appointed to represent the volunteer guardian. In contested cases, appointment

of an attorney for the volunteer guardian is required. When the guardian ad litem is an attorney, the judge determines on a case-by-case basis whether counsel is required for the guardian. S.C. Code Ann. § 63-7-2560(B)(Supp. 2008).

Selection of a guardian ad litem is the same as selection in abuse and neglect cases. Either volunteers or attorneys may be appointed in termination cases. When a termination action is filed subsequent to a child protection case, appointment of a different guardian ad litem is not required by statute. The guardian ad litem from the previous case may be re-appointed in the termination of parental rights case. A guardian ad litem may choose not to serve in the termination case, and the court may choose to appoint a new guardian ad litem for the termination case.

Training requirements are the same for either volunteers or attorneys in child abuse and neglect cases. No additional training is required for appointment in termination cases.

Duties are not delineated in statute, but the guardian ad litem is always required to advocate for the best interests of the child. Family court judges generally expect the guardian ad litem to determine whether termination of the parents' rights would be in the best interests of the child. Although the plaintiff (usually DSS) must prove a ground for termination and demonstrate best interests, the guardian ad litem focuses on the child's perspective.

In addition to submitting recommendations to the court, the guardian ad litem may initiate an action for termination of parental rights. *Joiner v. Rivas*, 342 S.C. 102, 536 S.E.2d 372 (S.C. 2000).

Liability and accountability are the same as in abuse and neglect cases. (See page 3-5 for volunteers and 5-6 for attorneys.)

Private Custody and Visitation Disputes

In actions between private parties involving custody of or visitation with a child, the court may appoint a guardian ad litem only when without a guardian: the court will likely not be fully informed about the facts and there is a substantial dispute which necessitates a guardian; or both parties consent to appointment of a guardian who is approved by the court. S.C. Code Ann. § 63-3-810(A)(Supp. 2008).

The South Carolina Private Guardian ad Litem Reform Act took effect January 15, 2003, and governs private guardians ad litem appointed in custody or visitation cases on or after that date.

Guardians ad litem in private custody cases are attorneys or other qualified persons who seek such appointments for a fee. Guardians ad litem in these cases who are not attorneys are commonly known as lay guardians ad litem.

The court may appoint an attorney for a lay guardian ad litem. A party or the guardian ad litem may petition the court by motion for appointment of an attorney, or the appointment may be by consent order. An order appointing an attorney for the guardian ad litem must set forth the reasons for the appointment and method for compensation. S.C. Code Ann. §63-3-820(E)(Supp. 2008).

Selection of a guardian ad litem may be recommended by an attorney in the case, but the court has absolute discretion in determining whom is appointed. S.C. Code Ann. § 63-3-810(B)(Supp. 2008) Private guardians must be at least 25 years old and have a high school diploma or its equivalent. They cannot have been convicted of certain crimes, or ever been on the DSS Central Registry. S.C. Code Ann. § 63-3-820 (Supp. 2008).

Once appointed, a guardian ad litem must provide an affidavit to the court and parties attesting to compliance with the statutory qualifications and training requirements. Guardians must also provide written disclosure to each party of any relationship the guardian has with any party, or any adverse interest to any party, and of any membership or participation in any organization related to child abuse, domestic violence, or drug and alcohol abuse. S.C. Code Ann. §63-3- 860 (Supp. 2008).

Training is required for both attorneys and lay guardians. For initial qualification, a lay guardian must complete a minimum of 9 hours of training in the areas of custody and visitation and 3 hours related to substantive law and procedure in family court. The training must be approved by the Supreme Court Commission on Continuing Legal Education and Specialization. Observation of 3 contested custody hearings is also required before lay persons can be appointed. Lay guardians ad litem must also complete 6 hours of continuing education in the areas of custody and visitation each year. S.C. Code Ann. § 63-3-820 (Supp. 2008).

Attorneys appointed as guardians ad litem in private custody cases must annually complete a minimum of 6 hours of family law continuing legal education in the areas of custody and visitation, although this requirement may be waived by the court. S.C. Code Ann. § 63-3-(A)(3) (Supp. 2008).

Duties are defined by statute, and apply to both attorneys and lay guardians. S.C. Code Ann. §63-3-830(A)(Supp. 2008). Guardians are required to:

(1) represent the child's best interest;

(2) conduct an independent investigation to include reviewing relevant documents, meeting with the child, visiting the homes if appropriate, interviewing relevant persons, obtaining criminal histories, and considering the wishes of the child when appropriate;
(3) advocate for the child's best interests by making suggestions for evaluation, services, and treatment;
(4) attend all court hearings unless excused;
(5) maintain a complete file;
(6) present to the court and all parties clear and comprehensive written reports including a final written report regarding the child's best interests.

Reports must be submitted in a manner consistent with the South Carolina Rules of Evidence and state law. S.C. Code Ann. § 63-3-830(A)(6)(Supp. 2008). The final written report must include the names, addresses, and telephone numbers of persons interviewed during the investigation. The final report must be submitted 20 days prior to the hearing, unless the court reduces the time period. However, the time period cannot be decreased to less than 10 days prior to the hearing unless all parties consent in writing. S.C. Code Ann. § 63-3-(A)(6)(Supp. 2008).

Guardians ad litem must not offer a recommendation concerning which party should be awarded custody either in their report or at the hearing. The guardian may only make a recommendation as to custody at the hearing if requested to do so by the court for reasons specifically set forth on the record.

Guardians are prohibited from acting as mediators in cases to which they have been appointed, but may participate in mediation or settlement conferences with consent of the parties. S.C. Code Ann. § 63-3-840 (Supp. 2008).

A guardian ad litem may submit briefs, memoranda, affidavits, or other documents on behalf of the child, including affidavits at the temporary hearing. S.C. Code Ann. § 63-3-830(B) (Supp. 2008).

Accountability for attorneys serving as guardians ad litem in private custody and visitation cases is the same as for attorneys practicing law. All attorneys are required to follow the Rules of Professional Conduct regardless of their role. Complaints may be made in writing to the Commission on Lawyers' Conduct, P.O. Box 11330, Columbia, S.C. 29211. Correspondence should include the lawyer's full name, the specific complaint about what the lawyer did or did not do, and any supporting documents.

Accountability for lay guardians is largely limited to that provided by the appointing court. There is no oversight organization for lay guardians in South Carolina.

Actions such as examining or cross-examining witnesses in court and preparing legal pleadings, if performed by a non-attorney, might be considered the unauthorized practice of law. Complaints about the unauthorized practice of law may be made to any of the following: (1) Office of the Attorney General, Unauthorized Practice of Law Division, P.O. Box 11549, Columbia, S.C. 29211; or (2) S.C. Bar, Unauthorized Practice of Law Committee, P.O. Box 608, Columbia, S.C. 29202.

Complaints against lay guardians ad litem who maintain a professional license issued by the state of South Carolina, such as a licensed social worker, professional counselor, or psychologist, may be reported through the appropriate board of the S.C. Department of Labor, Licensing, and Regulation (LLR). Complaint forms can be obtained by calling LLR at (803) 896-4300 and asking for the appropriate board. Complaint forms are also available on LLR's website, www.llr.state.sc.us.

Liability is limited by the South Carolina Supreme Court's ruling that guardians ad litem have common law immunity in private custody cases, as long as they are acting within the scope of their duties. *Fleming v. Asbill*, 326 S.C. 49, 483 S.E.2d 751 (S.C. 1997).

This immunity only applies when acting within the scope of the duties of a guardian ad litem. A recommendation by a guardian ad litem, even when against one party, cannot be the basis for a cause of action against the guardian ad litem. *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350 (S.C. Ct.App. 2000).

Fees are set by the court in accordance with the statute for both attorney guardians and lay guardians in private custody matters. S.C. Code Ann. §63-3-850 (Supp. 2008). Reasonable compensation is determined by the court which must consider the complexity of the issues, the contentiousness of the litigation, time spent and reasonable expenses incurred by the guardian, each party's financial ability, and any other relevant factors.

At the time of appointment, the judge sets the hourly rate the guardian may charge, the amount each party is to pay the guardian to begin the investigation, and the total amount the guardian may charge in the case. If the guardian finds it necessary to exceed the total amount determined by the judge, the guardian must notify both parties and ask the judge to increase the total amount a guardian may charge. A guardian may seek the consent of the parties for an increase in the total amount a guardian may charge. The guardian must submit an itemized billing statement of hours, expenses, fees and costs to the parties and to the court pursuant to a schedule as directed by the court. A party may petition the court to review the reasonableness of the fees and costs submitted by the guardian. S.C. Code Ann. § 63-3-850(C) and(D) (Supp. 2008).

Adoptions

Selection and appointment of a guardian ad litem is required to represent the interests of the adoptee in an agency, private, relative, or stepparent adoption. The guardian ad litem in adoption cases is usually an attorney whose appointment is sought by the adoptive parents. Guardians ad litem in adoption actions are sometimes non-attorneys acquainted with the family who serve for a minimal or no fee.

In adoption actions, certified adoption investigators are also required to complete background investigations prior to the final adoption hearing.

Training of a specific type is not required.

Duties are not set forth in the statute, but the court generally expects the guardian d litem to submit a recommendation at the final hearing as to whether adoption is in the best interests of the child. The guardian ad litem may accept service of pleadings for children 14 or younger. S.C. Code Ann. § 63-9-720 (Supp. 2008).

Fees are typically paid by the adoptive parents.

Name Changes

Selection and appointment of a guardian ad litem is required when a parent petitions the court to change the name of a child. S.C. Code Ann. §15-49-10(B)(Supp. 2006). Guardians ad litem in name change actions are usually attorneys, but are sometimes non-attorneys acquainted with the family who serve for a minimal or no fee.

Training: There are no specific training requirements.

Duties may include, in the discretion of the court, recommending whether the proposed name change would be in the child's best interests.

Fees are typically paid by the petitioning parent.

Actions Related to Paternity

Actions to establish paternity may be brought by the child, the mother, a caretaker, a putative father, or an authorized agency. In any action that may have the effect of making a child illegitimate, a guardian ad litem must be appointed for the child.

Selection and appointment may not include the child's mother or presumed or putative father who are prohibited by statute from serving as guardian. S.C. Code Ann. § 63-17-10(E)(Supp. 2008

Abortion Consent

Through a procedure called judicial bypass, a minor may petition the family or circuit court for an order granting her the right to obtain an abortion without parental consent. In these circumstances, a guardian ad litem must be appointed for the minor. S.C. Code Ann. § 44-41-32(3)(Supp. 2006).

Selection and appointment of an attorney as guardian ad litem is the usual practice. The guardian may be a family member or acquaintance of the petitioner. The minor's preference is taken into consideration in this appointment.

Duties are not delineated in statute. Courts generally expect the guardian ad litem to make a determination as to whether authorizing an abortion would be in the minor's best interests; or that the minor understands the ramifications of the decision and is capable of making the decision on her own. The court may grant a minor the right to consent to an abortion on her own behalf upon finding that the abortion would be in her best interests or that she is mature and well-informed enough to make the decision on her own. S.C. Code Ann. § 44-41-32(5)(Supp. 2006).

Definitions

Best Interests: Statutes require that guardians ad litem represent the best interests of the child. While "best interests of the child" is the statutory standard, the definition of "best interests of the child" may be complicated. Professor Roy Stuckey in his *Marital Litigation in South Carolina* offers a useful working definition: "what combination of factors this child needs in a custody and/or access arrangement that will sustain his or her adjustment or development." South Carolina appellate court cases concerning child custody and visitation require an analysis of the totality of circumstances to determine the best interests of the child. Circumstances of the child include all aspects of the child's life: physical; psychological; spiritual; educational; familial; emotional; and recreational. Circumstances of the person seeking custody and/or visitation include character, fitness, and attitude as those factors impact the child.

Central registry: A statewide data system maintained by DSS which identifies abused and neglected children, their parents and guardians, and those responsible for a child's welfare. The Central Registry of Child Abuse and Neglect is not a public record. Information concerning an individual in the Central Registry can be disclosed only when screening of an individual's background is

required by statute or regulations for employment, licensing, or other statutorily specified reason.

Child: A person under the age of 18.

Disability: Incapacity in the eyes of the law; a person under 18, a person in prison, and a person adjudged incompetent have a legal disability.

Good faith: An honest and sincere intention to fulfill one's obligations; absence of any intention to defraud or seek an unfair advantage.

Gross negligence: Failure to exercise even slight care for the protection of others against unreasonable risk of harm.

Guardian ad litem: A person appointed by the court to protect the interests of a minor or legally incompetent person in a lawsuit.

Rules of Professional Conduct: General rules for attorneys governing their practice and behavior.

References

South Carolina Code Ann. (Supp. 2006) [New Statute Designations]

§15-49-10(B) Name change

§ 63-7-1620 Appointment in abuse and neglect

§ 63-11-500 through §63-11-570 S.C. Guardian ad Litem Program

§ 63-17-10 Actions related to paternity

§ 63-3-810 through § 63-3-870 Private custody and visitation

§ 63-7-1570(B) Termination of parental rights

§ 63-9-720 Adoptions

§ 44-41-32 Abortion consent (judicial by-pass)

Black's Legal Dictionary, Sixth Edition

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APPENDIX FIVE

INTRODUCTION TO EVIDENCE FOR GUARDIANS

APPENDIX 5

Introduction to Evidence for Guardians

This appendix offers a brief introduction to evidence in family court and orients a guardian to general principles of evidence. The appendix does not provide a non-lawyer guardian with a complete summary of the rules of evidence nor does it provide a complete summary of the many complicated legal issues concerning admission of evidence.

Attorneys are trained to deal with matters relating to evidence including what can or cannot be presented to the court. In cases where the guardian is not an attorney, an attorney may be appointed to represent the guardian should the case result in a trial. A non-attorney, including a lay guardian, must have an attorney in order to properly protect a child's best interests at trial.

Rules of Evidence

Rules of evidence prescribe the types of evidence that may be introduced and the procedures for introducing evidence in court. Those rules work to insure that testimony, documentary evidence, and physical evidence provided to the court is trustworthy and relevant so that each party receives a fair hearing.

Most of the rules of evidence pertinent to family court are found in the South Carolina Rules of Evidence, and a few are found in the South Carolina Rules of Family Court.

Guardians who are attorneys are familiar with the rules of evidence and with how evidence is used as trial. As set forth above, guardians who are not

attorneys must seek the assistance of his or her attorney on questions about rules of evidence and about how evidence may be used at trial.

General Categories Evidence

There are two general categories of evidence that may be introduced at a family court hearing. They are:

DEMONSTRATIVE EVIDENCE – Demonstrative evidence is evidence addressed directly to the senses; that is, evidence that is seen, heard, or felt. There are two categories of demonstrative evidence:

PHYSICAL EVIDENCE (THINGS) - Physical evidence includes clothing, shoes, guns, belts, hairbrushes, models, and all other physical objects.

DOCUMENTARY EVIDENCE - Documentary evidence includes school records, medical reports, letters, copies of emails, income tax returns, placement and treatment plans, photographs, maps, charts, and diagrams.

TESTIMONY- Testimony is the sworn verbal statement of a witness at a trial or hearing.

Demonstrative Evidence

Demonstrative evidence includes documentary evidence such as reports, evaluations, records, and other written material. Such evidence may be introduced at trial when the party offering the document establishes a foundation for admission of the document and has established the document's authenticity. Establishing a document's authenticity means showing the document is what it purports to be.

Authenticity may be established through the in-court testimony of the person who wrote or maintains the document. To authenticate a document, the person testifies that the document present in court is the document the person wrote or maintained.

An example of demonstrative evidence typically admitted in custody cases is a calendar depicting dates when a non-custodial parent did or did not visit with the children. The calendar may assist the testimony of a witness concerning the number of scheduled visitations accomplished or missed. The witness may testify about marking and maintaining the calendar (thus establishing the foundation for admission of the calendar), and the calendar may be offered as a record of the dates. Using the calendar as documentary evidence in that manner is far less time consuming than in-court testimony about every date reflected on the calendar.

Photographs, charts, maps, and diagrams are examples of demonstrative evidence that may be used to support testimony at trial. For example, testimony may describe that a house was in disrepair, but actual photographs of the house may more persuasively depict the appearance of the house. In order to use a photograph at trial, a foundation must be established similar to the foundation established for the calendar described above. The person who took the photograph must establish: the circumstances surrounding taking the photograph; the conditions under which the photograph was taken; and that the photograph truly represents what is depicted in the photograph.

Rule 7 of the Rules of Family Court allows admission of some documents without authentication. Those documents are set forth in Table 1.

Table 1. Documents not requiring authentication.

Documents not requiring authentication
A written statement of a child's attendance at school signed by a principal or duly authorized school official;
The school report card showing a child's records of attendance, grades on subjects taught and other pertinent information, provided that this is a reported out at periodic intervals by the school;
A physician's written statement showing that a patient was treated at certain times and the type of ailment;
Except in cases where the Department is a party, a written report of the Department or other agency, reporting the home investigation or any other report required by the court;
A written statement from an employer showing either weekly or monthly wages, W-2 statements, income tax returns, and other reports or similar documents.

Testimony

A witness who is not an expert witness testifies about what the witness has observed. Such testimony is commonly referred to as "who, what, when and where" testimony. A witness at a trial or a hearing must testify under oath. Generally, in a family court custody case, the parties (typically a father and a mother) testify and other witnesses with knowledge of the facts and circumstances testify. Each party testifies or offers the testimony of other witnesses to support the party's view of the case.

Expert Testimony

Expert testimony is the testimony of a person who, due to the person's knowledge, skill, experience, training or education, is able to assist the court. The court must determine whether a witness has the required knowledge, skill, experience, training or education before a person may be "qualified" by the court

as an expert. Unlike witnesses who are not qualified as expert witnesses, experts may offer their opinions on issues the court must decide.

Hearsay

Hearsay is a statement other than a statement made by a person testifying in court offered in evidence to prove that the statement is true. For example, a witness might testify that the witness heard the child's paternal grandmother say that the child is always dirty when the child visits the grandmother. The testimony of the witness uses the statement of the grandmother who is not present to prove to the court that the child is dirty when the child visits the grandmother.

Because the grandmother is not present to testify and be cross-examined at the hearing, the grandmother's statement is hearsay and the other party may object to the admission of the grandmother's statement. The reason hearsay is not admissible absent an exception is that there is no way for the court to determine whether the grandmother who made the statement is credible, and the father's lawyer is not able to question the grandmother about the facts and circumstances surrounding the grandmother's observation of the child when the child visited her.

When a guardian has information relevant to the guardian's efforts to protect a child's best interests and that information must be presented to the court, the guardian must call the person possessing the information as a witness to testify in court. In the example above, if the guardian believes that the grandmother's statements are relevant, then the guardian should call the

grandmother as a witness to testify concerning what she observed. The guardian may not, however, attempt to offer the grandmother's statements made out of court through another witness.

APPENDIX SIX

CHILD DEVELOPMENT AND INTERVIEWING

APPENDIX 6

Child Development and Interviewing

Introduction

A guardian appointed for a child must have a basic understanding of child development and of how a child's developmental level may impact a guardian's interaction with a child, including interviews with the child. There are undergraduate and graduate courses in child growth and development, and there are thousands of books and articles on that subject. The purpose of this section of the resource manual is not to provide in-depth instruction such as is available in courses or to provide the breadth of information contained in books and articles. This section briefly introduces child development, provides some basic interviewing techniques and guidelines, and provides basic references for further research.

Guardians are encouraged to study child development and to read the literature on interviewing children. They are also encouraged to contact children's advocacy centers, child welfare agencies, and volunteer organizations serving children and to confer with professionals in those organizations to increase their skills in advocating for children.

Guidance for Non-Lawyer Guardians

A guardian must represent a child's best interest before the court and interviewing a child and obtaining the child's views are crucial. Obviously, the age and/or the developmental level of the child will determine whether a child may be interviewed and will affect the value and reliability of the information

gained from the child. A child may be old enough and sophisticated enough to have his or her own agenda in a particular situation. For example, a child may feel that wanting to live with one parent or the other will hurt the parent not chosen. Such a child may try to cast both parents in the best light so as not to appear that he or she is favoring one parent over the other.

A child may have a great deal of fear about the child's situation and about the guardian. It is important that a child understand that a guardian is there to help the child and to respond to the child's questions and concerns. A guardian must attempt to address a child's fears. A surprising number of children think they will have to go to court and "tell the judge where they want to live." Although that rarely happens, it is important for a child to understand that a guardian speaks for the child and that a visit to the court may not necessarily be in the child's future. A guardian must encourage a child to share the child's thoughts and fears with the guardian so guardian may present that information to the court.

A guardian should consider where and how the interview of a child should take place. Questions to consider are: is an office so formal and stuffy that a child may not feel at ease and ready to communicate? Is school a safe, neutral location where a child is not under the influence of either parent and therefore feels free to talk? Should siblings be interviewed together or apart? May an activity such as coloring with a younger child a way to get the child to be more comfortable and ready to communicate?

Every guardian will approach a child's interview differently. A guardian must determine the goal of the interview and seek the best interview methods for reaching that goal.

As a case proceeds, a guardian may need to conduct repeated interviews. How many interviews a guardian conducts may depend on the needs of the child, the requests of the court or a parent, or the requests of a third party such as a teacher. If a child is in counseling, the counselor may want the guardian to attend a session to hear what the child says or needs to say. In addition to interviews, other contacts with a child are important and can assist with the investigation conducted by the guardian in protecting the child's best interests.

Child Development Generally

An important concept in child development is the distinction between a child's chronological age and a child's developmental age. The literature on child development generally sets forth developmental levels in association with a child's age, but knowing the child's developmental age is a key to effectively communicating with and advocating for a child.

Jean Piaget is considered by many to be the most influential researcher in child development. There are a number of other researchers who have either questioned Piaget's research or refined aspects of that research. Despite some criticisms, levels of development identified by Piaget are generally accepted and provide a framework within which to consider a child's developmental level.

A summary of Piaget's theory in C*hildren and the Law*[1] sets forth Piaget's four basic levels of development:

1. Birth to two years old: sensory motor period: children at the end of this level are able to mentally plan simple physical tasks using objects they see.

2. Two to seven years old: preoperational thought period: children gain language facility and move from thought processes based on what they directly observe to the beginnings of logical thinking.

3. Seven to eleven years old: concrete operations period: children begin to understand causation and to more objectively view the universe - they begin to understand why physical events occur.

4. Eleven to fifteen years old: formal operations period: children can engage in thought independent of actions they see or perform. They can project past, present and future conditions of a problem and create hypotheses about what may occur under different conditions. They are able to engage in problem solving mental operations.

Developmental Level and Communication

A number of researchers have studied children's language skills at various levels of development. One of the most useful articles on that topic is Anne Graffam Walker's *A Few Facts about Children's Language Skills*[2]. According to Dr. Walker, children's language ability at various ages may be summarized as follows:

1. By age 3: vocabulary ranges from 500 – 3000 words and they can identify parts of their own bodies.

2. By ages 5 - 6: vocabulary ranges from 13,000 – 21,000 words. Language is well-developed but not mature. Although these children sound like

adults, they have not mastered their language. They do not understand all the concepts expressed in language. For example, they have trouble with abstractions (what is truth?) with relations of time, speed, size and duration (how fast was it going?).

3. By ages 10 - 11: children have learned to use relational words as adults use them.

A general understanding of children's language skills assists the guardian's initial interview planning. For example, an infant may not be interviewed but a guardian may plan a home visit to observe the infant's interaction with the parent. A guardian may also conduct structured observations of an infant. For example, the guardian may note an infant's general affect (happy, dour, passive) and observe whether that affect changes when a parent is present.

A practical way to understand a child's ability to communicate as a guardian plans an interview is to consider what kinds of questions a child may be able to answer. The most commonly asked questions are: who, what, where, how, when, number of times and circumstances. Associating those questions with the ages of children normally able to answer those types of questions offers a useful guide for developing appropriate interview questions for children.

Guardians must be aware, however, that each child's developmental level is different and that the child may not respond consistent a broad guideline. According to research, the following guidelines reflect age appropriate interview questions.

Age 3: who, what

Age 4: who, what, where

Ages 5 - 6: who, what, where, how

Ages 7 – 8: who, what, where, how, when

Ages 9 – 10: who, what, where, how, when, number of times

Ages: 11+: who, what, where, how, when, number of times, circumstances

An interviewer should avoid why questions. Responding to such questions may be beyond the developmental level of a child. More importantly, a why question may ask a child to explain the action of an adult, including a parent, and doing so may make the child uncomfortable.

When speaking with younger children, avoid questions using pronouns. Younger children think very concretely and pronouns may confuse them. For younger children, use names of people rather than him or her.

Interviewing Children: General Considerations

There are several general principles to keep in mind when considering questions for children in an interview. First, research shows that children provide more accurate information when asked open-ended or indirect questions. Second, a child's age and suggestibility are not directly related. Children's suggestibility varies based on a number of factors, including but not limited to: a child's developmental level; the type of information sought; how information is remembered; manner in which interview is conducted; and numerous other factors. Third, it is very important in custody and visitation cases to know

whether a child is responding to a question based on what the child observed or felt or based on what someone told the child. Distinguishing between what a child knows through the child's own experience and what a child knows from another person is called source monitoring.

Source monitoring is important to a guardian for two reasons. First, a guardian interviewing a child seeks accurate information from a child based on what the child observes and experiences. Second, a guardian interviewing a child may be interested in what a parent or other person told a child. For example, one parent may disparage another parent to the child. In response to a question from the guardian, the child might respond in a manner which demonstrates that the response originated with the disparaging parent rather than from the child's feelings about the parent disparaged. As discussed more fully below in the parental alienation syndrome section, it may be important for a guardian in a contested custody case to know that one parent is disparaging the other parent in the presence of the child.

Interviewing Children: Preparation and Planning

Once a guardian understands the basics of child development and the relationship between development and communication, the guardian is ready to begin child interviews. The first step in the interview process is to gather all available information on the child. That information should include:

1. complete identification information: nicknames, age, sex, address, name of school (or day care provider for pre-school children), and grade level;

2. information concerning child's needs and capacities, including whether the child has recognized disabilities, including those which might impair a child's ability to verbally communicate;

3. family information including parents, siblings and close kinship relations;

4. if applicable, information on abuse and neglect, trauma and treatment related to abuse and neglect;

5. placement history;

6. information on a child's cultural background, including whether English is a second language or whether the child's ethnic background may merit particular attention in planning interviews and interaction with a child.

After gathering the information about the child, the guardian should assess that information in the context of child development. Such an assessment assists the guardian in planning an interview appropriate for that child.
After gathering and assessing the necessary background information on the child, the guardian must plan the interview.

While planning is important, an interview plan must be flexible enough to handle the variability of children. For example, children's attention spans vary and even a child with a relatively long attention span may have a day when the child has little or no attention span. Some factors to consider in planning the interview are:

1. where will the interview be conducted and who will be present;

2. how will the guardian establish rapport;

3. how will the interview be explained to the child, including the guardian's role and confidentiality;

4. what is(are) the purpose(s) of the interview;

5. what specific issue(s) need to be addressed in the interview;

6. how will the results of the interview be recorded.

With respect to the purpose of an interview, a guardian must plan keeping in mind the issues involved in the case and must plan how to address those issues during the interview. For example, the case may involve one parent stating that the child prefers not to be with the other parent. Assuming the child is developmentally able to discuss the child's feelings about the parents, the guardian should plan questions that attempt to determine what the child perceives about the child's relationship with the parent.

Interviewing Children: Rapport

The first step in the interview process is to establish rapport with the child. Establishing rapport requires knowledge of attending behavior and of techniques commonly employed in interviewing children.

Attending behavior is the behavior of an interviewer during an interview. Another way to consider that behavior is as an interviewer's "bedside manner". Attending behavior includes an interviewer's body language, eye contact between interview and child, interviewer's vocal qualities, and an interviewer's paying attention to a topic introduced by the child (verbal tracking).[3]

An interviewer must always pay attention to attending behavior, and attention to attending behavior is particularly important when a child being

interviewed is from a different cultural background than the interviewer. Culture may have an impact on eye contact, touching, including handshaking, and other aspects of interview behavior.

There are a number of techniques to establish rapport and choosing a method depends in part on the developmental level of the child. Examples of establishing rapport for children at different developmental levels are set forth in *Interviewing Children*[4] and include: drawing; simple games like card toss; simple play with toy figures, animals, cars and the like; book reading; and techniques to encourage an older child to talk. A guardian should take some time to research rapport-building techniques so that the guardian is prepared to use them when interviewing children.

Interviewing Children: Questions

Questioning during an interview may be directive, non-directive, or both. Directive questions are closed questions and place responsibility for maintaining the conversation on the interviewer. An example of a closed question is, "how old are you?" Non-directive questions are open questions. An example of an open question is, "tell me about your dog" or more generally, "tell me about that." Leading questions are suggestive questions and should be avoided during interviews with children. An example of a leading question is, "are you happy visiting with your father every weekend".

There are several reasons to avoid leading questions. First, research shows children provide accurate information more frequently when asked to narrate about a subject. Second, a guardian is an adult and children often

perceive that they need to please adults. A child might take a cue from the way a guardian asks a leading question and respond in a way that the child believes will please the guardian rather than in a way which accurately reflects what the child observed, felt or believed. Third, a child's simple yes/no responses to leading questions do not afford the child an opportunity to fully respond to the question asked.

In addition to considering question styles, a guardian must consider several child development issues. Younger children are developing communication skills so an interviewer may need to slow down the interviewer's rate of speech or may need to use short sentences. An interviewer may need to give children more time to respond to questions as it may take children more time to process a question and formulate a response.

Parental Alienation Syndrome

Dr. Richard A. Gardner, a forensic psychiatrist, first identified parental alienation syndrome in the 1980s. According to Dr. Gardner, parental alienation syndrome is a disorder in children that arises primarily in child custody disputes. The main manifestation of the syndrome is a child's campaign of denigration against a parent and the campaign has no justification. The syndrome results from one parent's (alienating parent) maintaining a pattern of behavior which denigrates the other parent (target parent) and from the child's own contributions to vilifications of the target parent.

Guardians must be familiar with the syndrome because children afflicted with the syndrome may suffer devastating psychological damage. A guardian is

in a unique position to identify the syndrome and to pursue interventions, including comprehensive parenting courses for alienating parent and therapy for the child. A guardian who has identified the syndrome should aggressively pursue interventions by seeking court orders which mandate appropriate interventions.

APPENDIX SEVEN

MULTICULTURAL ISSUES

APPENDIX 7

Multicultural Issues

Introduction

Guardians will encounter children and parents who come from diverse cultures. Working effectively for a child whose culture differs from the guardian's culture requires the guardian to identify the child's culture and to appreciate the impact of the child's culture on the child.

This section of the resource manual is not intended to deal comprehensively with cultural issues. It is designed to provide some basic principles for identifying culture and for appreciating the impact of a child's culture on the child. It is also designed to identify additional resources so that a guardian may continue to study culture and its impact on children.

This resource manual uses the American Professional Society Against Child Abuse definition of culture: a set of beliefs, attitudes, values, and standards of behavior that are passed from one generation to the next.[5] Explaining the impact of culture, Lisa Aronson Fontes writes:

> Culture defines what is natural and expected in a given group. We all participate in multiple cultures: ethnic, national, and professional, among others. We carry our cultures with us at all times, and they have an impact on how we view and relate to people from our own and other cultures.[6]

Cultural Competence

Because a guardian may encounter numerous cultures in representing the interests of children, a guardian must develop competence in dealing with diverse cultures. Developing cultural competence may be accomplished in a

number of ways. In explaining how to develop cultural competence, this section uses attributes of cultural competence identified by Elaine Pinderhughes:

1. Knowledge of the values, beliefs, and cultural practices of particular children;

2. Ability to respect and appreciate the values, beliefs, and practices of children and their families, including those who are culturally different and to perceive such individuals in their own cultural context instead of the guardian's;

3. Ability to be comfortable with the differences in others and not be trapped in anxiety about differences; understanding that defensive behavior to ward off anxiety about being different from others is a nearly universal phenomenon and that mastery of it is key;

4. Ability to control and even change one's own false beliefs, assumptions, and stereotypes which should lessen the need for defensive behavior to protect oneself;

5. Ability to think flexibly and to recognize that one's way of thinking and behaving is not the only way;

6. Ability to behave flexibly, including taking extra time, effort and energy to know about a cultural group and to sort through that knowledge to determine how the knowledge may apply or not apply to a child.[7]

Attributes of Cultural Competence and Interviews

The following discussion of the attributes of cultural competence identified by Ms. Pinderhughes in the context of child interviews will demonstrate how

understanding the attributes may assist an interviewer in becoming culturally competent.

Knowledge of Values, Beliefs, and Cultural Practices

A first attribute of cultural competence is knowledge of the child's values, beliefs, and cultural practices. An interviewer must learn about a child's culture before interviewing a child. Some knowledge may be gleaned from interviews with a child's parents, caregivers, extended and teachers. Additional knowledge may be obtained by reading and researching a child's culture. Lisa Aronson Fontes' book, *Child Abuse and Culture*, has a reference section with dozens of books and articles on a variety of cultures and cultural practices. Finally, some churches have mission programs which offer a variety of resources for church members and interested members of the public. Those programs are excellent resources for practical information on cultural practices.

Appreciation of Other Cultures and Seeing a Child in the Child's Cultural Context

A second attribute of cultural competence is the ability to appreciate the child's values, beliefs and practices and to perceive the child in the child's cultural context rather than in the interviewer's cultural context. For example, consider an interviewer whose preference is sitting directly across from the interviewee during an interview. If an interviewer knows a child comes from a culture in which people avoid sitting directly across from one another during conversation, the interviewer must know and appreciate the reason why sitting across from another person violates a cultural norm (perhaps because it is considered confrontational or disrespectful). Rather than attempting to make the

child comfortable sitting across the table from the child as preferred by the interviewer, the interviewer should determine a seating arrangement appropriate to the child's culture.

Comfort with Cultural Differences

The third attribute of cultural competence is the ability to be comfortable with the differences in others and not be anxious about those differences. For example, an interviewer notices that a child does not look the interviewer in the eye during the conversation. Should the child never look the interviewer in the eye, the interviewer may feel uncomfortable during the interview. In response to the child's behavior, the interviewer may end the interview believing she or he failed to establish rapport with the child or believing that the child does not respect the interviewer. An interviewer must understand that a child looking into an adult's eyes during conversation may be considered disrespectful in the child's culture. The interviewer must be comfortable with that cultural factor and learn to conduct an interview despite the lack of eye contact with the child.

Controlling Interviewer Beliefs, Assumptions and Stereotypes

A fourth attribute of cultural competence is the ability to control the interviewer's own false beliefs, assumptions and stereotypes. For example, people of certain religious backgrounds believe it is not appropriate to touch a person of the opposite sex. An interviewer should understand that such a belief is not sexist. The interviewer need not be defensive because of the interviewer's anxiety concerning an interview with a child from that culture.

Thinking Flexibly During an Interview

A fifth attribute of cultural competence is the ability to think flexibly and recognize that one way of thinking is not the only way of thinking. For example, in some cultures it is not appropriate to discuss sex. A child who has grown up in that culture may refuse to discuss sexual abuse perpetrated on the child. An interviewer should not assume that a child who was sexually abused will freely inform the interviewer of the abuse nor should an interviewer believe that the victim's family will be supportive of the child victim. In addition to other blocks which frequently interfere with a child's disclosure of abuse, there may be a cultural norm against doing so. An interviewer who is interviewing an abused child must be ready to be flexible in overcoming blocks to disclosure, including blocks which are rooted in culture.

Behaving Flexibly During an Interview

A sixth attribute of cultural competence is behaving flexibly, taking the time and effort to know about a child's culture, and using that knowledge so that the interview proceeds in a culturally competent manner. For example, in Native American and Asian cultures children learn to pause after questions and to think carefully about answers. Children from those cultures may not seem as talkative as children from a middle class American culture. An interviewer of children coming from either a Native American or an Asian culture must know about the more hesitant conversation style in those cultures and must accommodate that style in the interview of those children.

APPENDIX EIGHT

PERMANENCY PLANNING BASICS

APPENDIX 8

Permanency Planning Basics

Time Frames

South Carolina law requires that a permanency planning hearing be held at least annually for every child in foster care. The family court must review the status of the child, assess the parents' compliance or lack of compliance with the placement plan, and review DSS' progress toward achieving permanency for the child. In some cases, it may be appropriate for the court to proceed with permanency planning before the expiration of one year. For example, if a child is abandoned, and the family court authorizes the Department to terminate or forego reasonable efforts to reunify the family, the permanency planning hearing should be held within thirty days of the family court's determination, unless the requirements for permanency planning are fulfilled at this same hearing.

Procedural Issues

The Department initiates a permanency planning hearing by filing and serving a notice and motion for permanency planning. A supplemental report prepared by the Department's caseworker should accompany the motion. The supplemental report describes the services that have been offered to the child's parents, discusses the parents' response to services offered, and explains the steps the Department is taking toward implementation of a permanency plan for the child. The hearing notice, motion, and supplemental report must be served on all parties at least ten (10) days before the permanency planning hearing.

If the child came into foster care because the parents relinquished custody and consented to the child's adoption, and no other action is pending in the family court, the permanency planning hearing is initiated by the filing of a summons and petition for review. These pleadings are to be served upon all parties at least ten (10) days prior to the hearing as well.

Regulations promulgated pursuant to the federal Adoptions and Safe Families Act (ASFA) require that the permanency planning hearing be an open hearing with participation by the parents, foster parents, pre-adoptive parents, and the child, if age appropriate, as well as the guardian for the child.

Consent orders, paper reviews, *ex parte* hearings or other actions or hearings not open to participation by these parties do not constitute proper permanency planning hearings. All parties must be notified and given an opportunity to participate in the permanency planning hearing; however, it is not mandatory that these parties attend. A party's failure to attend a hearing is not a basis for continuing the hearing.

Permanency Plans

The Department presents the court with the agency's plan which is intended to achieve permanence for the child. Depending upon the circumstances, siblings may not have the same permanent plan; each child is considered individually based on that child's best interests. The family court has a choice of five permanency plans at the initial permanency planning hearing:

(1) Reunification: The court must find that the child may be safely maintained in the home without unreasonable risk of harm to the child's life,

safety, physical health or mental well-being. The court should consider all evidence, including whether the parents have substantially complied with the placement plan. The court may require the Department to provide protective services for up to twelve months following the child's return home.

(2) Extension or Modification of the Placement Plan: If the court determines that the parents have not substantially complied with the placement plan so as to make immediate return of the child appropriate and also determines that the child may be returned to the parents within a specified reasonable amount of time, the court may extend or modify the placement plan with the goal of reunifying the child with his parents at a later date. Extension or modification of the plan is an appropriate permanent plan only if the court finds that termination of parental rights is not in the best interests of the child. **Reunification must occur within eighteen months of the child's entry into the foster care system.** If a child is not reunified with his or her parents within eighteen months, the court must adopt a different permanent plan.

(3) Termination of Parental Rights and Adoption: Except in cases where the court has extended or modified the placement plan, the court must order the Department to file a petition to terminate parental rights if reunification is not an appropriate permanent plan. The Department must file an action to terminate parental rights within sixty days of receipt of the permanency planning order. The Department must also exercise and document every effort to expedite adoption and no adoption can be denied or delayed simply because a child has special needs. After termination of parental rights or relinquishment and consent

to adoption by the legal and biological parents, a child may be adopted. A child over fourteen years of age must consent to his or her own adoption.

(4) Custody or Guardianship to a Relative or Non-Relative: After a thorough adoption assessment, the Department may determine that termination of parental rights is not in a child's best interests, and that a relative or non-relative is willing to accept placement of the child. The court may grant custody or guardianship to a relative or non-relative. However, before the court grants custody or guardianship, the Department must submit a thorough home study of the prospective caregiver. The court may order a period of visitation between the child and the prospective caregiver before receiving the home study. The court may also order a period of child protective services and supervision not to exceed twelve months.

(5) Another Planned Permanent Living Arrangement: If the Department proves that there are compelling reasons not to establish a permanent plan of reunification, termination of parental rights and adoption, or custody to a relative or non-relative, the court may approve "another planned permanent living arrangement." The compelling reasons for adopting "another planned permanent living arrangement" must be stated in the permanency planning order, and the court must find that the alternative plan is in the best interests of the child. The plan must also accomplish the goal of providing a specific long-term stable placement for the child.

After the initial permanency planning hearing, hearings must be held annually as long as a child remains in foster care. However, a named party, the

child's guardian, or the local foster care review board may file a motion for review of the case at any time. Any other party in interest may move to intervene in the case, and if the motion is granted, may move for review of the case. Parties in interest include, but are not limited to, an individual with physical or legal custody of the child and the foster parent. The notice and motion for review must be served on all named parties at least ten days before the hearing and shall state the reasons for review of the case and the relief requested.

If an appeal is pending concerning a child in foster care, the court still has jurisdiction to conduct a permanency planning hearing. The court retains jurisdiction to review the status of the child and may act on matters not affected by the appeal.

Special Considerations in Permanency Planning

An abuse and neglect case can involve a number of issues which, if not anticipated by guardians, may impede efforts to achieve permanency for a child in foster care.

Infants and Toddlers

Research shows that abuse and neglect have the greatest developmental impact on the very young. In the United States, infants are the fastest growing population of children entering the foster care system. Half of all babies who enter foster care before they are three months old spend thirty-one months or longer in foster care. These babies are less likely to be reunified with their parents. However, intervention during the early years may help the child avoid a lifetime of failure and reliance upon various public welfare systems.

During permanency planning, the guardian must ensure several areas are analyzed to effectively intervene on behalf of infants and toddlers. Guardians should pay careful attention and inquire about areas that affect the development of these children.

Babies must have comprehensive health assessments. A comprehensive health assessment includes a physical examination to establish a baseline for the child's current health care status, a determination of whether the child has been immunized, a determination of whether the child has vision or hearing difficulties, screening for lead exposure, assessment of the need for dental care, and a determination of whether the child has any contagious diseases.

Infants and toddlers should also be screened for developmental delays. A child who has developmental delays may be eligible under two federal entitlement programs. First, children under the age of three may access the Early Intervention Program under Part C of the Individuals with Disabilities Education Improvement Act (IDEIA). Second, a child between the ages of three and five may access the Preschool Special Education Grants Program. Both biological and foster families may receive the benefits of these programs. Guardians should also determine whether infants and toddlers have had mental health assessments or evaluations, and also whether they are receiving any needed mental health treatment. Because early childhood education has such a profound effect on educational and life achievement, assessment of the needs of infants and toddlers should also include a determination of whether these children are enrolled in high quality early childhood programs.

Guardians should also explore whether the foster parents, some of whom may be prospective adoptive parents, are educated and informed about the social and emotional needs of the children; whether these caregivers are receiving information and support for the placement; and whether the foster parents are capable of identifying problems the children may be experiencing and of accessing appropriate services.

Adolescents

Youth, ages 15 to 21, experience many changes that make transition to adulthood challenging. Research demonstrates that youth in foster care experience an even more difficult time making the transition to adulthood. Foster children and children formerly in foster care are less likely to complete high school. They have difficulty maintaining employment. They are often unable to access health and dental insurance and do not receive adequate health care. Research shows that former foster care youth live at or below the poverty line more frequently than other members of the general population.

For courts, permanency planning for youth in this age group presents special barriers. Those barriers include:

1. because these children are regarded as "not adoptable", their case plans may not be given priority;

2. failure to implement concurrent planning (where the Department pursues more than one permanency outcome) presents a barrier to successful permanency planning for adolescent youth;

3. lack of permanent placement resources impedes permanency planning; and

4. absence of parental or family involvement in case planning interferes with permanency planning.

In the United States, it is common for young people to receive emotional and financial support from their parents and other family members well into adulthood. Conversely, foster care youth may lack the support of family members and may exit the child welfare system, in many instances, at age 18, without support of any kind.

Thus, it is important to closely monitor permanency planning for adolescents. The court should pay special attention to ensuring that the case plans for adolescent children are designed to give them the best opportunity to become healthy, productive members of society.

Federal law recognizes the unique needs of adolescent youth in foster care and responds to these needs through two pieces of legislation. The Independent Living Program was added to the Social Security Act in 1985, and in 1999, the Social Security Act was further amended by the Chafee Foster Care Independence Act (FCIA), 42 U.S.C. § 677.

FCIA requires a State to:

1. Provide services to youth up to age 21 who are in foster care during a time period defined by the State. DSS has designated Independent Living funds for foster care youth between the ages of 13 and 21. In South Carolina, Independent Living funds are available to youth who remain in foster care until

they reach the age of 18. **Youth who leave foster care before age 18 are ineligible for Independent Living funds.** Independent Living funds must be utilized to cover costs associated with preparing youth to live independently. The monies cannot be used for placement costs and should only be used to supplement other funding sources. If community-based services are available, they must be utilized;

2. Provide services to youth regardless of the permanency plan or placement setting;

3. Provide services to all youth to help acquire independent living skills, including youth with special needs or disabilities; and

4. Develop outcome measures for programs that use FCIA dollars.

FCIA allows a State to:

1. Use up to 30% of Independent Living funds to provide room and board to youth who have aged out of the system and who are older than 18 years and under age 21;

2. Extend Medicaid coverage until age 21 for youth who have left foster care.

Pregnant and Parenting Youth

A foster child's pregnancy or expectancy can impact permanency planning in a number of ways. Pregnant and parenting youth can experience delays in achieving a safe, stable, permanent home because the professionals handling these cases are not sure how to proceed with permanency for these youth. The birth of a child to a child who is in foster care can sometimes result in the infant's

entry into the foster care system unnecessarily, thereby perpetuating a cycle of abuse and neglect and reliance on public welfare systems.

Title IV-E of the Social Security Act anticipates that a child born to a foster child will remain in the physical and legal custody of the foster child. IV-E payments made to the State to maintain the foster child must include an additional amount to support the infant. The State does not need to make a separate determination of eligibility for the infant to receive these monies. Furthermore, infants who remain in the physical and legal custody of their parents are eligible to receive Medicaid.

Effective permanency planning for pregnant and parenting youth should begin with an effort to secure joint placement for the foster child and the infant, when joint placement would not be contrary to the infant's best interests. Permanency planning for pregnant and parenting youth should also include an assessment of whether the youth is receiving parenting education, as well as an assessment of proper child care arrangements for the infant. The overall objective of permanency planning for pregnant and parenting youth is that these youth exit the child welfare system to a safe, stable, environment and that their parental rights remain intact.

Children with Incarcerated Parents

The child welfare system is impacted by an increasing number of children whose parents are incarcerated. When these children enter the foster care system, courts face unique problems in the efforts to achieve permanency. These children often present with emotional problems that are the result of the

abuse or neglect they have endured and that stem from the loss of the parent and perhaps, unpredictable changes in caregivers since the parent's incarceration. Children who have an incarcerated parent also have therapeutic needs stemming from their parent's criminal behaviors prior to incarceration and the stigma of having a parent in jail or in prison. The most unique aspect of permanency planning for a child with incarcerated parents is that the length of time the child spends in foster care is not simply determined by the parent's willingness to cooperate with a placement plan or the parent's willingness to demonstrate an ability to care for the child.

Also, coordinating visits between these children and their parents presents challenges. However, in appropriate cases, the Department is legally mandated to make reasonable efforts to reunify families. When it would not be contrary to the child's welfare, the Department caseworkers should facilitate visits between the child and the incarcerated parent. Visitation can reduce the impact of parent-child separation and help the child to cultivate and maintain a relationship with the parent. In addition, visitation may increase the chances of successful reunification.

To affect permanency for children of incarcerated parents, practitioners must be aware of the length of time the parent will be incarcerated, know the parent's actual sentence, eligibility for parole, and expected date of release. Guardians must also be willing to educate themselves about the availability of treatment services within the Department of Corrections.

Once a date of release is determined and a placement plan is implemented, the focus shifts to an assessment of the parent's ability, when released, to care for the child in an appropriate way. Guardians must also assess the parent's ability to cope with multiple stressors upon release, including, securing employment and housing, and dealing with the threat of relapse if the parent is addicted to a controlled substance or alcohol.

If reunification is not possible because of the length of the parent's sentence or the inability to access needed treatment services while the parent is incarcerated, other permanency options must be considered. Adoption, custody, and guardianship are appropriate alternatives. Each of these options provides children with security and stability. Ultimately, the key to remember is that even children who have an incarcerated parent are entitled to a plan for permanency within twelve months of entering foster care.

Non-custodial Fathers

Delays in achieving permanency are sometimes caused by the failure to include a non-custodial parent (often the child's father) in the child welfare case from its inception. When children enter foster care they are typically removed from their mothers as primary caretakers, and in many cases, fathers either do not participate or remain on the periphery of the case.

There are several reasons why non-custodial fathers do not participate in child welfare cases. Among the reasons are: the mother's failure to identify the father; the caseworkers' failure to pursue the mother for information about the father's identity; the existence of a poor relationship between mother and father;

the father's fear of becoming involved with the child welfare system; and the time it takes to establish paternity.

According to the National Family Preservation Network, children who have no contact with their father are:

1. five times more likely to live in poverty;
2. more likely to bring weapons and drugs into the classroom;
3. twice as likely to commit crimes;
4. twice as likely to drop out of school;
5. twice as likely to be abused;
6. more likely to commit suicide;
7. more than twice as likely to abuse drugs or alcohol; and
8. more likely to become pregnant as teenagers.

These statistics suggest that, when the child welfare system fails to enlist the participation of a non-custodial father, the system contributes to the problem of multigenerational reliance upon the system.

Failure to identify and include a biological father from the beginning of the child welfare case may cause delays in achieving permanency for a foster child. For example, when a father does come forward later in a case, his late entry may force the agency to reassess the child's case if the plan had been to terminate parental rights and place the child for adoption. The father may want to claim custody of the child or the father may have relatives who want to care for the child. If the child's father has not previously been given notice and an opportunity to be heard, permanency may be delayed so that the agency can

explore the suitability of placing the child with the father or with the father's relatives.

From the beginning of the child welfare case, guardians must seek information about the identity and location of the child's father. If a mother is refusing to reveal the information, it is important to explore whether there are safety reasons inhibiting the mother's disclosure. Once a father is located, he should participate in case planning concerning the child. The father should also receive all hearing notices and motions, and be informed of the agency's recommendations about the case.

Interstate Placements

If the child's permanent plan requires that the child be placed in the care of a person who does not live in South Carolina, prior to finalizing the plan, in many cases, the court will need to comply with the Interstate Compact on the Placement of Children.

The Interstate Compact on the Placement of Children (ICPC) is a uniform law enacted in all 50 states, the District of Columbia, and the U.S. Virgin Islands. South Carolina's ICPC statutes are found in S.C. Code Ann. § 63- 9-2000 et.seq.

Essentially, the ICPC applies to four types of out-of-state placement decisions:

1. placements preliminary to adoption;
2. placements into foster care, including foster homes, group homes, residential facilities, and institutions;

3. placements with parents and relatives when a parent or relative is not making the placement, and
4. placements of adjudicated delinquents in institutions in other states.

The ICPC does not apply when the court transfers custody to a non-custodial parent if the court:

1. has no evidence that the parent is unfit;
2. does not seek such evidence; and
3. does not retain jurisdiction over the child after the court transfers the child.

The purposes of the ICPC are: to ensure that, when abused or neglected children are placed in another state, they receive a safe, appropriate placement; that they continue to receive needed services; and that there is a mechanism for the prompt return of these children to South Carolina if necessary. Placing children out-of-state without following the ICPC could put them at risk of harm if the placement is inappropriate or if the children do not have access to services.

The court need not comply with the ICPC when a child visits another state. Whether a child's stay in another state is a "visit" is determined by purpose, duration, and intention.

When out-of-state placement is being considered in a child protection case, the Department must give written notice to the state to which the child may be sent ("the receiving state"). Upon receiving notification, the "receiving state" will complete a home study or otherwise evaluate the placement to determine its suitability to meet the needs of the child.

Upon completion of the home study, the receiving state prepares a written report which contains a recommendation on whether the placement should be made. This process usually takes six weeks or thirty working days. However, the ICPC anticipates that priority will be given to certain hardship cases. For these cases, the court may order the completion of an expedited home study pursuant to Regulation Seven of the ICPC.

An expedited home study requires the receiving state to complete the home study within twenty working days. A child protection case is considered a hardship case if the prospective placement is in the home of a relative and:

1. the child who needs placement is under two; or
2. the child is in an emergency shelter; or
3. the court finds that the child has spent a substantial amount of time in the home of the proposed placement recipient.

When a request to place the child in another state is approved, South Carolina and the "receiving state" finalize the details of placing the child. The two states negotiate an agreement about payment for the child's care, the receiving state's monitoring of the placement, and the frequency of progress reports. After the agreement is finalized the child is placed in the receiving state. While the child is in the out-of-state placement, South Carolina retains legal and financial responsibility for the child. South Carolina retains jurisdiction to make all decisions concerning the child's custody, care, and supervision just as if the child were in this state. South Carolina is responsible for the child until both

states agree that this state’s jurisdiction shall end.

APPENDIX NINE

TIMELINES IN ABUSE AND NEGLECT CASES

APPENDIX 9

TIMELINES IN ABUSE AND NEGLECT CASES

General

Abuse and neglect cases in family court are controlled by statutorily mandated timelines. The rationale for the timelines is that children must be expeditiously protected and afforded a safe living environment. The Department has the obligation to meet the statutory timelines but the Department may be constrained by the family court docket and by scheduling complications caused by lack of availability of counsel, guardians, and witnesses.

It is important for guardians in abuse and neglect cases to be aware of the statutory timelines and to ensure the child's best interests are recognized and protected within the timelines.

Emergency Protective Custody Timelines

When a child has been taken into emergency protective custody, S.C. Code Ann. § 63-7-710 (West Supp. 2008) (a copy of the complete statute is in the appendix to this resource book) requires the action summarized below:

1. Within **twenty-four hours**, the Department must:

   a. conduct a preliminary investigation;

   b. determine whether the child may be placed with a relative or non-relative;

   c. determine whether grounds exist for taking legal custody of

the child;

d. meet with the parents, family or other relevant persons.

2. The Department may retain physical custody without assuming legal custody up to an **additional five days** if all parties agree to allow for placement of the child with a relative or non-relative.

3. Once the Department assumes legal custody of the child, the Department shall begin a child protective investigation and shall initiate a removal proceeding in family court **on or before the next day after initiating the investigation**.

4. The family court must schedule a probable cause hearing within **seventy-two hours of the time the child was taken into emergency protective custody**. The court shall set the date and time of the merits hearing at the probable cause hearing.

5. The hearing on the merits to determine whether removal of custody is needed must be held within **thirty-five days of the receipt of the removal petition**. A merits hearing may be continued without returning the child if the court finds exceptional circumstances. The merits hearing must then he held within **sixty-five days following receipt of the removal petition**. A family court may continue the merits hearing beyond sixty-five days without returning the child home by written order with findings as follows:

a. the child should remain in custody because there is probable cause to believe returning the child home would seriously endanger the child's physical safety or emotional well-being;

b. the court schedules the case for trial on a date and time certain not more than thirty days after the date the hearing was scheduled to be held;

c. the court finds exceptional circumstances supporting the continuance or the parties and the guardian agree.

6. The Department must develop and present a placement plan to the **court at the merits hearing or within ten days after the merits hearing**. S.C. Code Ann. § 63-7-1680 (Supp. 2008).

Table 1. Emergency protective custody timelines.

Department must: conduct preliminary investigation; determine placement w/relative or non-relative; determine whether grounds exist for Department taking legal custody; meet w/parents, family or other relevant persons.	within 24 hours
Department may retain physical custody without assuming legal custody if all parties agree to allow placemen of child.	additional 5 days
Once Department assumes legal custody, Department must begin child protective investigation and initiate removal proceeding.	on or before next day after initiating investigation
Family court must schedule probable cause hearing.	within 72 hours after child taken into emergency protective custody
Merits hearing on removal must be held. Merits hearing may be continued for exceptional circumstances.	within 35 days of receipt of removal petition continued merits hearing must be held within 65 days of receipt of removal petition

Department must develop and present placement plan to court.	at merits hearing or within 10 days after the merits hearing

Reports of Abuse and Neglect: Timelines Other Than Emergency Protective Custody

In addition to the emergency protective custody mandates of S.C. Code Ann, § 63-7-620-760 (West Supp. 2008), the Department has other duties set forth in S.C. Code Ann. § 63-7-900-980 (West Supp. 2008)] Those duties include the duty to begin an appropriate and thorough investigation **within twenty-four hours of the Department's receipt of a report of suspected child abuse or neglect**. S.C. Code Ann. § 63-7-920(A)(1-3).

The Department must determine whether the report of suspected child abuse or neglect was indicated or unfounded **within forty-five days of receipt of the report**. A single exception of an additional **fifteen days** may be granted by the Director of the Department or the Director's designee. S.C. Code Ann. § 63-7-920(A)(1-3).

When the Department finds that facts of a report indicate the abuse or neglect appears to violate criminal law, the Department must notify law enforcement of those facts **within twenty-four hours of the Department's finding**. If the intake report alleges sexual abuse, the Department must notify law enforcement **within twenty-four hours of receipt of the report.** S.C. Code Ann. § 63-7-980(A)(B)(1)(2),(D).

Table 2. Department abuse and neglect timelines other than emergency protective custody.

Department must begin investigation into report of abuse and/or neglect.	Within 24 hours of receipt of report
Department must notify law enforcement when Department determines abuse and/or neglect appears to violate criminal law.	Within 24 hours of Department's determination
Department must notify law enforcement when intake report indicates sexual abuse.	Within 24 hours of receipt of intake report
Department must determine whether abuse and/or neglect was indicated or unfounded. Extension may be granted one time by Director or designee.	Within 45 days of receipt of report 15 days

Permanency Planning Timelines

A permanency planning hearing must be held no later than **one year after the date the child was first placed in foster care**. S.C. Code Ann. § 63-7-1700(A) (West Supp. 2008). A guardian, a named party, or a local foster care review board may petition the court for review of the case **at any time**. S.C. Code Ann. § 63-7-1700(K). If the court determines at the permanency planning hearing that the child should not be returned to the parent, the court shall order the Department to file a petition to terminate parental rights **not later than sixty days after receipt of the court order**. S.C. Code Ann. § 63-7-1700(D).

APPENDIX TEN

COMMISSION ON INDIGENT DEFENSE REIMBURSEMENT PROCEDURES

APPENDIX 10

Commission on Indigent Defense
Reimbursement Procedures

SCCID Voucher Payment Policy
Adopted by the Commission September 25, 2007

Please refer to the Order of the SC Supreme Court dated September 29, 2006, and memorandums of Chief Justice Toal, dated July 6, 2005, and July 8, 2005, all of which can be accessed at www.sccid.sc.gov

I. Appointment of Counsel

a. Attorney Registration: Every attorney who represents or expects to represent an indigent client pursuant to court appointment must personally register on line with SCCID, at its website **www.sccid.sc.gov** and be approved and issued an attorney password. This registration is for the attorney and payee information and does not have to be repeated when the attorney registers a case. (When filling our Payee portion of voucher on line, Payee information must be identical in name, social security number or Federal ID number as is was submitted on the W-9, or the system will reject the voucher).

b. Case Registration For Appointed Counsel: Upon appointment by the court in an indigent case or proceeding, counsel must notify the Office of Indigent Defense (OID) within 15 days of the appointment by registering the case online at **www.sccid.sc.gov** Additional documentation may be required by OID. Every court appointed case must be registered even if the attorney does not intend to apply for payment of attorney fees and/or expenses.(In addition to being an electronic voucher processing system, the system is also the exclusive data collection and tracking system for all indigent defense cases).

c. Payment: Vouchers, time sheets and any other supporting documentation for payment must be submitted online through the Indigent Defense website. They may be mailed directly to OID

only if electronic access is not available. Vouchers must be received by OID in correct form no later than thirty (30) days after the services are completed. Vouchers should not be mailed to the Clerk of Court for transmittal. The Clerk of Court is no longer required to sign off on a voucher. Detailed invoices for any experts, investigators, translators, and other outside services must also be submitted, and may be submitted by fax or regular mail. The website contains the appropriate fax numbers.

d. If there is no objection to the reasonableness of the request and the amount requested is within the hourly rates and statutory caps, OID is authorized to make payment of the requested amount without further action of the Court. However any expense whether below the statutory cap or not must have prior approval of the trial court.

e. If there is an objection by OID to the reasonableness of the amount, the amount requested exceeds the hourly rates or statutory caps or if for some other reason OID determines the voucher is not in order, OID will notify the trial court and counsel of any objection and will forward the voucher, timesheet and any other submitted materials to the trial court in writing or electronically. Upon submission of the documentation the trial court may determine the matter with or without a hearing in its discretion. OID will then pay such amount as the trial court may authorize.

f. OID, along with S.C. Court Administration, subject to the approval of the Chief Justice or the Supreme Court, may establish such additional procedures for the electronic award of fees and costs to minimize delay and to facilitate the administration of the Indigent Defense Chapter of the Code.

g. OID will notify counsel of all actions taken on a voucher. If a voucher is forwarded by OID to the trial court for approval, the trial court will also notify the attorney and OID of its actions.

h. Nothing herein shall preclude the trial court from taking immediate action on ex parte requests for fees and costs during the pendency of a case as may be authorized by statute or court

rule.

i. Authorization to Exceed Rates/Caps: Pursuant to Memorandum of Chief Justice Toal, dated July 6, 2005, and S.C. Code Ann. Section 17-3-50(C) (2003), payment of attorneys fees in excess of the statutory amount is allowed if the circuit court "certifies, in a written order with specific findings of fact, that payment in excess of the rates is necessary to provide compensation adequate to ensure effective assistance of counsel." Because Section 17-3-50(C) does not provide for *ex parte* proceedings to determine attorney's fees, hearings on requests for additional fees should be held in open court.

Further, whether or not additional fees are necessary to ensure effective assistance of counsel is an issue that should be determined with reference to the facts of a particular case. Payment in excess of the statutory rates should not be authorized as a matter of course for all appointed cases or for all of a particular attorney's appointment cases.

j. Advance of Funds : (See also Section VII) The policy of SCCID is not to advance funds except in extraordinary instances, such as court approval, witness travel and lodging costs. Pursuant to Memorandum of Chief Justice Toal, dated July 8, 2005 and S.C. Code Ann. Section 17-3-50(B) (2003), when requests for investigative, expert, or other services in excess of the statutory limits are received, circuit court judges should closely examine the need for the services, especially when approval for advance costs are requested. Rather than seeking advance expenses counsel should seek authorization for incurring expenses for a specific reason and up to a specific amount. When authorized by the Court, OID will need only the order, the invoice for services rendered, and the electronic voucher submission in order to process the payment.

In determining whether additional fees are reasonable and necessary, judges should require the requesting party to show that there is a substantial factual basis for the contention the party seeks to prove by the use of the services and that the services are integral to the building of an effective defense. In additional where

the party seeks funding for services of a particular provider, the party should be required to show why the services must be provided by that particular provider. Judges may ask OID to participate in the hearing on a request for additional expenses or legal fees to contribute information concerning expenses and legal fees awarded in similar cases.

k. Transcripts: The court reporter's fee for providing the transcript of the trial proceeding may be reimbursed only after direct submission by the court reporter of a letter of transmittal showing the case name and number, the nature of the proceeding, the reporter's name, address, and social security number, a copy of the written request for transcript, a copy of the order of appointment of the requesting party as counsel and a completed court reporter's bill (Form SCCA DI-4). Provision of transcripts and billing rates are to conform to the guidelines set out in Rule 508, SCACR, and are applicable to state court reporters as well as independent court reporters. Only the cost of one (1) original or one (1) copy of any transcript per defendant, regardless of the number of counsel, may be reimbursed out of the defense fund.

II. Fees of Appointed Counsel

a. Statutory maximum limits are as follows (Provisos are authorized in the 2007-2008 Appropriations Act):

Case Type	Attorney Fees	In Court	Out of Court	Expenses	Authority
Death Penalty	$25,000 each	$75.00	$50.00	$20,000	SC Code 16-3-26
Felony	$3,500	$60.00	$40.00	$500.00	SC Code 17-3-50(A)
Misdemeanor	$1,000	$60.00	$40.00	$500.00	SCACR 602(a)
Post Conviction Relief	$1,000	$60.00	$40.00	$500.00	SC Code 17-27-60 and Proviso 35.4*
Termination of Parental Rights	$2,000	$50.00	$50.00	$500.00	Proviso 35.5*
Abuse and Neglect	$2,000	$50.00	$50.00	$500.00	Proviso 35.5*
Probate Commitment	$2,000	$50.00	$50.00	$500.00	Proviso 35.5*
Sexual Violent Predator	$2,000	$50.00	$50.00	$500.00	Proviso 35.5*

* Provisos are found in the State's annual Appropriations Act.

b. Appointed counsel must electronically submit a Defense of Indigents Voucher and time sheet that specifies the time spent in-court and out-of-court with an explanation as to the nature of the services rendered. In computing time, "In-court" time is that time for which appointed counsel is required to be present the courtroom and appears before a judicial officer for the purposes of a particular case to which counsel has been appointed. "In court" time includes jury qualification and roll calls that pertain specifically to the client's case. "Out-of-court" time is any time spent by counsel in the preparation of a case and includes: plea negotiations, travel time, research, interviews, observing co-defendants' trial and time spent waiting for a trial or hearing to begin. If waiting for multiple trials or hearings for one or more defendants to be held on the same day, counsel may only bill once for the time spent waiting. Time spent on a case whether "in-court" or "out-of-court" must be the actual time spent in the particular activity computed to the nearest one-tenth (.1) of an hour. "Fixed Time" for activities will not be allowed. Examples of fixed time are ".5 hours" for every letter written, ".25 hours" for all telephone calls, etc. The activity claimed must be actually performed by the attorney. **Counsel may not claim time spent by clerical personnel preparing documents.**

III. Reimbursable Expenses for Appointed Counsel

There is a $500 limit on expenses in all civil and criminal cases, except capital cases, in which the limit is $20,000. These limits may not be exceeded unless the court certifies**, prior to any expense being incurred**, in a written order with specific findings of fact that such excess is both reasonable and necessary to insure adequate representation in the particular case. (See Chief Justice Toal's Memo dated July 8, 2005) SCCID will not provide funds for payments in amounts in excess of the prior authorization. Claims for necessary expenses must be submitted with the order approving the expenditure, setting out the total amount allowed and copies of invoices documenting the claims. By submitting the voucher for payment, counsel certifies that the services were performed and that the amount is fair and reasonable. Necessary

expenses are those deemed to be reasonable and essential for a proper defense. The following are deemed to be necessary expenses, subject to limitations in Section IV.

a.
Fees for expert witnesses and investigators, subject also to provisions of Section V.
b.
Costs of scientific tests or exhibits for trial demonstration.
c.
Costs of psychiatric examination.
d.
Extraordinary travel expenses. (Out of county of appointment, with prior approval.)
e.
Long distance telephone calls (Prior approval is not required, but bills or itemized affidavits setting out dates and actual costs must be submitted with the voucher. Estimated costs may not be submitted.)
f.
Subpoena charges.
g.
Deaf or foreign language interpreters.

IV. FEES AND EXPENSES THAT WILL NOT BE PAID

a. Any expenses incurred which the court did not previously approve prior to being incurred.

b. Expenses that are considered to be normal operating or overhead costs of a law firm such as staff personnel, secretary or employed paralegal time. These overhead items are deemed to be included in the attorney fee rates.

c. Copies for staff members or for “in-house” administrative purposes.

d. Fees for time billed as in-court time which was expended waiting for a trial or hearing to begin; conferences with defendants; witnesses; and solicitors in the courthouse; travel to and from court;

and observation of co-defendants' trials. These examples are regarded as out-of-court time.

e. In non-capital cases, fees and expenses for any attorney other than appointed counsel, and in capital cases, fees and expenses for any attorney other than the appointed first chair and second chair.

f. Long distance telephone bills, which are estimated or rounded off, including fees or costs for using a facsimile machine or computer. A copy of the bill or an affidavit setting out the actual costs must accompany the voucher. Charges for the use of a fax machine other than the long distance charges are not allowed.

g. Mileage is paid only for extraordinary travel and is reimbursable only for travel outside the attorney's county of appointment upon approval, or circuit if by contract and only at the current state mileage rates.(the current state mileage rate is 44.5cents per mile) Where the court has found it necessary to appoint an attorney from outside the county of appointment, mileage and travel time will not be paid if the attorney maintains an office in the county of appointment or for some other reason has a connection with that county thereby placing the attorney on that county's appointment list. This also applies if the attorney has contracted with SCCID to render indigent defense services. No payment for mileage or travel time will be allowed where the attorney has volunteered to be appointed or solicited appointment. Mileage within the county of appointment is not reimbursable. Where the attorney maintains an office in another county or has solicited or volunteered for the appointment, neither mileage nor time for travel between the attorney's office and the county of appointment shall be reimbursed. Absent special circumstances, if a vehicle is rented for case-related travel, reimbursement will be for the lesser of the cost of the rental vehicle plus gasoline or the mileage reimbursement at the current state rate. A receipt for rental car expenses is required. Credit card receipts or statements will not be accepted.

h. Fees for time billed as travel time from the attorney's primary office to another county in which counsel has an office, the existence of which resulted in the attorney being appointed to a case in that county because the attorney maintained an office there.

i. Meals are reimbursable at the current state rate and will be reimbursed only when it was necessary for the attorney to travel out of the county of appointment and remain overnight. Attorneys must provide a detailed listing of the departure and return times to establish which meals will be reimbursed.

j. Charges for entertainment, cover charges, and alcoholic beverages will not be reimbursed. Meals provided for or consumed at meetings between counsel, witnesses, experts or other staff personnel will not be reimbursed.

k. Lodging is reimbursable as provided in Proviso 72.25 of the 2007-2008 Appropriations Act, at the current CONUS rate, as published by the U.S. General Services Administration. (See **www.sccid.sc.gov** or **www.gsa.gov** for lodging rates for all cities in the US including SC cities.) Incidentals such as room service, tips, telephone charges, etc., are not reimbursable.

l. Non service type expenses such as eyeglasses, hearing aids, orthopedic devices, etc. However, examinations for these problems may be paid if they relate to the defense of an individual.

m. Time spent preparing and seeking approval of the Defense of Indigents Voucher for fees and expenses and for opening and closing a file will not be reimbursed. Activities occurring after the end of a case will be carefully examined for necessity.

n. Time expended in travel and mileage where an attorney has solicited the appointment to represent the defendant. This does not include situations where a judicial officer has appointed an attorney outside the county of appointment because of a lack of qualified attorneys in that county. It applies to situations where the attorney has solicited the appointment. The appointed attorney will be treated as if residing within that county or having an office located there.

o. Fees generated prior to the date of appointment to the case unless specifically authorized by the court with prior notice to SCCID of attorney's motion or intent to seek such payment.

p. Compensation to lay witnesses for their time or expenses except under extraordinary circumstances.

q. Trial Attendance by Investigators, Experts and Mitigation Specialists will be compensated only for attending portions of a trial when their presence is necessary, and as long as the services provided are within the amount pre-authorized for their service. Attendance for an entire trial will not be compensated, unless there are extraordinary circumstances and the attorney of record obtains prior approval.

r. OID will not compensate for any investigator whose license is not valid or current throughout the term of employment in the case, or who is unlicensed.

s. Continuing Legal Education costs, including specialized seminars and conferences will not be paid by SCCID.

V. EXPERT FEES, INVESTIGATORS, ETC.

These policies apply to the use of Expert Witnesses, Psychiatrists, Psychologists, Investigators, Paralegals, Mitigation Experts, Jury Consultants, and other individual services rendered to indigent defendants for which the Commission on Indigent Defense is expected to provide funds. Payments will be made only to the Attorney of Record or the Defender Offices and not to the individual provider. In order for funds for payment to be disbursed, the provider must meet the following requirements:

1. The provider of services must have a separate business address and Taxpayer Identification Number from the attorney or attorneys of record or the Public Defender’s Office, and an independent investigator must be properly licensed according to South Carolina law and the license must be current and in good standing during the period of employment in the case. Payment for use of “in-house” employed staff as investigators or paralegals is not allowed. The hourly rate paid for attorney services is intended to reflect and include office overhead.

2. The use of the provider must be approved by court order prior to

the services being provided and such request must state with specificity the reason for the use and the anticipated services as they apply to the individual case. Approval may not be granted *nuc pro tunc* except where provided by statute.

3. The voucher requesting reimbursement for expert's services must be accompanied by an invoice for such services detailing what services were actually performed, and that the invoice is fair and reasonable. Such statement need not divulge case or defense sensitive information but must account for the provider's time, rates and expenses other than stating only the totals for each activity.

VI. REIMBURSEMENT FOR EXPENSES

All requests for expenses must be approved **prior** to being incurred. Failure to have expenses pre approved will result in non-payment. Bills, statements, invoices or other documentation must be submitted to substantiate all requests for reimbursement of all expenses.

VII. ADVANCED APPROVAL OF FUNDS

(See Memorandum of Chief Justice Toal, dated July 8, 2005)

The policy of SCCID is not to advance funds to cover expenses except in extraordinary instances, such as court approved witness travel and lodging costs. Rather, the attorney should seek court approval of authorization of specific expenses to be paid by OID upon submission of vouchers and invoices showing that the services were performed; and no further order of the court for payment will be needed.

Payment of either expenses or fees is allowed only under the provision of SCACR 602(g)(1). Unless otherwise set out in the order, advanced payments of attorneys fees will not be made prior to the end of the trial stage of the case, except in extraordinary circumstances. Failure to provide the required documentation and accounting records will result in no payments being made in the case or to the attorney. Any funds advanced shall be subject to periodic accounting.

SCCID must process all requests for payment through the State Comptroller General's Office and the State Treasurer then issues checks. This may create a delay in obtaining payment since the administrative requirements of each agency must be satisfied. OID makes every effort available to expedite voucher processing through the agency, but please be aware of this potential delay in receiving funds when submitting vouchers.

ALL VOUCHERS MUST BE RECEIVED BY OID IN CORRECT FORM NOT LATER THAN THIRTY (30) DAYS AFTER SERVICES ARE COMPLETED.

If you have a questions or your concern is not specifically addressed here, please call SCCID at 803-734-1343

APPENDIX ELEVEN

SELECTED STATUTES

APPENDIX 11

Selected Statutes

RIGHTS AND DUTIES OF PARENTS

S.C. Code Ann. § 63-5-30 (West Supp. 2008)

Rights and duties of parents in regard to their minor children.

The mother and father are the joint natural guardians of their minor children and are equally charged with the welfare and education of their minor children and the care and management of the estates of their minor children; and the mother and father have equal power, rights, and duties, and neither parent has any right paramount to the right of the other concerning the custody of the minor or the control of the services or the earnings of the minor or any other matter affecting the minor. Each parent, whether the custodial or noncustodial parent of the child, has equal access and the same right to obtain all educational records and medical records of their minor children and the right to participate in their children's school activities unless prohibited by order of the court. Neither parent shall forcibly take a child from the guardianship of the parent legally entitled to custody of the child.

STATUTORY PROVISIONS FOR APPOINTED GUARDIANS AD LITEM

S.C. Code Ann. § 63-7-1620 (West Supp. 2008)

Legal representation in abuse and neglect proceedings

In all child abuse and neglect proceedings:

(1) Children must be appointed legal counsel and a guardian ad litem by the family court. In the event the individual appointed as guardian ad litem is an attorney, the appointed individual shall serve as the guardian ad litem and legal counsel. The court must not, absent extraordinary circumstances, appoint additional legal counsel to represent an attorney guardian ad litem. The appointed attorney guardian must petition the family court for the appointment of legal counsel and set forth extraordinary circumstances necessitating the appointment. Counsel for the child in no case may be the same as counsel for the parent, guardian, or other person subject to the proceeding or any governmental or social agency involved in the proceeding.

(2) Parents, guardians, or other persons subject to any judicial proceeding are entitled to legal counsel. Those persons unable to afford legal representation must be appointed counsel by the family court.

(3) The interests of the State and the Department of Social Services must be represented by the legal representatives of the Department of Social Services in any judicial proceeding.

S.C. Code Ann. § 63-11-510 (West Supp. 2008)

Responsibilities and duties of guardian ad litem in abuse and neglect proceedings

The responsibilities and duties of a guardian ad litem are to:

(1) represent the best interests of the child;

(2) advocate for the welfare and rights of a child involved in an abuse or neglect proceeding;

(3) conduct an independent assessment of the facts, the needs of the child, and the available resources within the family and community to meet those needs;

(4) maintain accurate, written case records;

(5) provide the family court with a written report, consistent with the rules of evidence and the rules of the court, which includes without limitation evaluation and assessment of the issues brought before the court and recommendations for the case plan, the wishes of the child, if appropriate, and subsequent disposition of the case;

(6) monitor compliance with the orders of the family court and to make the motions necessary to enforce the orders of the court or seek judicial review;

(7) protect and promote the best interests of the child until formally relieved of the responsibility by the family court.

STATUTORY PROVISIONS FOR PRIVATE GUARDIANS AD LITEM

S.C. Ann. § 63-15-30 (West Supp. 2008)

Child's preference for custody to be considered in private custody cases

In determining the best interests of the child, the court must consider the child's reasonable preference for custody. The court shall place weight upon the preference based upon the child's age, experience, maturity, judgment, and ability to express a preference.

S.C. Code Ann. § 63-15-40 (West Supp. 2008)

Evidence of domestic violence to be considered in determining custody

(A) In making a decision regarding custody of a minor child, in addition to other existing factors specified by law, the court must give weight to evidence of domestic violence as defined in Section 16-25-20 or Section 16-25-65 including, but not limited to:

(1) physical or sexual abuse; and

(2) if appropriate, evidence of which party was the primary aggressor, as defined in Section 16-25-70.

(B) The absence or relocation from the home by a person, against whom an act of domestic violence has been perpetrated, if that person is not the primary aggressor, must not be considered by the court to be sufficient cause, absent other factors, to deny custody of the minor child to that person.

S.C. Code Ann. §63-15-50 (West Supp. 2008)

Visitation granted to person found to have committed domestic violence; conditions; payment for treatment of child physically or psychologically injured by violence.

(A) A court may award visitation to a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, as defined in Section 16-25-20 or Section 16-25-65, or in cases in which complaints were made against both parties, to the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor under Section 16-25-70, only if the court finds that adequate provision for the safety of the child and the victim of domestic violence can be made.

(B) In a visitation order, a court may:

(1) order an exchange of a child to occur in a protected setting;

(2) order visitation supervised by another person or agency;

(3) order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by the court to have been the primary aggressor, to attend and complete, to the satisfaction of the court, a program of intervention for offenders or other designated counseling as a condition of the visitation;

(4) order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by the court to have been the primary

aggressor, to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four hours preceding the visitation;

(5) order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor, to pay a fee to defray the costs of supervised visitation;

(6) prohibit overnight visitation;

(7) require a bond from a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, from the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor, for the return and safety of the child if that person has made a threat to retain the child unlawfully;

(8) impose any other condition that is considered necessary to provide for the safety of the child, the victim of domestic violence, and any other household member.

(C) If a court allows a household member to supervise visitation, the court must establish conditions to be followed during the visitation.

(D) A judge may, upon his own motion or upon the motion of any party, prohibit or limit the visitation when necessary to ensure the safety of the child or the parent who is a victim of domestic violence.

(E) If visitation is not allowed or is allowed in a restricted manner to provide for the safety of a child or parent who is a victim of domestic violence, the court may order the address of the child and the victim to be kept confidential.

(F) The court must order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor, to pay the actual cost of any medical or psychological treatment for a child who is physically or psychologically injured as a result of one or more acts of domestic violence.

S.C. Code Ann. § 63-3-810 (West Supp. 2008)

Private guardians ad litem; appointment.

(A) In a private action before the family court in which custody or visitation of a minor child is an issue, the court may appoint a guardian ad litem only when it determines that:

(1) without a guardian ad litem, the court will likely not be fully informed about the facts of the case and there is a substantial dispute which necessitates a guardian ad litem; or

(2) both parties consent to the appointment of a guardian ad litem who is approved by the court;

(B) The court has absolute discretion in determining who will be appointed as a guardian ad litem in each case. A guardian ad litem must be appointed to a case by a court order.

S.C. Ann. § 63-3-820 (West Supp. 2008

Qualifications; affidavit attesting to qualifications; appointment of attorney for lay guardian.

(A) A guardian ad litem may be either an attorney or a layperson. A person must not be appointed as a guardian ad litem pursuant to Section 20-7-1545 unless he possesses the following qualifications:

(1) a guardian ad litem must be twenty-five years of age or older;

(2) a guardian ad litem must possess a high school diploma or its equivalent;

(3) an attorney guardian ad litem must annually complete a minimum of six hours of family law continuing legal education credit in the areas of custody and visitation; however, this requirement may be waived by the court;
(4) for initial qualification, a lay guardian ad litem must have completed a minimum of nine hours of continuing education in the areas of custody and visitation and three hours of continuing education related to substantive law and procedure in family court. The courses must be approved by the Supreme Court Commission on Continuing Legal Education and Specialization;

(5) a lay guardian ad litem must observe three contested custody merits hearings prior to serving as a guardian ad litem. The lay guardian must maintain a certificate showing that observation of these hearings has been completed. This certificate, which shall be on a form approved by Court Administration, shall state the names of the cases, the dates and the judges involved and shall be attested to by the respective judge; and

(6) lay guardians ad litem must complete annually six hours of continuing education courses in the areas of custody and visitation.

(B) A person shall not be appointed as a guardian ad litem pursuant to Section 20-7-1545 who has been convicted of any crime listed in Chapter 3 of Title 16, Offenses Against the Person; in Chapter 15 of Title 16, Offenses Against Morality and Decency; in Chapter 25 of Title 16, Criminal Domestic Violence; in Article 3 of Chapter 53 of Title 44, Narcotics and Controlled Substances; or convicted of the crime of contributing to the delinquency of a minor, provided for in Section 16-17-490.

(C) No person may be appointed as a guardian ad litem pursuant to Section 20-7-1545 if he is or has ever been on the Department of Social Services Central Registry of Abuse and Neglect.

(D) Upon appointment to a case, a guardian ad litem must provide an affidavit to the court and to the parties attesting to compliance with the statutory qualifications. The affidavit must include, but is not limited to, the following:

(1) a statement affirming that the guardian ad litem has completed the training requirements provided for in subsection (A);

(2) a statement affirming that the guardian ad litem has complied with the requirements of this section, including a statement that the person has not been convicted of a crime enumerated in subsection (B);
and

(3) a statement affirming that the guardian ad litem is not nor has ever been on the Department of Social Services Central Registry of Child Abuse and Neglect pursuant to Section 20-7-650.

(E) The court may appoint an attorney for a lay guardian ad litem. A party or the guardian ad litem may petition the court by motion for the appointment of an attorney for the guardian ad litem. This appointment may be by consent order. The order appointing the attorney must set forth the reasons for the appointment and must establish a method for compensating the attorney.

S.C. Code Ann. § 63-3-830 (West Supp. 2008)

Responsibilities and duties; submission of briefs

(A) The responsibilities and duties of a guardian ad litem include, but are not limited to:

(1) representing the best interest of the child;

(2) conducting an independent, balanced, and impartial investigation to determine the facts relevant to the situation of the child and the family. An investigation must include, but is not limited to:

(i) obtaining and reviewing relevant documents, except that a guardian ad litem must not be compensated for reviewing documents related solely to financial matters not relevant to the suitability of the parents as to custody, visitation, or child support. The guardian ad litem shall have access to the child's school records and medical records. The guardian ad litem may petition the family court for the medical records of the parties;

(ii) meeting with and observing the child on at least one occasion;

(iii) visiting the home settings if deemed appropriate;

(iv) interviewing parents, caregivers, school officials, law enforcement, and others with knowledge relevant to the case;

(v) obtaining the criminal history of each party when determined necessary; and
(vi) considering the wishes of the child, if appropriate;

(3) advocating for the child's best interest by making specific and clear suggestions, when necessary, for evaluation, services, and treatment for the child and the child's family. Evaluations or other services suggested by the guardian ad litem must not be ordered by the court, except upon proper approval by the court or by consent of the parties;

(4) attending all court hearings related to custody and visitation issues, except when attendance is excused by the court or the absence is stipulated by both parties. A guardian must not be compensated for attending a hearing related solely to a financial matter if the matter is not relevant to the suitability of the parents as to custody, visitation, or child support. The guardian must provide accurate, current information directly to the court, and that information must be relevant to matters pending before the court;

(5) maintaining a complete file, including notes. A guardian's notes are his work product and are not subject to subpoena; and

(6) presenting to the court and all parties clear and comprehensive written reports including, but not limited to, a final written report regarding the child's best interest. The final written report may contain conclusions based upon the facts contained in the report. The final written report must be submitted to the court and all parties no later than twenty days prior to the merits hearing, unless that time period is modified by the court, but in no event later than ten days prior to the merits hearing. The ten-day requirement for the submission of the final written report may only be waived by mutual consent of both parties. The final written report must not include a recommendation concerning which party should be awarded custody, nor may the guardian ad litem make a recommendation as to the issue of custody at the merits hearing unless requested by the court for reasons specifically set forth on the record. The guardian ad litem is subject to cross-examination on the facts and conclusions contained in the final written report. The final written report must include the names, addresses, and telephone numbers of those interviewed during the investigation.

(B) A guardian ad litem may submit briefs, memoranda, affidavits, or other documents on behalf of the child. A guardian ad litem may also submit affidavits at the temporary hearing. Any report or recommendation of a guardian ad litem

must be submitted in a manner consistent with the South Carolina Rules of Evidence and other state law.

S.C. Code Ann. § 63-3-840 (West Supp. 2008)

Guardian ad litem as mediator.

A guardian ad litem must not mediate, attempt to mediate, or act as a mediator in a case to which he has been appointed. However, nothing in this section shall prohibit a guardian ad litem from participating in a mediation or a settlement conference with the consent of the parties.

S.C. Code Ann. § 63-3-850 (West Supp. 2008)

Compensation; factors considered in determining reasonableness; submission of itemized bill; review.

(A) At the time of appointment of a guardian ad litem, the family court judge must set forth the method and rate of compensation for the guardian ad litem, including an initial authorization of a fee based on the facts of the case. If the guardian ad litem determines that it is necessary to exceed the fee initially authorized by the judge, the guardian must provide notice to both parties and obtain the judge's written authorization or the consent of both parties to charge more than the initially authorized fee.
(B) A guardian appointed by the court is entitled to reasonable compensation, subject to the review and approval of the court. In determining the reasonableness of the fees and costs, the court must take into account:
(1) the complexity of the issues before the court;
(2) the contentiousness of the litigation;
(3) the time expended by the guardian;
(4) the expenses reasonably incurred by the guardian;
(5) the financial ability of each party to pay fees and costs; and
(6) any other factors the court considers necessary.
(C) The guardian ad litem must submit an itemized billing statement of hours, expenses, costs, and fees to the parties and their attorneys pursuant to a schedule as directed by the court.
(D) At any time during the action, a party may petition the court to review the reasonableness of the fees and costs submitted by the guardian ad litem or the attorney for the guardian ad litem.

S.C. Code Ann. § 63-3-860 (West Supp. 2008)

Disclosure.

A guardian ad litem appointed by the family court in a custody or visitation action must, upon notice of the appointment, provide written disclosure to each party:

(1) of the nature, duration, and extent of any relationship the guardian ad litem or any member of the guardian's immediate family residing in the guardian's household has with any party;
(2) of any interest adverse to any party or attorney which might cause the impartiality of the guardian ad litem to be challenged;
(3) any membership or participation in any organization related to child abuse, domestic violence, or drug and alcohol abuse.

S.C. Code Ann. § 63-3-870 (West Supp. 2008)

Removal.

A guardian ad litem may be removed from a case at the discretion of the court.

TERMINATION OF PARENTAL RIGHTS

S.C. Code Ann. § 63-7-2570 (West Supp. 2008)

Termination of parental rights

The family court may order the termination of parental rights upon a finding of one or more of the following grounds and a finding that termination is in the best interest of the child:

(1) The child or another child in the home has been harmed as defined in Section 20-7-490, and because of the severity or repetition of the abuse or neglect, it is not reasonably likely that the home can be made safe within twelve months. In determining the likelihood that the home can be made safe, the parent's previous abuse or neglect of the child or another child in the home may be considered;

(2) The child has been removed from the parent pursuant to Section 20-7-610 or Section 20-7-736, has been out of the home for a period of six months following the adoption of a placement plan by court order or by agreement between the department and the parent, and the parent has not remedied the conditions which caused the removal;

(3) The child has lived outside the home of either parent for a period of six months, and during that time the parent has wilfully failed to visit the child. The court may attach little or no weight to incidental visitations, but it must be shown that the parent was not prevented from visiting by the party having custody or by court order. The distance of the child's placement from the parent's home must be taken into consideration when determining the ability to visit;

(4) The child has lived outside the home of either parent for a period of six months, and during that time the parent has wilfully failed to support the child.

Failure to support means that the parent has failed to make a material contribution to the child's care. A material contribution consists of either financial contributions according to the parent's means or contributions of food, clothing, shelter, or other necessities for the care of the child according to the parent's means. The court may consider all relevant circumstances in determining whether or not the parent has wilfully failed to support the child, including requests for support by the custodian and the ability of the parent to provide support;

(5) The presumptive legal father is not the biological father of the child, and the welfare of the child can best be served by termination of the parental rights of the presumptive legal father;

(6) The parent has a diagnosable condition unlikely to change within a reasonable time including, but not limited to, alcohol or drug addiction, mental deficiency, mental illness, or extreme physical incapacity, and the condition makes the parent unlikely to provide minimally acceptable care of the child. It is presumed that the parent's condition is unlikely to change within a reasonable time upon proof that the parent has been required by the department or the family court to participate in a treatment program for alcohol or drug addiction, and the parent has failed two or more times to complete the program successfully or has refused at two or more separate meetings with the department to participate in a treatment program;

(7) The child has been abandoned as defined in Section 63-7-20(1)]

(8) The child has been in foster care under the responsibility of the State for fifteen of the most recent twenty-two months; or

(9) The physical abuse of a child of the parent resulted in the death or admission to the hospital for in-patient care of that child and the abuse is the act for which the parent has been convicted of or pled guilty or nolo contendere to committing, aiding, abetting, conspiring to commit, or soliciting an offense against the person as provided for in Title 16, Chapter 3, criminal domestic violence as defined in Section 16-25-20, criminal domestic violence of a high and aggravated nature as defined in Section 16-25-65, or the common law offense of assault and battery of a high and aggravated nature.

(10) A parent of the child pleads guilty or nolo contendere to or is convicted of the murder of the child's other parent.

(11) conception of a child as a result of the criminal sexual conduct of a biological parent, as found by a court of competent jurisdiction, is grounds for terminating the rights of that biological parent, unless the sentencing court makes specific findings on the record that the conviction resulted from consensual sexual

conduct where neither the victim nor the actor were younger than fourteen years of age nor older than eighteen years of age at the time of the offense.

APPENDIX TWELVE

SELECTED RULES OF PROCEDURE

APPENDIX 12

Selected Rules of Procedure

Family Court Rules

Rule 7. Admissibility of certain documents.

The following documents and written statements shall be admissible in evidence without requiring that the persons or institution issuing the document or statement be present in court:

(a) A written statement of a child's attendance at school, signed by the school principal or duly authorized school official.

(b) The school report card showing a child's records of attendance, grades on subjects taught and other pertinent information, provided that this be a report sent out at periodic intervals by the school.

(c) The written statement by a physician showing that a patient was treated at certain times and the type of ailment.

(d) Except in cases where the particular agency is a party, a written report of the Department of Social Services or other agency, reporting the home investigation or any other report required by the court.

(e) A written statement of an employer showing wages either weekly or monthly for a given period of time and W-2 statement, income tax returns and other reports of like nature.

Rule 12. Attorneys for guardians ad litem.

If a guardian ad litem is represented by an attorney, the court in its discretion may assess reasonable attorneys' fees and costs.

Rule 21. Temporary relief.

(a) Motion for Temporary Relief. A written motion for temporary relief, and notice of the hearing thereof, shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by the order of the court. In an emergency situation, such an order may be made on ex parte application.

(b) Evidence at Hearing. Evidence received by the court at temporary hearings shall be confined to pleadings, affidavits, and financial declarations unless good

cause is shown to the court why additional evidence or testimony may be necessary.

(c) Service of Affidavits. Notwithstanding the provisions of Rule 6(d), SCRCP, affidavits filed at a temporary hearing need not be served on the opposing party prior to the temporary hearing.

Rule 22. Interview with child.

In all matters relating to children, the family court judge shall have the right, within his discretion, to talk with children, individually or together, in private conference. Upon timely request, the court, in its discretion, may permit a guardian ad litem for a child who is being examined, and/or the attorneys representing parents, if any, to be present during the interview.

Rule 23. Presence or testimony of child.

(a) Presence in Courtroom. Generally, in actions of parents against each other, or where the conduct of either parent is an issue, the children should not be allowed in the courtroom during the taking of testimony.

(b) Testimony. Children should not be offered as witnesses as to the misconduct of either parent, except, when, in the discretion of the court, it is essential to establish the facts alleged.

Rule 41. Counsel and guardian ad litem fees in abuse and/or neglect proceedings.

(a) Limitation on Fees. In all child abuse and neglect proceedings, the court shall grant to legal counsel appointed for the child subject to child abuse and/or neglect proceedings, a fee not to exceed One Hundred ($100.00) Dollars. The court shall grant to a guardian ad litem appointed for a child subject to such proceedings a fee not to exceed Fifty ($50.00) Dollars.

(b) Exceptions. If the court determines that extraordinary circumstances require the award of a fee larger than that which is specified in this rule, the court shall set forth in its order the salient facts upon which the extraordinary circumstances are based and shall award a fee to appointed counsel or guardian ad litem in an amount which the court determines just and proper.

APPENDIX THIRTEEN

SELECTED CASES

APPENDIX 13

Selected Custody and Visitation Cases

Adulterous affair – impact on custody

Paparella v. Paparella, 531 S.E.2d 297 (S.C. Ct. App. 2000)

Father appealed award of custody to mother claiming mother's post separation affair justified an award of custody of the three children to him. The trial court considered mother's affair, the fact that it occurred after separation, and the fact that the paramour had spent the night at the mother's home only a few occasions when the children were not present. Trial court found no deleterious effect on the children. Court of Appeals agreed with the trial court that the best interests of the children were served by their remaining in the custody of the mother. Court of appeals did expand father's visitation by giving him an additional night on his usual weekends and an additional overnight on his off weeks.

Brown v. Brown, 606 S.E.2d 785 (S.C. Ct. App. 2004)

Court of appeals found that, "in reaching a determination as to custody, the family court should consider how the custody decision will impact all areas of the child's life, including physical, psychological, spiritual, educational familial emotional, and recreational aspects. Additionally, the court must assess each party's character, fitness, and attitude as they impact the child. *Citing Shirley v. Shirley*, 536 S.E.2d 427 at 430 (S.C. Ct. App. 2000). In *Shirley,* an adulterous father was awarded custody of the three children based on: mother's failure to

get children to school on time; mother's failure to pickup the children from school on several occasions; mother's failure to provide school lunches; and testimony concerning mother's poor temperament. As to father, he resided with his parents, attended church, was active in raising the children, cooked meals, and appeared to deal well with the children. Although the children expressed a desire to live with mother, the court found that it was in the children's best interest to reside with father.

Alienation by one parent – impact on custody

Altman v. Griffith, 642 S.E.2d 619 (S.C. Ct. App. 2007)

At temporary hearing, custody of the child was granted to the maternal grandparents. By the time of the final hearing, both parents were found to have improved their fitness as parents. Court granted custody of the child to father and found that, "the father would provide the best opportunity to have a good relationship with both the child's parents and their families."

The court described at length how the mother attempted to keep the child from father and to interfere with that relationship. Court noted that father, "appears to have a stronger focus on the daily welfare and care of this child than does the mother." In making its determination, court considered the "totality of the circumstances" in considering the best interests of the child.

Guardian responsibilities

Patel v. Patel, 555 S.E.2d 386 (S.C. 2001)

In this complicated case, the court set forth its findings about the duties and responsibilities of a guardian ad litem and those findings were incorporated

in the 2003 Private Guardian ad Litem statute. The Patels have three children. The family owned and lived in a Days Inn in Dillon, South Carolina. At the end of a week long trial, father was granted custody of the children. The parties appealed on a number of grounds. On the issue of custody, the court found that the mother had not had a fair hearing. The Court sited specific concerns about the guardian's actions:

> The family court appointed a non-lawyer Guardian *Ad Litem* (GAL) in February of 1996 to review this case. The GAL testified at the final hearing in May of 1997, after having 15 months to review the case. As stated by the family court in its final divorce decree filed in October 1997, the GAL had "a substantial amount of personal involvement" in this case. However, the GAL's actions in this case give rise to concern. For example, the GAL did not keep notes of her observations during her investigation and failed to produce a written report. In addition, the GAL contacted Husband's counsel 19 times, but never contacted Wife's counsel. The GAL stated she had "some" telephone contact with Wife, but spoke on the phone with Husband "very frequent[ly]." After an incident with Wife, the GAL testified she did not feel comfortable enough to meet with Wife, and did not visit her from July 14 to October 21, 1996. During the time she did not feel comfortable meeting with Wife, she continued to meet with the children while in Husband's care. Furthermore, the GAL listened to a phone conversation between Husband and Wife without Wife's knowledge. The GAL also taped a conversation with Anish concerning an incident that happened while they were in Wife's custody. Finally, the GAL testified that "she was taken aback" by Wife's request that she be removed from the case. In sum, the GAL did not conduct an objective, balanced investigation. She did not afford each party a balanced opportunity to interact with her. Her method of evaluation created a high potential for bias towards Husband. (at 286, 388-389)

This supreme court remanded the case to the family court for a new trial with a new guardian and a complete rehearing on the matter before the court.

Best interests of child factors

Nasser-Moghaddassi v. Moghaddassi, 612 S.E.2d 707 (S.C. Ct. App. 2005)

In this case, the family court awarded custody of the children to father. Claiming that the guardian's recommendation was not the product of an independent, balanced, and impartial investigation, mother appealed. Citing the *Patel* factors and the conduct of the guardian, the court found the guardian had conducted a fair and balanced investigation. The court went on to restate controlling factors of every custody dispute, the best interests of the children. *Citing Shirley v. Shirley*, 536 S.E.2d 427 430 (S.C. Ct. App. 2000), the court reiterated the South Carolina rule governing custody cases:

> In all custody controversies, the controlling considerations are the child's welfare and best interests. In reaching a determination as to custody, the family court should consider how the custody decision will impact all areas of the child's life, including physical, psychological, spiritual, educational, familial, emotional, and recreational aspects. Additionally, the court must assess each party's character, fitness, and attitude as they impact the child.

Psychological parent

Middleton v. Johnson, 633 S.E.2d 162 (S.C. Ct. App. 2006)

This case addressed the concept of the "psychological parent." Mr. Middleton had no biological connection to the child. However, he had paid child support until it was shown he was not the child's natural parent. He visited with the child and had become involved in many aspects of the child's life. When the child's mother began seeing another man, she denied Mr. Middleton access to the child. Mr. Middleton sought a visitation through the family court which denied Mr. Middleton's request due to his lack of biological connection to the child. The court of appeals, using a four-prong test developed by the Wisconsin Supreme Court to establish the facts of a psychological

parent-child relationship, found Mr. Middleton to be a psychological parent. The test included:

> (1) that the biological or adoptive parent[s] consented to, and fostered, the petitioner's formation and establishment of a parent-like relationship with the child; (2) that the petitioner and the child lived together in the same household; (3) that the petitioner assumed obligations of parenthood by taking significant responsibility for the child's care, education and development, including contributing towards the child's support, without expectation of financial compensation; [and] (4) that 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 re Custody of H.S.H.-K., 533 N.W.2d 419 (Wis. 1995).

Liability of private guardians

Fleming v. Asbill, 483 S.E.2d 751 (S.C. 1997)

The Court addressed the liability of guardians in private family court cases. The court found that court appointed guardians are not state employees such that they would be protected by the South Carolina Tort Claims Act. The court further found guardians enjoyed quasi-judicial immunity. The court stated,

"[i]t has been argued that a grant of immunity could lessen the protection of the ward, if a guardian ad litem knows that she cannot be found liable for gross negligence or even recklessness in the performance of her duties. Although it may not be possible to fully protect against this danger, certain safeguards do exist. First, the immunity would not protect guardians ad litem for actions beyond the scope of their duties. Thus, for example, if a guardian abuses a child, she would be liable because her actions would fall outside her duties as guardian. Second, the accountability of the guardian ad litem is preserved in various ways. For example, the opposing party may cross-examine the guardian ad litem and any witnesses whose testimony form the basis of the guardian's recommendation.

Timeliness of Merits Hearing

South Carolina Department of Social Services v. Meek, 575 S.E.2d 477 (S.C. Ct. App. 2002)

Mother challenged jurisdiction of family court and alleged violation of her right to due process on grounds that the merits hearing was not held within statutorily required time limits. The chronology of events in *Meek* was as follows:

EPC action brought:	April 20
Probable cause hearing held:	April 24
Merits hearing scheduled for:	May 24
Merits continued until August 2:	May 24
Merits hearing held:	August 2

Considering the provisions of S.C. Code Ann. §§ 20-7-610(M) and 20-7-736, and considering the South Carolina Court of Appeal's opinion in *South Carolina Department of Social Services v. Gamble*, 523 S.E.2d 477 (S.C. Ct. App. 1999), the court concluded that the requirement found in 20-7-610 that a merits hearing be "held" within thirty-five days of receipt of the removal petition is

met when the merits hearing is "scheduled" to be held within thirty days of receipt of the removal petition. "The statute does not indicate that the hearing must be completed within the thirty-five day period. Therefore the requirement that a hearing on the merits actually come to a conclusion within thirty-five days of the removal petition should not be read into the statute." *Citing Gamble* 523 S.E.2d at 479.

The court further noted that the family court would not be deprived of jurisdiction by a failure to meet a statutorily mandated time limit. A party's remedy in such a situation is a petition for return of the party's child or motion to vacate the order granting custody of a child to the Department.

Selected Termination of Parental Rights (TPR) Cases

Grounds for TPR:

(1) The child or another child in the home has been harmed as defined in S.C. Code Ann. § 63-7-20, and because of the severity or repetition of the abuse or neglect, it is not reasonably likely that the home can be made safe within 12 months. In determining the likelihood that the home can be made safe, the parent's previous abuse or neglect of the child or another child in the home may be considered.

- See *South Carolina Dept. of Soc. Servs. v. Sims,* 598 S.E.2d 303 (S.C. Ct. App. 2004), affirming a family court order terminating parental rights on the ground of repetitious neglect.
- *Hooper v. Rockwell,* 513 S.E.2d 358 (S.C. 1999), affirming a family court order terminating parental rights on the ground of severe and repetitious abuse.

(2) The child has been removed from the parent pursuant to S.C. Code Ann. § 63-7-1660, has been out of the home for a period of six

months following the adoption of a placement plan by court order or by agreement between the department and the parent, and the parent has not remedied the conditions which caused the removal of the child from the home.

- See *South Carolina Dept. of Soc. Servs. v. Cochran,* 589 S.E.2d 753 (S.C. 2003), family court order terminating parental rights was reversed and remanded because DSS failed to establish a proper chain of custody in its introduction of the mother's positive drug screens.
- *South Carolina Dept. of Soc. Servs. v. Cummings,* 547 S.E.2d 506 (S.C. Ct. App. 2001), holding that evidence of the mother's multiple failed attempts to complete drug treatment was clear and convincing evidence that the mother failed to remedy conditions.
- *Dept. of Soc. Servs. v. Mr. H. and Mrs. H.,* 550 S.E.2d 898 (S.C. Ct. App. 2001), affirming the family court's decision to terminate parental rights on the ground of failure to remedy conditions of removal.
- *South Carolina Dept. of Soc. Servs. v. Lail,* 516 S.E.2d 463 (S.C. Ct. App. 1999), holding that DSS failed to present clear and convincing evidence that the mother failed to remedy conditions of removal because the merits order unfounded the allegations of abuse and neglect.
- *South Carolina Dept. of Soc. Servs. v. Broome,* 413 S.E.2d 835 (S.C. 1992), holding that evidence supported termination of

parental rights on the ground of failure to remedy conditions of removal.

- *Dept. of Soc. Servs. v. Phillips,* 618 S.E.2d 922 (S.C. Ct. App. 2005), holding that the mother was procedurally barred from challenging the sufficiency of a removal order and affirming the family court order terminating parental rights based upon failure to remedy the conditions of removal.
- *South Carolina Dept. of Soc. Servs. v. Sims,* 598 S.E.2d 303 (S.C. Ct. App. 2004).
- *Hooper v. Rockwell,* 513 S.E.2d 358 (S.C. 1999).

(3) The child has lived outside the home of the parent for a period of six months, and during that time the parent has willfully failed to visit the child. The court may attach little or no weight to incidental visitations, but it must be shown that the parent was not prevented from visiting by the party having custody or by court order. The distance of the child's placement from the child's home must be considered when determining the ability to visit.

- See *South Carolina Dept. of Soc. Servs. v. Headden,* 582 S.E.2d 419 (S.C. 2003), holding that the family court is not limited to considering the months immediately preceding the termination of parental rights hearing in determining whether a parent has willfully failed to visit.
- *South Carolina Dept. of Soc. Servs. v. Wilson,* 543 S.E.2d 580 (S.C. Ct. App. 2001), holding that DSS failed to present clear and

convincing evidence that an incarcerated father failed to visit because DSS actually prevented the father from visiting with his children.

- *Charleston County Dept. of Soc. Servs. v. Jackson,* 627 S.E.2d 765 (S.C. Ct. App. 2006), holding that the family court erred in terminating the parental rights of an incarcerated father for failure to visit.

(4) The child has lived outside the home of either parent for a period of six months, and during that time the parent has willfully failed to support the child. Failure to support means that the parent has failed to make a material contribution to the child's care. A material contribution consists of either financial contributions according to the parent's means or contributions of food, clothing, shelter, or other necessities for the care of the child according to the parent's means. The court may consider all relevant circumstances in determining whether or not the parent has willfully failed to support the child, including requests for support by the custodian and the ability of the parent to provide support.

- See *South Carolina Dept. of Soc. Servs. v. Wilson,* 543 S.E.2d 580 (S.C. Ct. App. 2001), holding that the family court erred by not considering an incarcerated father's means and his ability to pay before ordering that the father's parental rights be terminated for willful failure to support.

- *South Carolina Dept. of Soc. Servs. v. Cummings,* 547 S.E.2d 506 (S.C. Ct. App. 2001), holding that the statute does not require that the parent receive notification of an obligation to pay child support.
- *South Carolina Dept. of Soc. Servs v. Lail,* 516 S.E.2d 463 (S.C. Ct. App. 1999), holding that DSS failed to present clear and convincing evidence that the mother willfully failed to support her children.
- *South Carolina Dept. of Soc. Servs. v. Parker,* 519 S.E.2d 351 (S.C. Ct. App. 1999), holding that the father was not relieved of the obligation to support because he was incarcerated.
- *South Carolina Dept. of Soc. Servs. v. Phillips,* 391 S.E.2d 584 (S.C. Ct. App. 1990), holding that the father's incarceration did not relieve him of the obligation to support the child.
- *Stinecipher v. Ballington,* 620 S.E.2d 93, (S.C. Ct. App. 2005), holding that an incarcerated father willfully failed to support the child.
- *South Carolina Dept. of Soc. Servs. v. Seegars,* 627 S.E.2d 718 (S.C. 2006), affirming the family court order terminating parental rights on the ground of willful failure to support.
- *Charleston County Dept. of Soc. Servs. v. Jackson,* 627 S.E.2d 765 (S.C. Ct. App. 2006), holding that the family court erred in terminating the parental rights of an incarcerated father for failure to support.

(5) The presumptive legal father is not the biological father of the child, and the welfare of the child can best be served by termination of parental rights of the presumptive legal father.

(6) The parent has a diagnosable condition unlikely to change within a reasonable period of time including, but not limited to, alcohol or drug addiction, mental deficiency, mental illness, or extreme physical incapacity, and the condition makes the parent unlikely to provide minimally acceptable care for the child. If substance abuse is the basis for pleading this ground, it is presumed that the parent's condition is unlikely to change within a reasonable time upon proof that the parent has been required by the department or the family court to participate in a treatment program for alcohol or drug addiction, and the parent has failed two or more times to complete the program successfully or has refused at two or more separate meetings with the department to participate in a treatment program.

- See *South Carolina Dept. of Soc. Servs. v. Cochran,* 614 S.E.2d 642 (S.C. 2005), affirming an order terminating parental rights on the ground of diagnosable condition and holding that DSS met its burden of establishing a chain of custody for two positive drug screens because DSS established that the procedures utilized in handling and testing the specimens ensured the integrity of the evidence.
- *Orangeburg County Dept. of Soc. Servs. v. Harley,* 393 S.E.2d 597 (S.C. Ct. App. 1990), holding that reasonable efforts to provide

rehabilitative services are not necessary prior to terminating parental rights on the ground of diagnosable condition.

- *South Carolina Dept. of Soc. Servs. v. Seegars,* 627 S.E.2d 718 (S.C. 2006), affirming a family court order terminating parental rights because the parent had a diagnosable condition that was unlikely to change.
- *South Carolina Dept. of Soc. Servs. v. Jane Doe,* No. 4191 (S.C. Ct. App filed December 21, 2006 (Shearouse Adv. Sh. No. 48 at 68), affirming a family court order terminating the mother's parental rights on the ground that the mother has a diagnosable condition that is unlikely to change within a reasonable time.

(7) The child has been abandoned as defined in S.C. Code Ann. §63-7-(1).

- See *South Carolina Dept. of Soc. Servs. v. Ledford,* 593 S.E.2d 175 (S.C. Ct. App. 2004), holding that the father willfully abandoned the child.
- *South Carolina Dept. of Soc. Servs. v. Truitt,* 603 S.E.2d 867 (S.C. Ct. App. 2004), holding that the facts and circumstances of the case supported a determination that the parents willfully deserted their children without making appropriate arrangements for the continuing care of the children.

(8) The child has been in foster care under the responsibility of the state for 15 of the most recent 22 months.

- See *South Carolina Dept. of Soc. Servs. v. Sims,* 598 S.E.2d 303 (S.C. Ct. App. 2004), holding that parental rights may be terminated solely on the basis of a child being in foster care for 15 of the most recent 22 months.
- *Doe v. Baby Boy Roe,* 578 S.E.2d 733 (S.C. Ct. App. 2003), holding that grounds for termination of parental rights exist once a child has remained in foster care for any 15 month period within the most recent 22 months.

(9) The physical abuse of a child of the parent resulted in the death or admission to the hospital for inpatient care of that child and the abuse is the act for which the parent has been convicted of or pled guilty or nolo contendere to committing, aiding, abetting, conspiring to commit, or soliciting an offense against the person as provided for in Title 16, Chapter 3, criminal domestic violence as defined in S.C. Code Ann. § 16-25-20, criminal domestic violence of a high and aggravated nature as defined in S.C. Code Ann. § 16-25-65, or the common law offense of assault and battery of a high and aggravated nature.

(10) A parent of the child pleads guilty or nolo contendere to or is convicted of the murder of the child's other parent.

(11) Conception of a child as a result of the criminal sexual conduct of a biological parent, as found by a court of competent jurisdiction, is grounds for terminating the rights of that biological parent, unless the sentencing court makes specific findings on the record that the conviction resulted from

consensual sexual conduct where neither the victim nor the actor were younger than fourteen years of age nor older than eighteen years of age at the time of the offense.

APPENDIX FOURTEEN

REFERENCES AND RESOURCES

APPENDIX 14

References and Resources

Web Sites

South Carolina

Children's Law Center, School of Law, University of South Carolina
http://childlaw.sc.edu

Features downloadable publications, summaries of case decisions, information on training and projects, and links to child-serving organizations and agencies

National

American Bar Association's Center for Children's Law
www.abanet.org/child/home.html

Features publications, resources, training, and initiatives of the ABA's Center for Children and the Law

American Professional Society on the Abuse of Children
www.apsac.org

Features information and resources on the effects of abuse on children and families and has links to numerous resources

Child Health Resources
www.onlinehealthresources.com

Features links to many web sites on a variety of children's health issues

Child Welfare League of America
www.cwla.org

Features resources on advocacy for children, foster care and child welfare; also has statistics relevant to child welfare

National Children's Alliance
www.nca-online.org

Features information about children's advocacy centers including state laws on them and features information about multidisciplinary teams and investigation of child abuse

National Child Welfare Information Gateway
www.childwelfare.gov

Features the most comprehensive collection of information and resources on children and families; it is a product of the Children's Bureau, Administration for Children and Families, USHHS

National Council of Juvenile and Family Court Judges
www.ncjfcj.org

Features information and resources on child welfare, abuse and neglect, foster care and family court processes

Wrights Law
www.wrightslaw.com

Features the most comprehensive sources of information on education of special needs children and has many practical guides for lawyers, teachers and parents

Books

Child Custody
Craig A. Everett, Ph.D.
The Hawroth Press, Inc., 1997

Creating Effective Parenting Plans
John Hartson, Ph.D., Brenda Payne, Ph.D.
American Bar Association, 2006

Child Abuse and Culture
Lisa Aronson Fontes
The Guilford Press, 2005

The APSAC Handbook on Child Maltreatment
John E.B. Myers, Lucy Berliner, John Briere,
C. Terry Hendrix, Carole Jenny & Teresa Reid, eds.
Sage Publications 2002

Assessing the Long-Term Effects
of Foster Care
Thomas P. McDonald, Reva I. Allen, Alex Westerfelt &
Irving Piliavin
Child Welfare League of America, 1996

Young Children and Trauma
Joy D. Osofsky, ed.
The Guilford Press, 2004

Representing Children in Child Protective Proceedings, 3d Ed.
Jean Koh Peters
Lexis/Nexis, 2007

Marital Litigation in South Carolina, 3d Ed.
Roy T. Stuckey
South Carolina Bar, Continuing Education Division, 2001

A Judge's Guide:
Making Child-Centered Decisions in Custody Cases
American Bar Association Center on Children and the Law, 2001

Investigation and Prosecution of Child Abuse, 3d Ed.
National Center for Prosecution of Child Abuse
Sage Publications, 2004

Law Review Articles

Proceedings of the Conference on Ethical Issues in the
Legal Representation of Children
Fordham Law Review
Volume LXIV, Number 4, March 1996

Children and the Law Symposium
Hamline Journal of Public Law and Policy
Volume 28, Number 1, Fall 2006

Working in the Best Interest of Children: Facilitating
The Collaboration of Lawyers and Social Workers in
Abuse and Neglect Cases
Mary Kay Kisthardt
30 Rutgers Law Record 1 (2006)

Other Articles

ABA Standards of Practice
for Attorneys Representing Parents in
Abuse and Neglect Cases
August 2006

ABA Standards of Practice
for Lawyers Representing Children in Custody Cases
August 2003

ABA Standards of Practice
for Lawyers Who Represent
Children in Abuse and Neglect Cases
February 1996

Ethical Issues for Guardians ad Litem
Representing Children in Dependency Cases
Jennifer Renne
The APSAC Advisor, Summer 2007

APPENDIX FIFTEEN

CHILD ABUSE PREVENTION RESOURCES

APPENDIX 15

Child Abuse Prevention Resources

A Child's Haven
1124 Rutherford Road
Greenville, SC 29609
(864) 298-0025
www.achildshaven.com
Provides intervention and prevention services for families and children ages 2 to 5 years who are victims of abuse and/or neglect, experiencing developmental delays, or behavioral problems.

Child Abuse Prevention Association
P.O. Box 531
Beaufort, SC 29901
(843) 524-4350
www.islc.net/capa
Mission is to prevent child abuse by providing intergrated education, shelter and counseling services to schools, families and individuals within the community.

Children in Crisis in Dorchester County (Dorchester Children's Center)
303 E. Richardson Avenue
Summerville, SC 29483
(843) 875-1551
www.dorchesterchildrensctr.org
Provides prevention, foster care development, forensic, treatment, and case management for children in need.

The Dee Norton Lowcountry Children's Center, Inc.
1061 King Street
Charleston, SC 29403
(843) 723-3600
www.dnlcc.org
Mission is to reduce the incidence of child abuse and its impact on the child, family and community by providing a forum for concerned agencies and individuals to identify needs and respond through the development, coordination, and delivery of quality services.

Exchange Club Parent Resource Center
1092 Montague
North Charleston, SC 29405
(843) 747-1339
www.exchangeclubcenter.com

Mission is to serve as a community resource for prevention programs that increase awareness of child abuse and neglect in Berkeley, Charleston, and Dorchester Counties.

Foothills Alliance
216 E. Calhoun Street
Anderson, SC 29621
www.foothillsalliance.org
Provides a variety of prevention services through out the areas of Anderson County which include distribution of prevention materials, presentations, and trainings.

Greenville Rape Crisis and Child Abuse Center
2905 White Hourse Road
Greenville, SC 29611
(864) 331-0560
Works to stop child abuse and addresses its impact through prevention, investigation, collaboration, treatment and advocacy.

Parenting Partners
1804 Hampton Street
Columbia, SC 29201
(803) 744-4600
www.myparentingpartners.org
Offers parenting classes through community centers, churches, and other organizations in response to a growing awareness that all parents are looking for ways to improve the parenting skills needed to provide a loving, nurturing, and protective home for their children.

The Parenting Place (Prevent Child Abuse Pickens County)
1899 Gentry Memorial Highway
Easley, SC 29640
(864) 898-5583
Dedicated to the prevention of child abuse through services to its victims, crisis intervention, and educational programs that promote a safe and nurturing environment for children.

Pee Dee Coalition against Domestic and Sexual Assault
P.O. Box 1351
Florence, SC 29503
(843) 669-4694
www.peedeecoalition.org
A comprehensive child abuse prevention program that serves Florence, Darlington, Marion, Chesterfield, Malboro, Dillon, and Williamsburg Counties.

Prevent Child Abuse South Carolina
1712 Hampton Street
Columbia, SC 29201
Phone: (803) 733-5430
Fax: (803) 744-4020
www.pcasc.org
Prevention of child maltreatment through education, intervention, and treatment.

Spartanburg Family Care Council
103 South Pine Street
Spartanburg, SC 29302
(864) 591-2273
Provides quality education and prevention programs to all families in Spartanburg in order to contribute to a positive family environment and to reduce adolescent pregnancies and child abuse incidences.

National Council on Child Abuse and Family Violence
American Campaign for Prevention of Child Abuse and Family Violence
1155 Connecticut Ave NW, Ste 400
Washington, DC 20036
Phone: (202) 429-6695
Fax: (408) 655-3930
Email: ncaafv@aol.com
Seeks to prevent family violence and child abuse through education, intervention, and treatment.

Family and Parenting Services

Aiken County First Steps
208-D The Alley
Aiken, SC 29801
(803)643-3845
www.aikenfirststeps.org
Provides services for pre-first grade children and their families to help prepare children to reach first grade healthy and ready to succeed

Anderson Interfaith Ministries
P.O. Box 1136
Anderson, SC 29622
(864) 266-2273
www.aimcharity.org
Provides assistance to low-income families and individuals, while encouraging and guiding them to function independently within their resources.

Children's Place, Inc.
310 Barnwell Avenue NE
Aiken, SC 29801
(803) 641-4144
www.childrensplaceinc.org
Provides services, treatment, and child care to children and families who experience difficult beginnings.

Florence Crittenton Programs of SC
19 Saint Margaret Street
Charleston, SC 29403
(843) 722-7526
www.florencecrittentonsc.org
Mission is to provide and promote those comprehensive medical, educational and support services which will most effectively insure the well-being and self-sufficiency of single parents and their children in South Carolina.

Greenwood Community Children's Center
113 Liner Drive
Greenwood, SC 29646
(864) 941-8105
www.greenwoodchildren.org
Provides services such as home visitation for families with young children, parent-to-parent support groups, family literacy, and parenting workshops and classed through collaboration with community partners.

Heritage Community Services- Healthy Marriage Initiatives
2810 Ashley Phosphate Road B-7
Charleston, SC 29418
(843) 863-0508
www.heritageservices.org
Mission is to strengthen the character of America's adolescents and our communities one individual, one family, and one institution at a time.

Lancaster Fatherhood Program
405 East Gay Street
Lancaster, SC 29721
(803) 283-3444
Works with African American fathers with the goal of helping them to engage with their children, meet financial and parenting responsibilities, realize self-worth as men and meet their responsibility to the community.

Lighthouse Ministries
201 E. Elm Street
Florence, SC 29506
(843) 629-0830

Is a cooperative effort of the Florence Christian congregations to assist individuals and families in emergency situations.

Orangeburg County First Steps
770 Stilton Road
Orangeburg, SC 29115
(803) 533-6441
www.orangeburgfirststeps.org
Focuses on addressing the healthcare, childcare, early education, family strengthening, parenting skills, and transportation needs and service gaps for families and their children from birth to five years.

South Carolina Respite Coalition
P.O. Box 493
Columbia, SC 29202
(803) 935-5027
Founded by 30 organizations concerned about family caregivers in 2001, the Coalition helps families find what few services exist in their communities.

Adolescent Services

A Better Way (Gang Out)
1445 Shop Road
Columbia, SC 29201
(803) 799-0990
Mission is to promote healthy living by educating and demonstrating positive alternatives and reducing the likelihood of "at-risk" behavior among youth and adolescents to encourage their maximum potential for success in life.

Butterfly House
488 Hampton Ave
Blackville, SC 29817
(803) 284-5042
http://www.angelfire.com/sc2/butterflyhouse13/
Free Christian residential program for pregnant teens.

Heritage Community Services- Healthy Marriage Initiatives
2810 Ashley Phosphate Road B-7
(843) 863-0508
www.heritageservices.org
Mission is to strengthen the character of America's adolescents and our communities one individual, one family, and one institution at a time. Provides resources which help young people to develop good character, abstain from risky behaviors, and prepare for marriage and family life.

Imagine That
(864) 582-7588
Improvisational theatre troupe consisting of high-school students that performs throughout Spartanburg County and South Carolina, and addresses social issues to youth and adults.

Lutheran Family Services in the Carolinas
1-800-HELPING
1440 Broad River Road
Columbia, SC 29210
(803) 750-9917

South Carolina School Violence Hotline
1-800-322-4453

South Carolina Teen Suicide and Crisis Hotline
1-800-852-8336

Health Insurance and Financial Assistance

ARC Medical Plan
1010 Wayne Avenue, Suite 650
Silver Springs, MD 20910
Phone: (301) 565-3842
Fax: (301) 565-3843
www.thearc.org
Health care plan for people with disabilities in their families.

SC Department of Insurance
300 Arbor Lake Drive #1200
Columbia, SC 29223
Phone: (803) 737-6180
Fax: (803) 737-6231
www.doi.sc.gov
Provides information and investigates complaints about insurance policies.

SC Department of Social Services
2638 Two Notch Road
Columbia, SC 29204
Phone: (803) 929-7275
Fax: (803) 929-2737
www.state.sc.us/dss

SC Department of Social Services – TERFA Medical Support
3150 Harden Street Ext. Suite 201
P.O. Box 1520
Columbia, SC 29202-1520

Email: lgoodwin@dss.state.sc.us
TERFA is an amendment to the South Carolina State Medicaid program that provides benefits to some children with disabilities.

SC Health Insurance Pool- Blue Cross and Blue Shield of SC
PO Box 61153
Columbia, SC 29260
Phone: (803) 788-0222 ext. 46401
Tollfree: 1-800-868-2500 ext.46401
Provides health insurance for those who were unable to obtain coverage from a private plan.

Social Security Administration District Office
1835 Assembly Street
Columbia, SC 29201
Phone: (803) 929-7635
Fax: (803) 765-5143
Tollfree: 1-800-772-1213
Provides applications for two types of disability benefits: Social Security Disability and Supplemental Security Income.

Children's Advocacy Centers

Assessment and Resource Center
PO Box 119
Columbia, SC 29202
Phone: (803) 898-1470
Fax: (803) 898-1471
Email: afd68@scdmh.org
Provides services to victims of child sexual abuse including forensic interviewing and medical examinations.

Children's Advocacy Center of Spartanburg
PO Box 6007
Spartanburg, SC 29304
Phone: (864) 515-9920
Fax: (864) 515-9919
www.cacsp.org
Mission is to facilitate a collaborative, child-focused approach for the effective prevention, detection, investigation, treatment and prosecution of child abuse.

The Child's Place
PO Box 693
Greenwood, SC 29648
Phone: (864) 227-1623
Fax: (864) 227-2923

www.sexualtraumacenter.org/childsplace.html
Mission is to enhance communication and cooperation among agencies and individuals entrusted with the responsibility of the protect of victims of child sexual abuse.

Foothills CAC
3407-B, Hwy 29 South
Anderson, SC 29626
Phone: (864) 261-6111
Fax: (864) 261-6130
Email: fthlcac@yahoo.com
www.foothillsalliance.org/about_us/
Part of the Foothills Alliance that advocates for child abuse victims in Anderson and Oconee Counties.

Hope Haven of the Lowcountry
PO Box 2502
Beaufort, SC 29901
Phone: (843) 534-2256
Fax: (843) 524-0597
www.hopehavenlc.org
Non-profit organization responding to the needs of child and adult victims of rape, sexual assault, and incest in Beaufort, Collenton, Jasper, and Allendale Counties.

Durant Children's Center
PO Box 1351
Florence, SC 29503
Phone: (843) 664-4357
rgriggs@durantchildren.org
www.peedeecoalition.org/durant
Comprehensive Program for diagnosis, treatment, and prevention of child physical and sexual abuse.

Pee Dee Coalition
PO Box 1351
Florence, SC 29503
Phone: (843) 669-4694
Fax: (843) 673-2005
www.peedeecoalition.org
Non-profit volunteer organization dedicated to the reduction of rape, family violence, child abuse and the needs of its victims.

Child Advocacy Center of Aiken County
P.O. Box 1763
Aiken, SC 29802

Phone: (803) 644-5100
Fax: (803) 649-0480
rfcallicott@gforceable.com
www.sccamrs.org/aiken.asp
Provides medical assessments for victims of child abuse and neglect.

Dickerson Center for Children
1615 Augusta Road
W. Columbia, SC 29619
Phone: (803) 791-1511
Fax: (803) 791-1572
sshaw@dickersoncenter.org
www.dickersoncenter.org
Provides a caring environment that addresses the effects of child abuse by administering mental and physical healthcare and assistance with complicated legal matters.

Dorchester Children's Advocacy Center
210 W. 6th N. Street
Summerville, SC 29483
Phone: (843) 875-1551
Fax: (843) 851-5963
kphillips@dorchesterchildrensctr.org
Sole children's advocacy center in Dorchester County that investigates, prosecutes and treats child abuse and neglect.

Edisto Children's Center- CASA/Family Systems
PO Box 1568
Orangeburg, SC 29116
Phone: (803) 534-2448
Fax: (803) 534-2594
lafurtick@bellsouth.net
Devoted to anchoring and improving the education of children who are victims of a violent relationship.

Family Resource Center
2905 Whitehorse Road
Greenville, SC 29605
Phone: (803) 425-4357
Fax: (803) 425-5769
derrickfrc@bellsouth.net.

Greenville Children's Advocacy Center
2905 Whitehorse Road
Greenville, SC 29605
Phone: (864) 331-0560

Fax: (864) 331-0565
Melissa.roberts@grcac.org
Donna.roy@grcac.org

Palmetto CASA
106 N. York Street
Lancaster, SC 29720
Phone: (803) 286-5232
Fax: (803) 286-0520
pcasa_cac@yahoo.net

Sumter Child Advocacy Center
Sumter Family Health Center
11 Croswell Drive
Sumter, SC 29151
Phone: (803) 773-5531
Fax: (803) 778-2058
Rsmith2@dss.state.sc.us
Part of the South Carolina Primary Health Care Assocation which works collaboratively to improve the health status of individual communities.

The Children's Recovery Center
1801 Legion Street
Myrtle Beach, SC 29577
Phone: (803) 448-3400
Fax: (803) 626-5040
Ccoons408@aol.com

Safe Passage/ York County CAC
PO Box 11458
Rock Hill, SC 29731
Phone: (803) 329-2800
Fax: (803) 329-3515
pjpayne@comporium.net

Client Assistance Program (CAP)
1205 Pendleton Street
Columbia, SC 29201
Phone: (803) 734-0285
Fax: (803) 734-0546
Investigates consumer complaints regarding state government agencies, advocates for children's affairs and administers the Client Assistance Program.

ARC of Tribble Center
116 South Cove Road

Seneca, SC 29762
Phone: (864) 884-6055
Fax: (864) 885-6058
Advocacy organization that provides information, training and support to people with mental retardation and their families.

Child Fatalities Investigation
State Law Enforcement Division
PO Box 21398
4400 Broad River Road
Columbia, SC 29221
Phone: (803) 896-7033
Fax: (803) 896-7078
Email: plightle@mail.sled.state.sc.edu
Investigates suspicious deaths of children under the age of 18.

Office of the Governor
Division of Children's Foster Care Review
1205 Pendleton Street, Room 436
Columbia, SC 29201
www.govoepp.state.sc.us/children/foster.htm
Provides an external system of accountability and advocacy for children and families involved with the foster care system.

Office of the Governor
Division of Guardian Ad Litem
Edgar A. Brown Building
1205 Pendleton Street, Room 440A
Columbia, SC 29201
Phone: (803) 734-1695
Fax: (803) 734-1694
Toll Free: 1-800-277-0113

APPENDIX SIXTEEN

RESOURCES FOR PEOPLE WITH DISABILITIES

APPENDIX 16

Resources for People with Disabilities

SC Developmental Disabilities Council
Division of Constituent Services

1205 Pendleton Street, Suite 372
Columbia, SC 29201
Phone: (803) 734-0465
Fax: (803) 734-0241
E-mail: clang@govoepp.state.sc.us

The Council advocates for the independence, productivity, and education of people with developmental disabilities through integration.

Christopher Reeves Paralysis Foundation
636 Morris Turnpike, Suite #3A
Short Hills, NJ 07078
Phone: (973) 467-8270
Fax: (973) 467-9845
http://www.paralysis.org
Email: prc@crpf.org
Promotes the health and well being of people living with paralysis by serving as an information source and clearing house for paralysis-related publications and research.

Relay South Carolina
P.O. Box 29320
Cayce, SC 29033
Phone TTY: (803) 926-1870
Fax TTY: (803) 926-1871
Toll Free: 1-800-735-2905
TTD: 1-800-735-8583
http://www.sprint.com/relay
Email: Kenneth.a.goulston@mail.sprint.com
Provides around the clock telephone communication and technology for hearing, deaf, hearing-impaired and speech-disabled persons.

Center for Disability Resources
USC School of Medicine
8301 Farrow Road
Columbia, SC 29208
Phone: (803) 935-5263
Fax: (803) 935-5342
http://www.sc.edd/scakp
Email: Youngs@cdd.sc.edu

Promotes the independence of people with disabilities through providing technology, equipment, and training geared towards integration.

Disabilities Collaborative Resource Center Library
USC School of Medicine
Columbia, SC 29208
Phone: (803) 733-3310
Provides books, videos, journals, etc. on disability related issues across the lifespan; information available to students, families, professionals, and people with disabilities.

SC University Center for Excellence in Developmental Disabilities Education, Research, and Service (SC UCEDD)-Center for Disability Resources
USC School of Medicine – Department of Pediatrics
Columbia, SC 29208
Phone: (803) 935-5270
Fax: (803) 935-5059
CDR identifies and utilizes the vast resources within institutions of higher education to improve the quality of life for people with developmental disabilities, their families, and other citizens of the state.

Center for Disability Resources
Training for Early Childhood Solutions (TECS)
USC School of Medicine – Department of Pediatrics
Columbia, SC 29208
Phone: (803) 935-5227
Fax: (803) 935-5300
Email: kkmusick@gwm.sc.edu

Protection and Advocacy for People with Disabilities Inc.
3710 Landmark Dr., Ste 208
Columbia, SC 29204
Phone:
Charleston: (843) 763-8571
Columbia: (803) 782-0639
Florence: (803) 662-0752
Greenville: (864) 235-0273
Fax: (803) 790-1946
Tollfree: 1-800-922-5225 (Charleston)
Tollfee and TTY: 1-866-275-7273 (Columbia)
http://www.protectionandadvocacy-sc.org.
Email: info@protectionandadvocacy-sc.org
Private non-profit that provides a variety of services including advocacy and literature about for people with disabilities.

York Place
Episcopal Church Home for Children
234 King's Mountain Street
York, SC 29745
Phone: (803) 684-8005 ext. 1028
Fax: (803) 628-1632
Tollfree: 1-800-939-4445
http://www.yorkplace.org
Email: kthomas@yorkplace.org
A residential treatment facility for children ages 6 to 16 with severe emotional disabilities.

Family Connection of SC Inc.
2712 Middleburg Drive, Suite 103B
Columbia, SC 29204
Phone: 1-800-578-8750
http://www.familyconnectionssc.org
Email: info@familyconnections.org
Network of parents working with the community to provide support to parents who have children with disabilities and special needs.

South Carolina Respite Coalition
Midlands Center Disabilities Collaborative
P.O. Box 493
8301 Farrow Road
Columbia, SC 29204
Phone: (803) 799-9819
Fax: (803) 935-5250
Tollfree: 1-866-345-6786
Email: screspoitecoalition@yahoo.com
A central point of inquiry for referral and information about 24 hour respite services.

Marion-Dillon Parent Guardian Association
609 Curry Street
Dillon, SC 29536
Phone: (843) 774-9514
Fax: (843) 8412-3607
Email: harg2706@bellsouth.net
Provides support to people with disabilities and their families.

Parents and Guardians Association
Coastal Regional Center
9995 Jamison Road
Summerville, SC 29485

Phone: (843) 821-5809
Fax: (843) 821-5894
A nonprofit organization that advocates for all people with developmental disabilities.

Self-Advocacy Advisory Committee-Whitten Center
PO Box 239
Clinton, SC 29325
Phone: (864) 938-3422
Fax: (864) 938-3115
pturner@ddsn.state.sc.us
Provides opportunity for residents to learn self-advocacy skills and address issues affecting people receiving services.

Tri-Development of Aiken County, INC
Friends for Action
PO Box 698
Aiken, SC 29802
Phone: (803) 642-8859
www.aikentdc.org
A self advocacy group for people with disabilities.

Federation of Families of South Carolina
P.O. Box 1266
Columbia, SC 29202
Local: (803) 779-0402
Toll Free: (866) 779-0402
Fax: (803) 779-0450
http://www.fedfamsc.org/
Through support networks, educational materials, publications, conferences, workshops and other activities, the Federation provides many avenues of support for families of children with emotional, behavioral or psychiatric disorders.

Learning Disabilities Association of South Carolina
537 Creekridge Road
Aiken, SC 29803
http://home.gforcecable.com/ldasc/
The association serves parents, professionals, and adults with learning disabilities.

Mental Health Association in South Carolina
1822 Gadsen Street
Columbia, SC 29201
(803) 779-6363
http://www.mha-sc.org/

Promotes mental health and prevents mental disorders through education, advocacy, research, and support.

NAMI South Carolina
P.O. Box 1267
Columbia, SC 29202
Phone: (803) 733-9592
Fax: (803) 733-9593
http://www.namisc.org/
Support, education, and advocacy for families and friends of people with serious mental illness.

Pro-Parents of South Carolina
652 Bush River Road
Suite 203
Columbia, SC 29210
Phone (local): (803) 772-5688
Toll Free: 1-800-759-4776
Fax: (803) 772-5341
http://www.proparents.org/
Provides information and training about education to families of children with all types of disabilities.

South Carolina Autism Society
806 12th Street
West Columbia, SC 29169-6142
Office: (803)750-6988
Toll Free: (800)438-4790
Fax: (803)750-8121
http://www.scautism.org/
Information and support to enable all children and adults in South Carolina who have autism spectrum disorders to reach their maximum potential.

South Carolina Department of Disabilities and Special Needs
3440 Harden St. Ext.
Columbia, SC 29203
Agency Receptionist: (803) 898-9600
V / TTY: (803) 898-9600
Fax: (803) 898-9653
Toll Free: 1-888-DSN-INFO (376-4636)
SC state agency that serves person with mental retardation, autism, head and spinal cord injury and conditions related to each of these four disabilities.

APPENDIX SEVENTEEN

COMPACT DISK OF FORMS, FORMATS, AND SUGGESTED CORRESPONDENCE TEMPLATES

Forms, Formats and Suggested Correspondence listed below may be found on enclosed compact disk or on the Children's Law Center website at childlaw@sc.edu. *

Abuse and Neglect Cases

Affidavit for Appointment of a New Attorney for the Guardian ad Litem

Motion, Affidavit (with Order) for Ex Parte Protective Order

Notice of Intention to Introduce Out of Court Statement Made by Minor Child(ren)

Notice of Motion and Motion for a Continuance

Notice of Motion and Motion to Quash Subpoena

Notice of Motion and Motion to Suspend Visitation

Notice of Motion, Motion and Affidavit for Emergency or Expedited Hearing

Order Appointing a Volunteer Guardian ad Litem and Attorney for the Guardian ad Litem

Order for Emergency or Expedited Hearing

Order for the Appointment of an Attorney for the Guardian

Order of Continuance

Order Relieving the Guardian ad Litem

Order Substituting Attorney for the Guardian ad Litem

Order to Substitute the Guardian ad Litem

Order Suspending Visitation

Private Custody and Visitation Cases

Authorization for the Release of Information

Authorization for the Release of Medical Information

Contempt Complaint for Guardian ad Litem Fees

Custody Investigation Checklist

Drafting the Guardian ad Litem Report

Guardian ad Litem Affidavit

Guardian ad Litem Order of Appointment

Guardian ad Litem Report

Initial Attorney Contact Letter

Letter to Attorneys-Preparing Final Report
Notice of Motion and Motion for Additional Guardian ad Litem Fees
Notice of Motion and Motion for Custody Evaluations
Notice of Motion and Motion for Drug Testing
Notice of Motion and Motion for Psychological Evaluations
Notice of Motion and Motion to Appoint an Attorney for the Guardian ad Litem
Order and Rule to Show Cause
Order Appointing an Attorney for the Guardian ad Litem
Parent Questionnaire Regarding Child(ren)
Parent Questionnaire Regarding Infant
Parent Questionnaire-Parent

General Forms

Acceptance of Service and Answer
Motion Cover Sheet

Forms Found on the Judicial Website (www.sccourts.org under quick links, select forms and in the drop down menu select family court)
Certificate for Case Observation
Family Court Cover Sheet
Financial Declaration
Subpoena

*It is recommended that before using any form on the compact disk you check the Children's Law Center website (childlaw@sc.edu) to insure that the form is current

END NOTES FOR APPENDICES

[1]Douglas E. Abrams & Sarah H. Ramsey, *Children and the Law,* at 208 (3d ed. 2007).
[2] Anne Graffam Walker, Ph.D., *A Few Facts About Children's Language Skills* (Cornerhouse Training Manual) (2000).
[3] Ivey, A., *Intentional Interviewing and Counseling: Facilitating Client Development in a Multicultural Society* (Belmont, CA) (1994).
[4] Rosemary Vasquez, *Interviewing Children*, (last modified April 2000) <www.casanet.org/library/advocacy/interviewing.htm>.
[5] Abney V. Cultural Competency in the Field of Child Maltreatment. In J.E.B. Myers, L. Berliner, J. Briere, C. Terry Hendrix, C. Jenny & T.A. Reid (Eds.), *The APSAC Handbook on Child Maltreatment* (2nd ed., pp. 477 – 486). Thousand Oaks, CA: Sage (2002).
[6] Fontes, Lisa Aronson. Multicultural Orientation to Child Maltreatment Work. In Lisa Aronson Fontes, *Child Abuse and Culture*, (p.4). The Guilford Press (2005).
[7] Elaine Pinderhughes. Developing Diversity Competence in Child Welfare and Permanency Planning. In Gary Anderson, Angela Shen Ryan & Bogart R. Leashore (Eds.), *The Challenge of Permanency Planning in a Multicultural Society*, (p. 20). The Haworth Press (1997).