

## THE ROLE OF THE GUARDIAN *AD LITEM*

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Any judge in the Family Part, Chancery Division of the Superior Court of New Jersey may appoint a guardian *ad litem* (“GAL”) pursuant to Court Rule 5:8B. When would such an appointment be made? The rule states, “[i]n all cases in which custody or parenting time/visitation is an issue, a guardian *ad litem* may be appointed by court order to represent the best interests of the child or children if the circumstances warrant such an appointment.”

Although the comment to the court rule states that such appointments are not to be made routinely, usually a GAL is appointed when genuine and substantial disputes between divorcing parties<sup>1</sup> exist with regard to custody and/or parenting time of their child(ren). There are other instances, however, when a judge may appoint a GAL to represent the best interests of a child. For instance, parents may present a dispute with regard to what each believes would be the appropriate education or religious upbringing for their child. In one such case, a GAL was appointed to help the court decide whether a child with learning disabilities was better served by receiving assistance in special classes, including the resource room at the public high school or by attending a boarding school that has special services for special needs children. In another instance, the court appointed a GAL for the purpose of helping to resolve the dispute over the children’s religious upbringing, where one parent wanted the children to strictly observe Orthodox Judaism and the other parent strenuously objected to allowing the children to observe such practices during that parent’s parenting time.

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<sup>1</sup> The parties do not necessarily need to be married or in the process of a dissolution matter; they can be parents of a child(ren) born out of wedlock.

The court rule is clear that the GAL's services are to the court on behalf of the child. The comment to the rule indicates that the GAL functions as "an independent fact finder, investigator and evaluator" as to what promotes the best interests of the child. Stated another way, the GAL acts as the "ears and eyes of the court." If the purpose of the appointment is for independent investigation and fact finding, then it is appropriate to appoint a GAL. If, however, the purpose of the appointment is for legal advocacy for the child, then the appointment of counsel, rather than a GAL is appropriate.<sup>2</sup>

When during the litigation process does the court appoint a GAL? The court rule provides that a GAL may be appointed by the court *sua sponte* (on its own motion) or upon application of either or both of the parents. The appointment often occurs during the *pendente lite* phase when the parents express in their respective certifications that genuine and substantial issues between them are impacting their child(ren). On rare occasions, a GAL may be appointed post divorce. A litigant may specifically request that the court appoint a GAL after demonstrating that an independent and neutral person is necessary to investigate certain allegations. By way of illustration, one parent may accuse the other of inappropriately involving the child in the divorce process, such as by asking the child to choose with whom he or she wants to reside after the divorce while placing coercive pressure on the child to respond favorably for that parent. Or one parent may accuse the other of being sexually inappropriate with or in the presence of a child, or of inappropriately disciplining a child, or of using illicit drugs of which the child is aware, or of abusing alcohol which is impacting the child(ren).

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<sup>2</sup> More will be said about the distinction between a GAL and counsel for the child later in this article.

Whether a judge chooses to appoint a GAL or a custody evaluator (generally a forensic psychologist, psychiatrist or doctoral level social worker) depends upon the individual judge and is fact sensitive. The comment to the court rule states that “a GAL can be an attorney, a social worker, a mental health professional or other appropriate person. If the primary function of the GAL is to act in the capacity of an expert, then the court should ordinarily appoint a GAL from the appropriate area of expertise.” Many judges will appoint an attorney who also has a mental health background, such as someone with a master’s degree in social work or counseling and who has worked in a mental health profession, such as an adolescent, child and/or family therapist.

#### The Duties of the GAL During the Investigation and Fact Finding Process

What are the duties of a GAL? The process by which the GAL does her/his fact finding, investigation and evaluation is set forth in the court rule. The list is not exhaustive and includes, but is not limited to:

1. Interviewing the children and parties.
2. Interviewing other persons possessing relevant information.
3. Obtaining relevant documentary evidence.
4. Conferring with counsel for the parties.
5. Conferring with the court, on notice to counsel.
6. Obtaining the assistance of independent experts, on leave of court.
7. Obtaining the assistance of a lawyer for the child (Rule 5:8A), on leave of court.
8. Such other matters as the guardian *ad litem* may request, on leave of court.

Before beginning the interview process, the GAL should read the available relevant information. This is usually contained in the respective parties’ certifications and other pleadings.

Deposition transcripts (those portions that involve issues relating to the children), transcripts of domestic violence hearings or other prior hearings related to the issue of custody, attorney's letter briefs regarding the issue at hand and psychological reports are examples of materials that a GAL may want to review prior to interviewing the parents and their child(ren).

Interviewing the children and parties. As to interviewing the children and parties, a good way to begin the process is to interview each parent in the GAL's office. During these interviews, it is important to take copious notes or tape record the meeting, with the person's permission.<sup>3</sup> It is also crucial to explain to the parents, as well as to the child, that what is stated to the GAL is not confidential. It is recommended that the GAL ascertain what each parties' understanding is of the GAL's appointment. The GAL should focus on what the parent is seeking and why. The GAL should investigate each parent's participation in the child's life during each of the child's developmental stages (infancy, pre-school, latency, adolescence). Did or does the parent take the child to doctor's appointments, did or does the parent attend parent/teacher conferences, did or does the parent participate in or attend the child's extracurricular activities, etc.? The GAL should determine the parent's ability to communicate and cooperate with the other parent. Inquire about prior acts of domestic violence and what the outcome has been. Determine if the parent understands his/her child's needs. As the GAL interviews the parent in the first and subsequent meetings, it is important to determine the parent's fitness or unfitness; that is, does the parent's conduct have a substantial adverse effect on the child.

Interviewing the child for the first time should be done in an environment where the child

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<sup>3</sup> In the event that the GAL writes a formal report, the use of quotes is most helpful and revealing.

will feel at ease talking with a stranger. A good place to meet a child for the first time is in the child's primary home. A look/see of the child's home, including his/her bedroom may reveal important information about the stability of the home environment. Children will frequently feel comfortable and more open when sitting and talking in their own bedroom. Often, when a child feels comfortable with the GAL, he/she will show family albums; pictures can speak louder than words. Children sometimes will initially be guarded, uncertain as to what the GAL is going to do with the information that is shared. It is important to let children know that they are not expected to determine where and with whom they will be living post divorce. Children should be advised that their feelings are very important and that what they tell the GAL will be helpful for the adults making the decision, whether the parents or the judge will be making the decision. Subsequent individual meetings with the child can take place in their home or the GAL's office, depending on the child's comfort level. Frequently, depending on the facts of the case, meeting a child on neutral territory is important, such as at the child's school, in a local restaurant, at a library or the like. Ascertain whether the child has been told by either or both parents what to say to the GAL. Having had a background in working with children, such as teaching or counseling can be helpful in the GAL's interviewing skills.

After meeting with the parents and child(ren) individually, it is very important to meet with the child(ren) with each parent. Doing so on more than one occasion may be, and is usually necessary. It is only through these meetings that the GAL can observe the interaction and relationship of the child(ren) with his/her parents and siblings. Does the parent show empathy for the child's feelings and attitudes? Is the child free to express him/herself in the presence of the parent? Is there a feeling of warmth or coldness between the child and parent? These are but a few

observations the GAL can make when interviewing the parent and child together.

Interviewing other persons possessing relevant information. There may be a number of people who possess relevant information regarding the child, parents and/or the presenting issue. Before contacting anyone, the GAL should have each parent sign authorizations or releases giving the GAL permission to communicate with those persons. Examples of people to contact are teachers, doctors, therapists for the child and/or parent, clergy persons involved with the child and/or parent(s), custody evaluators who have been or are currently involved in the case. It is also important to interview relatives, such as grandparents and aunts and uncles, who are actively involved with the family. If a parent has a significant other in his or her life, it is important to interview that person, either alone or with the parent and usually with the parent and the child(ren) together.

Obtaining relevant documentary evidence. Usually, documentary evidence consists of the parties' pleadings, transcripts of any previous hearings, transcripts of deposition testimony, discoverable expert reports and exhibits the attorney intends to introduce at trial on the relevant evaluation issues. As the investigation unfolds, other forms of documentary evidence may become relevant, such as pictures, letters or e-mails. For example, a parent may allege that the other parent does not provide a clean or safe home environment for the children. Pictures to support this allegation can be helpful. A parent may allege that the other parent has never participated in a child's extracurricular activities. Pictures showing that person's involvement can refute the allegation. Tape recordings by a parent can also be useful. In one particular case, a parent had been admonished by the judge not to involve the 10 year old child in the divorce. A subsequent tape recording revealed that the parent actively involved the child in the divorce, and actually had the

child spy on the other parent's involvement with a significant other. Revealing those tape recordings at trial was a significant factor in determining the custody/parenting time in that case. In another case, a parent's letter to the children which demonstrated coercive pressure on the children to say they wanted to live with that parent was an important factor in the judge's decision.

Conferring with counsel for the parties. It is helpful to the process for the GAL to contact and introduce oneself to the attorneys for the respective parties. During the initial telephone contact, the GAL can ask about the pleadings, transcripts, expert reports, etc. that exist and request that they be sent to the GAL as soon as possible. A parent's attorney may request to review the retainer agreement that will be provided to his/her client by the GAL. The GAL can educate the attorney as to his/her role and the duties that are expected to be performed.

During the investigation, if warranted, the GAL can advise an attorney that his/her client is not cooperating. In the event the GAL believes that the assistance of an independent expert or assistance of a lawyer for the child is warranted, this should be discussed with the attorneys, preferably in a conference call. If the GAL believes that he/she can help the parties resolve the dispute, this can be discussed with the attorneys, also preferably during a conference call.

Conferring with the court, on notice to counsel. In the event that the GAL believes an independent expert or attorney for the child is needed, this will be communicated to the judge, either by way of telephonic communication or written letter after advising the attorneys. Although the court rule does not address a GAL's ability to file a motion or order to show cause with the court, some judges allow such filings. Should the GAL believe that an emergency exists, such that parenting time should be suspended with one parent as the investigation is ongoing, the Court may request a certification from the GAL. On the other hand, a GAL may be appointed during one

parent's suspension of parenting time. During the investigation, the GAL may believe that the resumption of parenting time, even if supervised, is in the best interests of the child(ren). Other times, a GAL may need to confer with the court regarding due dates for a formal report or scheduling of the custody trial.

Obtaining the assistance of independent experts, on leave of court. There are times during the investigation and fact finding process when the GAL suspects that one or both parents have a substance or alcohol abuse problem. There may be instances when one parent accuses the other of sexually abusing their child. In such instances, the GAL should confer with the court, on notice to counsel and ask for the appointment of an independent expert. In one recent case, a parent alleged that the other had acted sexually inappropriately with their very young daughter. The GAL, who had prior experience treating children and adolescents, some of whom had been sexually abused, was nonetheless not an expert in the field of sexual abuse. It was apparent that a psychological evaluation was warranted. In that particular case, the psychologist was then asked by the court to conduct a risk assessment and to render an opinion regarding the child's safety with the alleged perpetrator. The GAL then incorporated the psychologist's findings in her report which addressed the custody/parenting time evaluation. In another case, the GAL suspected that the mother had serious mental health issues based upon her (the GAL's) observations of the interaction between mother and son, whom she had breast fed until age seven. It also appeared that this case involved parental alienation. It was appropriate for the GAL to confer with the court to request that a psychologist be appointed. Even if a GAL has prior experience in the mental health field, the GAL cannot diagnose a person, such as having a major mental illness, personality disorder or neurotic symptoms.



Obtaining the assistance of a lawyer for the child (Rule 5:8A), on leave of court. There are instances when a judge may appoint a lawyer for a child and a GAL simultaneously. This occurred in a case when the custodial mother of two teen age girls had met a man, post divorce, in another state. The mother did not think her former husband was a fit parent, so she wanted her daughters to relocate with her. The girls did not want to leave their community in New Jersey. Thus, the judge believed that the girls needed their own attorney in addition to a GAL to investigate the stability of the father's home, among other things. Other times, an attorney for the child may request an appointment of a GAL. This occurred after a psychologist rendered a custody evaluation that contradicted what each of the three children wanted, two of whom were adolescents. The children's attorney requested that a GAL with a mental health background be appointed, to help understand why the children were so resistant to following the recommendations of the court appointed psychologist.

In another matter, the GAL who believed that the adolescent girls' wishes to reside with a third party relative was in their best interests requested that the Court appoint an attorney for the children. In that case, it appeared that the children's best interests were not being sufficiently protected by the lawyers for the parties. Pursuant to Rule 5:8A, the services of the lawyer were to the children, not the court.

Such other matters as the guardian *ad litem* may request, on leave of court. There may be occasions when it becomes necessary for the GAL to obtain information from prior or current mental health professionals involved with the family. If a clinician refuses to communicate freely with the GAL based upon an assertion of privilege, the GAL may need to bring the matter to the Court's attention.

### The GAL's Duty to Write a Report

Once the GAL has completed his/her investigation and evaluation, what does the GAL do with the information? The court rule provides, “[t]he guardian *ad litem* shall file a written report with the court setting forth findings and recommendations and the basis thereof, and shall be available to testify and shall be subject to cross-examination thereon.” In the event, however, that the GAL facilitates an agreement between the parties regarding the presenting issue or they resolve their dispute on their own, whether it is custody and parenting time, or where a child should attend school, or what religious practices are in the child’s best interests, a formal report is not necessary. If the matter settles before a report is due and a trial date has been scheduled, the attorneys can set forth the agreement in a consent order or include it in the matrimonial settlement agreement. Under these circumstances, it is recommended that the GAL inform the court that an agreement has been reached by way of written correspondence so that it becomes part of the Court file.

Given that many cases in which a GAL is appointed are considered to be high conflict cases, interim reports may be required. This is particularly so because a GAL is often involved in a matter far longer than a custody expert (e.g. forensic psychologist) may be. While a custody expert may be involved in a matter for several months during the evaluation, a GAL usually stays actively involved with the family throughout the pendency of the divorce or pending litigation.

There appears to be some confusion about the “cross-examination” of the GAL. If the presenting dispute cannot be resolved and there is a trial, the GAL becomes a fact witness or an expert witness, depending on the facts of the case and the credentials of the GAL. Thus, the GAL is called upon to testify, usually by the party who believes the GAL’s report is favorable to him/her. The testimony is usually confined to the contents of the report. The other party then cross-examines

the GAL, confining the questions to the scope of the direct testimony and the contents of the GAL's report. The GAL cannot cross-examine other witnesses; cross-examination is conducted only by the attorneys, including the attorney for the child if there is one. Remember, if the GAL happens to be an attorney licensed in this State, that does not mean he/she functions as an attorney in the role of GAL.

Assuming the dispute cannot be resolved and it becomes apparent that a trial will commence, then the GAL must file a written report which will be introduced at trial. The report should include a section that describes facts, either stated or observed. This format provides the Court with the GAL's findings from many sources, including documentary evidence, statements from the parties, children, family members and collateral contacts, as well as the GAL's observations, all of which form the basis for the recommendations that follow. The next section contains an analysis of the facts. Pursuant to *N.J.S.A. 9:2-4*, the rights of both parents are equal. The statute outlines possible custody orders, including joint physical and/or legal custody, sole custody to one parent with appropriate parenting time of the non-custodial parent and "any other custody arrangement as the court may determine to be in the best interests of the child." The statute directs the court to specifically indicate those factors, as outlined in the statute, which justify its custody determination not agreed to by both parties. Therefore, an analysis of the statutory factors, using what has been written in the "fact/observation" section is an excellent way to set forth the GAL's basis for the recommendations.

#### A Sample Outline of the GAL Report

Following is a sample outline of the GAL's report.

##### I. Documents Reviewed.

- A. Pleadings, orders, court documents: List all of the documents that were reviewed, including complaints, counterclaims, certifications, letter briefs, court orders, etc.
- B. Correspondence: This may include letters to and from the attorneys, letters to and from the court, and any other correspondence that was reviewed and considered.
- C. Psychological reports: List the reports that were reviewed, whether by court appointed experts, jointly retained experts or experts retained by the respective parties.
- D. Transcripts: List the transcripts that were reviewed, including deposition transcripts and transcripts of domestic violence hearings, if applicable, and other prior hearings.
- E. Statements/letters that were provided to the GAL by the parties and/or children: For example, if a party provided a letter(s) listing grievances and allegations about the other party, allow the party to respond, either orally or in writing. Indicate that such writings have been reviewed and considered.
- F. Articles provided by a party or the parties: For example, if a party has alleged parental alienation by the other parent and that parent has provided an article to support his/her position, identify the article that was reviewed and considered. Another example is a parent providing articles regarding sleep-overs of an infant with the non-custodial parent.
- G. Investigation by a party or parties: This may include e-mails, phone bills, internet pornography, detective reports, etc.
- H. Collateral contacts: This may include letters from pediatricians, teachers, past or current therapists, clergy persons and the like.

## II. Interviews and Telephone Conferences

The GAL should provide pertinent information that was obtained from each and every interview, whether in person or via the telephone, with the parties and the children. Include where, when and for how long each interview took place. This section may be organized either by person (parents and child) or in chronological order of interviews. In the event that the children are too young to verbalize their thoughts and feelings, the GAL may find it more helpful to describe the contents of the interviews in chronological order of the meetings. For instance, if the GAL first meets with the mother and certain allegations are made, the GAL will want to ask the father about these accusations in the first meeting with him, and so on. This is the section of the report where the GAL will want to include quotes from the parties, as well as his/her significant observations. By way of illustration, it may be noted that a parent was crying when describing a certain incident, or that a parent expressed extreme and uncontrolled rage, or that a parent or child had no eye contact with the GAL.

In the event that there are older children, especially adolescents, the GAL may organize this section by describing what each individual stated in their meetings. The use of quotes is powerful; the GAL wants the judge to visualize the child, describing his/her feelings about important aspects of the case. The GAL can ask the child to describe a typical day when with his/her mother and with his/her father, and so note it in the report. Ask the child to describe what he/she likes and dislikes about his/her parents, the environment at each home, etc., which should be included in the report.

The report also includes statements from relatives living at a parent's home or a significant other to the mother or father. Also, if a therapist has provided a summary of his/her opinions about what custodial arrangement is in the best interests of the child, include it in this section.

### III. Statutory Analysis of N.J.S.A. 9:2-4.

Providing an analysis of the custody/parenting time statute will aid not only the Court, but the attorneys who are trying the case for their respective clients. The GAL should list each factor and analyze it using the information contained in the previous section of his/her report.

1. The parent's ability to agree, communicate and cooperate in matters relating to the children. *Beck v. Beck*, 82 N.J. 480 (1981) is the seminal case involving joint custody. The *Beck* Court noted that the parents need not have an amicable relationship but in order for a joint custodial arrangement to be successful, the parents need to be able to isolate their personal conflicts from their roles as parents and to spare their children of their resentments and hostility they feel for the other parent. If the level of distrust between the parents is so extreme, then a joint custodial arrangement may not be suitable. The report should also note practical considerations, including the children's ages and the proximity of their respective homes. If a party stated that he/she will not cooperate or communicate with the other parent, this needs to be noted and analyzed under this factor.

2. The parties' willingness to accept custody and any history of unwillingness to allow visitation not based on substantial abuse. Usually in cases where a GAL is appointed, both parties are willing to accept custody and, in fact, if the matter proceeds to trial they are often trying to advance their pursuit of being designated the parent of primary residence. An example of a repeated unwillingness to allow visitation might be a mother who would otherwise have parenting time on Sundays has refused to allow the father to have parenting time on Father's Day or the father's birthday. These types of behaviors should be noted and the GAL can opine as to whether the parent will continue to engage in this type of behavior if she is designated the parent of primary residence.

3. Interaction and relationship of the child with his/her parents and siblings. In the

report note whether the children are psychologically bonded to each parent. Is one parent more nurturing than the other? Using the information from the prior section of the report, the GAL should note whether during the joint meetings with parent and child, the child seemed happy, comfortable, relaxed, secure, respected, respectful, appreciated and understood. Was there laughter, joy and enthusiasm? Were the children able to talk about problems they are experiencing at home, in school or with friends?

On the other hand, does the relationship between parent and child seem strained and awkward? How did the parent react when a child expressed pain and hurt about that parent's behavior in a particular situation? Is a parent unable to listen to and acknowledge his/her child's thoughts and feelings? Do the children describe a parent as intimidating, demoralizing and insensitive? If a child throws up his hands in exasperation because he feels that his parent does not understand his feelings, this should be noted in the analysis.

It is also important to note if the siblings are bonded and close to one another. Or is there resentment and unfettered bullying between siblings?

4. The history of domestic violence, if any. If there are restraining orders in effect, this must be noted. Address the impact of prior domestic violence or prior false accusations of domestic violence and how this might impact the custodial arrangement. If there is a current restraining order, this would make it difficult for parents to share joint custody, which should be addressed and considered.

5. The safety of the child and the safety of either parent from physical abuse by the other parent. If one parent has described the other as using physical discipline or being emotionally abusive to a child, note the parent's allegations to this effect. The GAL should provide an opinion

as to whether he/she believes the parent's perceptions are accurate. If the statements made by the parents and/or child suggest that one parent's behavior is psychologically damaging to a child, mention it and provide concrete examples.

There are times when each parent believes that their child is not safe while in the care of the other parent. Refer back to the interview section and provide examples. As the GAL, opine whether the parents' perceptions are accurate or exaggerated. If an independent expert has been involved and that person opines as to the safety of the child with a parent, this should be noted in the report. For example, in one case where the mother alleged sexually inappropriate behavior by the father, a psychologist was appointed to do a risk assessment. The expert found no risk to the young child; it was crucial to include this opinion in the GAL's analysis.

6. The preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision. The age of the child affects the weight that his/her preference should be accorded. Both the statute and case law provide that the court may consider the wishes of a child who is found to have the capacity to form and express an intelligent preference. The GAL should note the child's intelligence, insight, achievements, school adjustment, peer relationships, involvement in extracurricular activities and other factors that demonstrate his/her capacity to understand their stated preferences. The GAL must form an opinion as to whether a child has been influenced, coached or coerced by one parent to state a particular preference. The GAL should be able to provide the Court with insight into whether the child understands what is in his/her best interests. Is a child stating a preference based upon the reality of the situation or has there been parental alienation by one parent? If there are inconsistencies in what the child has stated, note them using quotes from the interview section of the report.



7. The needs of the child. The GAL should note whether a child has special medical or educational needs. Does a child have ADHD, Asperger's Syndrome, severe asthma or any other condition that needs special attention? Mention the needs of the children based upon their developmental stages (infancy, preschool, latency and adolescence). If the case involves an infant, analyze the needs for stability and continuity, and what each parent can provide to this effect. If the case involves older children, discuss the need for love, comfort, guidance, discipline, limit setting, support, advice and freedom to express oneself. Relate this analysis to quotes from the parents and children as to what they perceive the child's needs to be. Depending on the facts of the case, it may be important to discuss the need for children to have positive male and female role models. For example, if a teenage boy is interested in sports and he has described his father as a positive role model who coaches his team and encourages sportsmanship, this may be relevant to the custodial arrangement that the GAL will recommend.

8. The stability of the home environment offered. The report should contain information regarding each parent's home or expected future living arrangements. Describe the home, noting if the children have their own bedrooms or share with a sibling. Siblings of the same sex sharing a bedroom may have a different impact upon the recommendations than siblings of opposite sex sharing a bedroom. Describe the neighborhood, noting the positives and negatives.

If there is a relative, such as a grandparent living in one parent's home, comment upon how this impacts the children's living environment. Is a parent living with a significant other who has a substance or alcohol abuse problem? It may be important to note the distance from a parent's home to the school a child attends.

9. Quality and continuity of the child's education. Is a parent who is seeking primary

custody intending to move to another community or county, whereby the child will need to change schools? The impact would be different if the child were in 7<sup>th</sup> grade and would be graduating from middle school the following year than a child who is about to enter high school when his/her parents' divorce becomes finalized and the custodial arrangement changes. If a parent intends to reside within several blocks of the other parent so that the child does not need to change schools, and that parent is seeking a joint custodial arrangement, this would be a factor to consider and comment upon in the report.

10. The fitness of the parent If the GAL has a basis to believe that one parent's behavior has a substantial adverse effect upon the child, such as an untreated substance or alcohol abuse problem, this must be noted and discussed. Often, however, both parents are fit but one may be better able to understand and meet the child's needs.

Even if the GAL believes, based upon his/her thorough investigation, that one parent should be designated as the primary custodial parent, it is very important to describe both parents in a fair and even-handed way. Parents have both positive and negative attributes that impact their parenting styles. It is not only crucial not to be biased, but to not give the appearance of being biased in the report. If the GAL is biased and only points out the negative characteristics of one parent, the attorney for that parent will use this in cross-examination. Moreover, a biased description of the parent's weaknesses may negatively impact the GAL's credibility during trial testimony.

Although a GAL cannot diagnose a person, who may be clearly character disordered, it is appropriate to describe that parent's behaviors in objective terms. By way of illustration, if a parent lacks the ability to be empathic towards his/her child's feelings and needs, and is jealous of his/her own child's accomplishments and is self-centered, this should be noted giving specific examples of

the behaviors as described by the child and/or other parent.

11. The geographic proximity of the parent's homes. Where the parents will be living in relation to each other is important, especially if a party is seeking a joint custodial arrangement. For instance, even if parents can communicate and cooperate, if one resides in Bergen County and the other resides in Monmouth County, a joint custodial arrangement during the school year will not be successful. The Beck Court noted that the proximity of the parents' homes enabled a joint custody arrangement to work smoothly since the children could attend the same school. However, in Mayer v. Mayer, 150 N.J. Super. 556 (Ch. Div. 1977), the court, noting the distance between the parents would be so great that it would thwart regular visitation to the non-custodial parent, granted an award of joint custody in which one parent had residential custody during the school year and one parent had residential custody during the summer.

12. The extent and quality of time spent with the child prior to or subsequent to the separation. The GAL report should note which parent has been involved in the child's extracurricular activities, who has attended parent/teacher conferences, who has helped the child with homework, who has taken the child to the doctor/dentist, who has been involved in the child's religious training and the like. However, there may be instances whereby one parent has spent more time with the child transporting him/her to appointments because of the other parent's work commitments, yet the quality of the time the child spends with the working parent has been described by the child in more positive terms. There may be instances where a previously uninvolved parent has become more involved in the child's life now that he/she is in the process of a divorce. The GAL should comment upon the motivation of that parent; is the parent sincerely interested in being more involved in all aspects of the child's life or is it an attempt to impact the amount of child

support he/she will be paying upon the divorce?

13. The parties' employment responsibilities. The report should mention each parties' work responsibilities and schedule. If one parent has flexibility in his/her hours and can be more available to a young child, this may be significant in the custody recommendation. In a recent case, one parent worked days and the other worked evenings. Based upon these employment schedules and considering all the other factors, a joint custodial arrangement whereby the parent working in the evening was recommended to spend afternoons with their three pre-school age children.

14. The ages and number of the children. Infants and pre-school age children may not be as successful as adolescents with a joint custodial arrangement. Although generally children express the desire to reside with their siblings, there are times when the GAL will recommend a different custodial arrangement for a son and a daughter or with a very young child and an older child.

#### IV. Recommendations

1. Legal Custody. In determining whether an award of joint legal custody is appropriate, the Court must consider the parties' ability to communicate with one another for the welfare of the children. It is clearly detrimental to a child's best interest to be placed on the battleground whenever a decision about his/her well-being has to be made. The GAL should summarize what he/she has written about the parties' ability to communicate and cooperate. An analysis of Beck v. Beck, 82 N.J. 480 (1981) may be helpful to the judge and the attorneys trying the case. Generally, the recommendation will be for joint legal custody; if, however, the GAL is recommending sole legal custody, the reasons must be clearly articulated.

2. Primary Residential Custody. The GAL should set forth which parent, if not joint

residential custody, should be designated the parent of primary residence and a summary of the reasons for this recommendation. It is helpful to include other custodial arrangements that were considered and rejected, and the reasons.

3. Parenting Time and Related Matters. The GAL should set forth the specific recommended parenting time for the non-custodial parent. A summary of the reasons are helpful. The report can also include specific recommendations for holiday and vacation time. The GAL may make other recommendations, such as therapy for one or both parents and the reasons, anger management classes for one or both parents, counseling for a child, family counseling, etc. Frequently, a recommendation for a referral to a Parenting Coordinator is warranted. GALs are often appointed in high conflict cases, which are the very type of cases that can benefit from the assistance of a qualified Parenting Coordinator.