

## WHEN A CHILD NEEDS A LAWYER

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### INTRODUCTION

This essay speaks to that lawyer who has just received a first-time appointment as a guardian *ad litem* to represent a child. The thoughts which form this essay come out of my half-decade of experience in the New Jersey Office of the Public Defender's Law Guardian Program where I represented children who were the subjects of family court complaints brought by the state social service agency against their parents, alleging abuse, neglect or abandonment.

For the most part, my experience as a law guardian was with the family part of the civil court. On occasion, I moved to intervene in companion criminal actions that were brought against my clients' parents. While my comments are directed to the guardian *ad litem* who is before the family court on behalf of a child whose parents' actions are about to be scrutinized by that court, many of my remarks can be applied to the representation of a victim-witness child before the criminal court.

### ONCE APPOINTED, WHAT NEXT

The first question that confronts the guardian *ad litem* reflects the reality of a child's position in our society: What can I do for this child? When adults seek our lawyering services, they tell us, for the most part, what it is that they want and believe they need from us. Adults tell us this in language that we understand or can decipher with their help. There is little mystery about how we will interview them, present their cases to the court, and advocate for the goals they have hired us to achieve. When adults are entitled to our services, by retainer or court appointment, they will direct our actions. We control the ways in which we seek to achieve their goals; they control the goals we seek on their behalf. Limited only by what is possible in a particular forum, under a particular set of legal theories with a par-

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ticular set of legally knowable facts, we take their questions and demands and gain answers to both. We are guided by the fact that the rights of adults under the law are explicit in the Constitution. The rights and obligations of adults are the stated focus of most, if not all, of the law.

In contrast, the status of children before the law is, frankly, inferior. As Justice Brennan recently noted,

minors are treated differently from adults in our laws, which reflects the simple truth derived from communal experience, that juveniles as a class have not the level of maturation and responsibility that we presume in adults and consider desirable for full participation in the rights and duties of modern life.<sup>1</sup>

The law and those who put the law into action reflect the reality of our society's response to its young members. In our history, children have not been granted a legally recognized role in the decision-making that shapes their lives.<sup>2</sup> Because children do not have the capacity to appreciate fully the configuration of factors inherent in that decision-making, their input has rarely been an institutionalized consideration in the decisions made for them. In response to the not-yet-developed reasoning faculties of children, the adults who direct their development, guide their education, and provide their nurture traditionally have not been required to include a child's voice in those decisions.

The traditional disinterest in giving children a say in what happens to them yields, though, to a new regard for the child's presence when a lawyer is appointed to represent a child in court. Even though the appointment itself may be framed in the language of protecting children, assigning an adult's voice to a child is a clear shift from the past tradition of allowing no voice to the child. While the appointment of a guardian *ad litem* tunes the court's listening towards the child, however, making the guardian *ad litem*'s adult voice an effective expression of the child's interest is not as simple as ordering the guardian *ad litem*'s appointment. Making that voice effective requires skill, preparation, and a sharply focused understanding of the role of the guardian *ad litem*.

Developing rapport and open communication with a child may take more time and effort than with an adult client. Accommodating the child's sense of time and understanding the expectations, fears, and beliefs that come out of the child's comprehension of time may

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1. *Stanford v. Kentucky*, — U.S. —, 109 S. Ct. 2969, 2988 (1989) (Brennan, J., dissenting).

2. For a history of childhood in the United States, see G. DAVIS, *CHILDHOOD AND HISTORY IN AMERICA* (1976).

take more insight and energy than might be spent on an adult.<sup>3</sup> Staying in touch and keeping information updated on the child-client's situation, either at home or in an alternative placement, may take more work and attention than it would if the client were an adult. These issues are not very different from those in adult representation; the difference is more one of the degree of effort required.

A substantial difference, though, may be the role the child plays in directing the representation. The adult client may direct or focus the labor of the attorney. Should a child similarly be allowed to direct the guardian *ad litem*? The adult establishes the goals of the representation. Can a child do likewise? The adult may hold the lawyer liable for the services that are rendered. Can a child also hold the guardian *ad litem* comparably accountable? To whom is the guardian *ad litem* responsible: the child, the court, the family? Whose goals are to be sought? From whom does the guardian *ad litem* take direction?

The responses to these questions will vary, depending on (1) the philosophy of the local forum, the appointing judge, and the guardian *ad litem*; (2) the maturity, verbal and social skills, and confidence of the child-client; and (3) the alleged facts which bring the case to court. Identical answers in every case would either deny any input by the child or look for input when none was available or appropriate. For example, the non-verbal infant cannot offer assistance or direction. The abused six-year-old, who seeks to be returned to the offending parent's care, may fear or may not comprehend the possibility of life outside the isolated home in which the abuse has taken place.<sup>4</sup> The adolescent subjected to years of psychological deprivation may come to believe in the scapegoat identity assigned by the parents and may have no sense of worth beyond serving the destructive emotional needs of the family.<sup>5</sup>

While many of these children can inform the attentive guardian *ad litem* about their lives, their wishes for those lives may require interpretation. Children's input into the decision-making will have varying degrees of maturity—from none to fully adult. Guidance from a professionally-trained child-development specialist will prove invaluable to the guardian *ad litem* in clarifying a child's verbal and non-verbal, direct and symbolic, spoken and gestured communications. Guidance about the reasonable expectations for a child at a particular

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3. See generally J. GOLDSTEIN, A. FREUD, & A. SOLNIT, BEYOND THE BEST INTERESTS OF THE CHILD 31-39 (1973); Goldson, *Child Development and the Response to Maltreatment*, in FOUNDATIONS OF CHILD ADVOCACY 3-20 (1987).

4. See Kerns, *Child Abuse and Neglect: The Pediatric Perspective*, in FOUNDATIONS OF CHILD ADVOCACY 35 (1987).

5. *Id.*

developmental stage will also prove quite helpful to the guardian *ad litem* who is trying to assess the child's relative maturity and ability to contribute to the legal decision-making.<sup>6</sup>

A second important difference between adult and child clients is the degree of independence each brings to the lawyer-client relationship. The lawyer who works for an adult client represents an independent individual whom the law recognizes as a fully emancipated, self-directed person. This, of course, is not true of the child-client. The law recognizes a duty in children to obey their parents or other care-givers, their teachers, and other sources of authority. Correspondingly, children learn to expect direction from persons who are sources of authority and punishment if those directives are not obeyed. This has an impact on the relationship that develops between the child and the guardian *ad litem*. The inclination of the child may well be to do what the guardian *ad litem* appears to desire, such as answering questions with responses that the guardian *ad litem* seems to want.<sup>7</sup>

Parents, or other care-givers, may want to have a say in the child's relationship with the guardian *ad litem*. Negotiating the appropriate parental presence in the lawyer-client relationship will take great skill and understanding, especially if the parent feels threatened or undermined by the guardian *ad litem*'s appointment. If the parent feels threatened throughout the relationship and if the parent has ongoing contact with the child, there is a great risk that the parent will succeed in sabotaging the guardian *ad litem*'s ability to render effective service. The child, if subjected to a loyalty contest over the issue of the guardian *ad litem*'s representation, may well succumb to the parent's attack on the alliance and break off the trust that might have otherwise been the foundation of the lawyer's work with the child-client. Helping the child to understand the role of each of these three parties—lawyer, client, and parent—will also help the child in sorting out the allegiance, trust, and loyalty questions

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6. See E. ERIKSON, *CHILDHOOD AND SOCIETY* (2d ed. 1973). See also M. PULASKI, *UNDERSTANDING PIAGET: AN INTRODUCTION TO CHILDREN'S COGNITIVE DEVELOPMENT* (1971). For a brief overview of the major theories of child development, see Goldson, *supra* note 3.

7. Much recent press attention has been paid to the prosecution of child abuse cases in which the credibility of the statements of alleged victims was challenged on just this basis. In the McMartin pre-school case (People v. Buckley, L.A. Super. Ct. No. A 750900, verdict entered Jan. 18, 1990), jurors, who were polled after finding the defendants not guilty on multiple counts of child sexual abuse, cited their doubts about the children's identification of the defendants as crucial to the acquittals. The mental health professionals who had evaluated the children who testified were criticized for the use of leading questions in their questioning of the children. News Briefs, *National Law Journal*, Jan. 29, 1990, at 6; U.S. News & World Report, Jan. 29, 1990, at 8; Law & Motion, *California Lawyer*, Feb. 1990, at 30.

that the child may have during the course of the lawyer's representation.

The first opportunity to work on the client-lawyer relationship in the face of the child-parent relationship comes at the point of the initial interview. The guardian *ad litem* must intrude, to some degree, on the parent's connection with the child. At the same time, the guardian *ad litem* must respect the parent's (or other caregiver's) right to protect the child from contact with strangers, to be informed of the child's communications to others, to control the information that the child offers about the family's private affairs, to be the consistent and ultimate authority in the child's life, and to be in exclusive control of the very young child. The effective guardian *ad litem* respects those rights and yet maintains a real attorney-client relationship, providing to the child-client all of the privileges that attach to that association. That respect must be a part of all the guardian *ad litem*'s dealings with the child-client's parents and will be discussed in the context of each of the issues dealt with below.

#### PREPARING TO INTERVIEW THE CHILD-CLIENT:

TO WHAT END AND THEN WHEN, WHERE, AND HOW?

The first step in preparing to interview the child is to decide what can be achieved by seeing and talking with the child. The "interview" can be purely observational or may be more interactive. The point at which a particular interview falls on the sliding scale between the points of observation and direct communication is decided on a case-by-case basis, taking many factors into account. Depending on the child's age, the goal of the interview may be simply to gather information by observing the child. Does the child appear properly cared for; does the child interact with family members or friends easily or do the child's relationships appear strained or even disengaged; does the child appear developmentally normal, that is, can the child accomplish the tasks typically mastered by children of the same age; are the child's memory and ability to think abstractly as developed as they typically are in children of like age?<sup>8</sup> Much of this information can be gathered by watching the child in play or in interactions with siblings and parents at home or in other settings. Some of this information can also be gathered by observing the child at school or preschool.

With a verbal child, the guardian *ad litem* may be able to gather

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8. The *Bayley Scales of Infant Development* and the *Weschler Intelligence Test for Children-Revised* are two evaluation instruments which can offer valuable information about the development and abilities of the child-client. These tests should be administered by a mental health professional who has expertise in child psychology.

information from the child's expressed thoughts about the issues with which the court is concerned. Those expressions may be explicit preferences the child states or may be deduced from other information the child offers. Take six-year-old Johnny as an example; an indirect inquiry might include the following questions: Who wakes him in the morning, how is he awakened, who feeds him and helps him dress, what does he usually eat in the morning and with whom, who is with him after school and in the evenings, with whom does he have dinner, to whom does he look for help and comfort when he is injured? The answers that Johnny gives to these questions may reveal who it is that Johnny looks to for care; those answers may also reveal information about the quality and type of care that Johnny experiences from his care-giver. Both direct and indirect questions can yield valuable information. Answers to indirect questions may be less guarded and therefore may provide the guardian *ad litem* with more insight into this child's sense of his world and his life. Also, with a series of indirect questions, the child may be less able to anticipate the direction in which his questioner may be guiding him. Thus, the child may be less susceptible to answering the questions in a way designed to please the questioner; or the child may be less able to manipulate the inquiry to a result the child wishes the examiner to take from the interview.

If there is any indication from any source that the child-client has suffered neglect or abuse at the hands of the parents or other care-givers, the guardian *ad litem* should use caution in broaching the subject of the maltreatment with the child. It may prove useful to the lawyer to become familiar with the evolving psychological theories which attempt to explain how the child experiences and adjusts to maltreatment. Gaining insight into the issues of abuse and neglect can make the lawyer more sensitive in interactions with the child and can also make the lawyer more comfortable in working with a child who may have been mistreated. When there are allegations of abuse or neglect—particularly allegations of sexual abuse—of the child, the guardian *ad litem* is well advised to use great care while interviewing the child.<sup>9</sup>

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9. An example may serve to illustrate this point well: A young adolescent girl, seeking to protect a younger sibling from similar abuse, disclosed to a state social worker that their father had been sexually abusing her. When probed by the social worker, the child described acts of oral sex that the father had forced her to do with him. The social worker, the child later reported, looked offended and said, "That's disgusting." The child, experiencing this as a judgment of her as well as her father, responded to this by refusing any further disclosure or discussion of the abuse. Only after much effort to reassure the child, was the child's law guardian able to gain the child's trust enough to continue the case to prosecution of the father. Over and over again, the child asked afterwards, "Why did [the social worker] act like that? Why did

One approach that has been successful is offered here. Take as an example twelve-year-old Joanne; during the first or in a subsequent interview, after Joanne has developed some understanding of the role of her guardian *ad litem* and of the legal process and has shown some comfort in talking with her lawyer, the guardian *ad litem* could ask a series of questions like these: Has anyone in your family given you reason to be afraid of him or her? Or has anyone outside of your family given you reason to be afraid of him or her? If yes, then: Can you tell me who that person is? What kind of things has he or she done to make you afraid? If no, then: Is there anyone you *are* afraid of? Can you tell me why you are afraid of him or her?

If the child resists this inquiry, the guardian *ad litem* should not probe past the point of the child's resistance. Requiring the child to listen to the questions, let alone answer them, may amount to a re-victimization of the child or may produce untrustworthy answers from the child for a number of reasons. The child may give responses designed to end the ordeal of the inquiry; the child may deny any fear or maltreatment to protect someone involved in the abuse or another sibling or a friend; the child may want to refuse to answer because she has been threatened with harm if she speaks and so may deny any fear or abuse. Fear may be written on the child's face but without the child's help in deciphering its source, the guardian *ad litem* may misread the child's expressed reaction and inadvertently may obfuscate the truth of the child's experience even more.

It is a better practice, at the point of resistance, to acknowledge that resistance to the child, offer to cease the questioning until the child is ready to talk about the matter, and then to stop asking about the issue of maltreatment. At a subsequent interview, the guardian *ad litem* can ask if the child has become more comfortable discussing the issue. The honesty of the child's later answer may derive from the trust felt because of the guardian *ad litem*'s earlier willingness to stop questioning. At that later time, if the child has become comfortable enough in the relationship, the child may be willing to discuss the problem of neglect or abuse. Again, forcing the issue can yield answers from the child, but those answers may be impossible to assess for truthfulness or accuracy if the child has felt duress.

For a number of reasons (the child's age, immaturity, or resistance) it is possible that the guardian *ad litem* may not get information directly from the child and may have to rely upon the reports of

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she say that? It wasn't my fault." The injury that this child suffered during the interview process was real. The insensitivity, though momentary, had a serious impact not only on the child herself but also could have been ended the case and prevented the successful conviction of the father.

others, either professionals or family members or friends to whom the child has been able to disclose. This bespeaks no failure on the part of the guardian *ad litem* but rather can serve to highlight for the court the guardian *ad litem*'s understanding of the needs of the child even when they conflict with those of the inquiring lawyer. The guardian *ad litem*'s respect for the child's right *not* to be re-victimized may provide a powerful example to the court and to the parents. In fact, the child who does not disclose to the guardian *ad litem* may also be acting from a sense that the guardian *ad litem* is the one person who will not force her to discuss something she does not want to talk about. The guardian *ad litem* has thus created an interview atmosphere in which the child believes herself safe from the prying inquiry she may have experienced with others. That in itself can be a valuable service to the child which could yield later disclosures that are significantly more trustworthy than the ones pried from the child by interviewers who have not respected her need to resist answering.

Once the guardian *ad litem* has established goals for the interview (observation, rapport-building, direct communication), the next step should be to look for obstacles which may hinder the child's lawyer in achieving these goals and to devise ways to overcome them.

Such obstacles could include resistance from the parents, parents' counsel, and, as just discussed, the child. Obstacles could also include the guardian *ad litem*'s own discomfort in working with children or with the perception of heightened responsibility in dealing with children's issues, and the unfamiliarity with interviewing children. Underestimating the importance of the interview and the difficulties in effectively interviewing a child may come from the guardian *ad litem*'s personal familiarity with children, the guardian *ad litem*'s belief that the child-client relationship is similar to other relationships with children, and the guardian *ad litem*'s beliefs (pro or con) about the facial validity of a child's statements.

Whereas discomfort in dealing with children may lead to an over-reliance on the statements of another adult who claims to be a spokesperson for the child, complacent feelings about dealing with children may lead the guardian *ad litem* to miss vital information offered by the child or to dismiss indirect verbal or non-verbal information that the child offers. The lawyering interview of the child-client is in many ways no different than one of the adult-client. The lawyer's duty to know the case fully, including from the perspective of the client, is just as important when the client is a child as it is when the client is an adult who can insist on the lawyer's attention and understanding. Knowing the case from the client's perspective clearly

requires the lawyer to know the client. Getting to know the child-client requires tact and sensitivity, just as when the client is an adult. The interview with the child, even if it consists of little more than the lawyer observing the client at play, must be approached with respect and consideration. Such respect is necessary if anything is to be gained from the interview and if the client's needs are to be served, both in the ultimate disposition of the case and in understanding how that disposition was determined. This second aspect to the interview, helping the child to understand the legal process, will be discussed more fully below.

While interviews can provide valuable information, gaining that information is no easy task. For example, observing the child-client at home with siblings and parents can provide information about the child's relationships and ability to relate.<sup>10</sup> That information can later be contrasted with the parents' perceptions, with the child's descriptions of those relationships, and with any reported information from third persons such as social workers. However, the child and the parents are also observing the observer; they might respond to a perceived threat to their privacy or to their family's established ways of interacting by masking their true interactions and acting in a way that they believe will be seen as desirable.

Although the guardian *ad litem* may be fully aware that the family—and particularly the child—is acting in response to a stranger's presence, the guardian *ad litem* will also know that little valuable insight into the child's situation will be gained while the child remains guarded. The frustration of the guardian *ad litem*'s purpose in this situation is obvious. Not only is insight not gained, but also the guardian *ad litem* may have an even harder job ahead in establishing real communication with the child who has colluded in the family's deception of the stranger.

Open, non-judgmental observation is one key to obtaining a maximum amount of information. Thus, communicating the safety of the lawyer-client relationship to the child becomes the first task in the interview process. The importance of starting with a non-judgmental attitude cannot be over-emphasized. While parental behavior and family attitudes may be foreign and unsettling to the guardian *ad litem*, one should avoid signalling to the child-client disapproval of the family or even of the child. The child's perception of disapproval

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10. A child's established relationships should carry great weight when considerations for the future of those relationships are contemplated by the court. For the significance of the child's ability to form relationships, see E. ERICKSON, *CHILDHOOD AND SOCIETY* (2d ed. 1973); M. PULASKI, *UNDERSTANDING PIAGET: AN INTRODUCTION TO CHILDREN'S COGNITIVE DEVELOPMENT* (1971). See also J. GOLDSTEIN, A. FREUD & A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* 31-39 (1973).

from the guardian *ad litem* may finish the interview before it begins. Equally detrimental is the possibility that harboring feelings of disapproval may also close the guardian *ad litem*'s mind to discoverable facts contradicting the information on which those feelings are based.

A second important task of the interview series is to make the legal process as comprehensible to the child as possible. Here the guardian *ad litem* can be an important person in the child's life. The guardian *ad litem* can be both an ally to the child-client during the court's process and a resource throughout their relationship—to help the child understand the court process, to be heard in that process, and to experience the process as helpful and not harmful. The more the child can grasp the court's power, interest, and role, the less the child is subjected to confusion, misapprehension, and fear. If the child can be calmed about the court process, the child's expressions to the court may be based more in the child's reality and less in a fantasy about a mysterious process. Success in this area has positive repercussions in the first goal of the interview: If the child is going to communicate with the guardian *ad litem*, especially if the child's experience with the family has been an isolating one, it will be because the child perceives the guardian *ad litem* as an ally and a resource.

Working at the child's level is paramount in a successful interview. Listening to the child's own language<sup>11</sup> and watching the child's facial expressions and demeanor to discover vocabulary and comprehension levels, looking for signals of comfort or discomfort with what is being discussed, and being respectful of the child's interests in the court action can make an interview successful. Success is learning the maximum information available from the child-client upon which to offer a position in court and, reciprocally, teaching the child what to expect from the court process, the child's role in the process, and the limits of the process.

Finally, the guardian *ad litem* must choose a place and time for the interview which will allow the communication goals for the interview to be achieved. The choice of environment may change after time, but the initial interview place must be given careful attention. Consideration must be given to the child's sense of safety and comfort. For a young child, a visit to a lawyer's office can be intimidating and may imply some wrongdoing on the child's part. For the older teen-aged client, the same visit may be welcome if the office visit is

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11. Children sometimes supplement their limited verbal ability by communicating through non-verbal means, such as using gestures, concrete objects like toys to demonstrate meaning, or drawings. Interpretation of these expressions may require the help of a trained mental health professional with expertise in the area of child psychology.

seen as an opportunity to speak with privacy; the older child may derive a sense of dignity from the office visit. Because the child's reaction cannot be known in advance, there is wisdom in scheduling initial visits at home and, once acquainted with the child, scheduling later visits at the office if the child expresses interest in an office visit.

Initial visits at home, where the child is on familiar ground, allow the child the opportunity to focus on meeting the guardian *ad litem*. The child, by getting to know the guardian *ad litem* in the child's own home, can thereby avoid many of the distractions attendant upon meeting the guardian for the first time at the guardian's office. Such distractions include the ride to the office, the unfamiliarities of the office, and the presence in the office of other persons who are strangers to the child. All these distractions may combine to impair or dilute the real goal of the initial meeting, which is to acquaint the child with the guardian *ad litem*.

Scheduling interview visits at the child's home also serves another purpose: Parents may resist the guardian *ad litem*'s interviewing the child out of their presence. Part of that resistance may be the parents' healthy desire to supervise contacts that their children have with strangers and to protect their children from unreasonable questioning by the guardian *ad litem*. Another explanation for parental resistance may be a desire to control the child's communication with the guardian *ad litem* and thus with the court. This may be so where the parents believe that their child will speak against the position they are presenting to the court.

There is no denying that the guardian *ad litem*'s presence is an intrusion into the family's privacy. The appointment of counsel for the child, the interviews, the development of a relationship between the lawyer and the child, and the lawyer speaking for the child in court all serve to disrupt the family's expectations of its responsibilities and freedoms. Guardians *ad litem* should not take the intrusive value of their presence lightly. Respectfully responding, but not giving in to the resistance offered by the parents and the child, may be the only way to overcome the resistance without injury to the child's continuing relationship with the family and without denying the child the full benefit of the court's concern.

Simple, effective responses to the parents' concern for their role as overseer of their child include notice to both parents' lawyers of the intent to interview the child at home and a request to the custodial parent's lawyer for a list of times convenient to the custodial parent when such interviews could be conducted. The guardian *ad litem* should be explicit with each counsel that there will be no discussion

of the case with any represented party other than with the child-client without the permission and presence, if necessary, of that party's lawyer. A reciprocal statement, that no one will interview the represented child outside of the guardian *ad litem*'s presence or without express permission, should be extracted from the other lawyers. The guardian *ad litem* should also ask for permission to contact the custodial parent for the purpose of setting up an interview time and to get directions to the home. The guardian *ad litem* should request that the parents' lawyers speak with their clients prior to the first interview to explain the role of the child's representative. If the guardian *ad litem* is going to be observing the child with only one parent, the other parent's lawyer should be advised of this, and arrangements, if possible, should be made to see the child with the other parent. If the parents' lawyers can assist in establishing with their clients that the guardian *ad litem*'s presence is an important part of the ultimate resolution of the case and not an unwarranted intrusion, the guardian *ad litem* will be considerably further in the process of acting as effective counsel for the child.

While being careful not to discuss the case with the parent who may be represented by counsel nor with the child in front of the parent—which may risk compromising the child's ability to speak freely later, the guardian *ad litem* can alleviate the parents' concern and put the child at ease by using the beginning of the interview to its full advantage. When the guardian *ad litem* first arrives at the child's home, time should be spent in explaining the ground rules of the interview both to the parents and the child. The parents should understand that the guardian *ad litem* is not free to discuss any of the case with them (unless they are proceeding *pro se*),<sup>12</sup> that the guardian *ad litem* will interview the child privately at some point in the future if the child is verbal and can be made comfortable enough with the lawyer to be interviewed alone, and that the guardian *ad litem* may need additional interview sessions with the child at later points to serve the interests of the child-client adequately and to meet the expectations of the court. The guardian *ad litem* can also put the child at ease by talking with the child in front of the parents. This allows the child to size up the guardian *ad litem* in the relative safety of the parents' presence and to see the lawyer as non-threaten-

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12. Parents may see the guardian *ad litem* as an extension of the judge and may seek to influence the decision-making power of that judge whenever and wherever possible. Unless a parent is proceeding *pro se*, the guardian *ad litem* as counsel to a represented party must refrain from all discussion of the case on its merits. All communications should be cleared through counsel for the parent and all efforts from the parents to engage the child's lawyer in conversation about the case should be respectfully rebuffed.

ing, for the child's own sake and for that of the parents to whom the child may feel great loyalty.

Once the child becomes comfortable with the guardian *ad litem* at the first or a later interview session, the guardian *ad litem* could ask for the parents' permission to observe the child at play. The guardian *ad litem* might gauge the child's comfort level by observing the child's reaction to less intrusive interactions such as having the child show the guardian *ad litem* (again with the parents' permission) personal toys, the bedroom where the child sleeps, the places where the child likes to play. The guardian *ad litem* could also ask the child to introduce the guardian *ad litem* to siblings and pets, thus giving the child familiar things to talk about and familiar people to introduce into the conversation with the stranger. Reviewing artwork or homework can also provide non-threatening opportunities to observe the child's demeanor, affect, and relationships within the family, provided the guardian *ad litem* treats the child and the child's work with sensitivity. Paying careful attention to everything that is said as the child begins to talk more freely during these casual interactions will guide the listener towards the child's understanding and perception of the world, home, and family.

As the parents and child become comfortable with the guardian *ad litem*'s presence, the child could be asked to go for a walk through the neighborhood with the guardian *ad litem*. This will afford the guardian *ad litem* the occasion to see whether or not the child is developing some trust and whether the child's answers to questions change when the child leaves the home and the immediate proximity of the parents. This also allows the child the opportunity to speak privately while still on familiar ground and with an immediate way back to the safety of home and family if the child feels emotionally threatened at any time by the interaction.

If the guardian *ad litem* assesses the child as mature and able to respond to direct questions, the guardian *ad litem* may ask more directly focused questions but should be extremely cautious in doing so. Direct questions should be open-ended, non-judgmental, and even-handed. The child should have a range of options for answering any question that asks for a value. The child should have the freedom to answer in any way, without guidance from the examiner about what an acceptable answer might be. The child, who will be sensitive to the focus of the questions, should be asked identical opening questions about each parent or each adult care-giver. Take these questions to twelve-year-old Joanne as examples: What kinds of things do you do with your dad/mom/step-dad/step-mom/grandfather/grandmother/foster father/foster mother? How do you feel about doing

that (in response to a particular activity that the child cites)—like to do it, don't like to, sort of in the middle, more towards one than the other? If the child's answer (a shrug or a glance away or another gesture) needs interpretation, the guardian *ad litem* should be very careful to offer the child a range of possible interpretations. Again, with Joanne: When you shrugged your shoulders, does that mean you don't know; or that you're not sure of an answer; or that you're uncomfortable with me asking that question; or that you have more than one answer?

The guardian *ad litem* should stay alert for signs of defensiveness. A child may be unwilling to discuss a particular topic early in the interview sessions but may feel more comfortable with the guardian *ad litem* and then with the topic later on. Pushing a child to offer answers before the trust between lawyer and client has had time to develop may not only injure the child's sense of safety with the lawyer, but it may also yield inaccurate and (misleadingly) incomplete information.

The interview has another aspect that should be acknowledged. The time spent with the child, the questions about the personal issues of family, home, school, attitudes, wants, dislikes, and so on, the focused attention of a professional, all provide the child with a forum that is unusual. The guardian *ad litem* must take care to help the child keep a perspective on their relationship. The guardian *ad litem* does not replace the parents in any way; the guardian *ad litem* does not provide an appellate forum in which to reverse parental decisions; the guardian *ad litem* is not a family member; the guardian *ad litem* is not a person who can provide therapy for an unhappy child. If the guardian *ad litem* comes to believe that the child needs therapeutic intervention, that issue can be raised at once with counsel for the parents. If the parents do not act on the guardian *ad litem*'s request that therapy be explored, the issue can be brought before the court.

#### WHOSE POSITION IS ADVOCATED BY THE GUARDIAN *AD LITEM*:

#### FROM WHAT IS THE POSITION DERIVED?

Although the position eventually presented to the court must address the child's needs as fully as possible, the guardian *ad litem* should understand that the "best interests" of the child-client, commonly sought by the court, cannot be known. The enigma<sup>13</sup> of this

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13. R. MNOOKIN, IN THE INTEREST OF CHILDREN: ADVOCACY, LAW REFORM AND PUBLIC POLICY 16 (1985).

standard, adopted in most judicial decision-making about children, is that the factual foundation for a "best interests" position cannot be determined. Knowing, advocating, and adopting the position which addresses the best interests of the child requires a prediction of the future of the child, the child's relationships within the family, and the parents' ability to meet the apparent and hidden needs of the child. All of those pieces which make up a "best interests" analysis cannot be known in any real way. Speculation about a child's best interests does not provide a firm foundation for decision-making, and yet it appears that speculation is precisely what is called for when children's futures are to be decided.

The suggestion from the authors of *Beyond the Best Interests of the Child*,<sup>14</sup> that the courts look to the least detrimental alternative, brings us back to the same dilemma. No optimal outcome, either most positively or least negatively constructed, can be found no matter how seriously it is sought in the court process. A workable outcome, pragmatically crafted from the competing and collaborative interests of parents and child, is a more attainable goal: With what will the child experience a meaningful life; and if the parents can meet that set of needs, what else can the court require of them?

Developing a position grounded in the reality of what can be known and actually achieved requires input from every legitimate information source the guardian *ad litem* can tap. Everyone who has responsibility for the child's daily life and everyone related to the child who cares about what happens to the child can offer some clarification to the lawyer who is trying to know the child well. Knowing the child well will lead the guardian *ad litem* to a fuller grasp of the issues a particular child presents than if the child alone is the source of the lawyer's understanding of the case. In particular, teachers, pediatricians, the family's or the child's therapist, and school nurses and guidance counselors may all contribute valuable pieces to the picture of the child-client.

Parents who continue to have custody of the child-client should be informed, through their counsel, of each person whom the guardian *ad litem* will interview. Informal interviews at the person's place of business or telephone calls may work well for gathering information. Permission to speak with doctors and school employees should be obtained in advance through parents' counsel. Parents' refusal to allow this information gathering should be directed back to their counsel. Maintaining open communication with the parents' lawyers will allow the guardian *ad litem* to work with them on the problems

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14. J. GOLDSTEIN, A. FREUD, & A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* 53 (1973).

which arise during the investigation without frequent resort to the court. The court though should not be forgotten. When parents are adamant in their refusal to cooperate with the guardian *ad litem*'s investigation of the case, the guardian *ad litem* should be willing to use motions to compel discovery rather than lose the opportunity to gather valuable information about the child.

The parents' show of resistance to the guardian *ad litem* will not be lost on the court. One implication that may surface from parental refusals to allow contact with the child or with the people who are familiar with the child is the notion that the parents are hiding information. While the parents, in fact, may only be demonstrating their right to exert control over the child by attempting to restrict the child's representative, the court may read other motives into their behavior. Thus, the guardian *ad litem* must be careful not to give the court an inaccurate picture of the parents' opposition when that resistance could be averted by a more respectful or diplomatic approach to the parents by the guardian *ad litem*. The parents' insecurity and sense of being threatened by the guardian *ad litem*'s presence may lead them to act in a way that is interpreted by the court to be against the child's interest, calling into question the parents' ability to care for and love the child. Not only may the parents' interference impede the guardian *ad litem*'s duty to the child to bring a fully-informed position to the court, but such interference may also muddle the judge's picture of the family and the parental motivations and interests. Again, the intrusive nature of the guardian *ad litem*'s presence cannot be overemphasized, but that intrusion must be so conducted that an accurate and complete illustration of the family can be presented to the court.

The appointment of the guardian *ad litem*, pragmatically speaking, is a response by the court to its perception that the child's due process rights need to be protected by independent representation. The appointment, though, can also be a response to the court's need for a neutral, independent presentation of the facts. The parents, in this reading of the appointment issue, are seen as unable to focus on the needs of their child or to place those needs before their own. Thus, the court appoints another adult, professionally trained in the legal process, to serve both as a surrogate and a due process safeguard. If the parents were able to recognize the needs of the child and place the fulfillment of those needs before that of their own, a strong argument could be made that they would be the appropriate representatives of their child before the court. In light of this second reading of the appointment, the guardian *ad litem*'s duty to the child to make a full and fair presentation to the court of the facts and circumstances of the child's life becomes obvious. In practice, the full

and fair presentation by the guardian *ad litem* does not translate into the guardian *ad litem* usurping the judge's position as decision-maker, but rather it ensures the judge's ability to step well in the shoes of Solomon.

#### ADVOCATING FOR THE CHILD IN THE NEGOTIATION

A guardian *ad litem* is introduced into the legal proceedings of a particular case by virtue either of a statutory requirement or a court's finding that such representation is needed for the child. The appointment of a guardian *ad litem*, as an expression of the legislature's general concern and the appointing judge's specific concern for the representation of a child, carries with it the full weight of that legislative and judicial interest.

Using these expressions of interest as a foundation upon which to assert the child's legitimate role in the proceedings, the guardian *ad litem* is in a unique position to require the parties, and especially the parties' lawyers who recognize the import of the appointment, to listen to the position adopted on behalf of the child. Thus the guardian *ad litem* can urge upon the parties a settlement of the case which reflects the high value that the community, if not the parties, attaches to the well-being of the child.

Because of the explicit attention a child receives from the appointment, the guardian *ad litem* is in a unique position to influence the parties to come to a negotiated result. Once the parties have been brought to a negotiated result and a court hearing has been avoided for the child, the guardian *ad litem* has already served the child's interest in not being the subject of the parents' further dissension. The conclusions of the negotiations can also reflect the guardian *ad litem*'s best judgment of a satisfactory conclusion of the disputed issues from the child's perspective. Thus, the negotiated outcome can address the interests of the represented child both in its content and in avoiding a court hearing.

The mediation model may serve as guidance for the guardian *ad litem* who seeks to provide the child-client with a negotiated settlement. Like a mediator, the guardian *ad litem*, representing a blameless and vulnerable child, occupies a virtually neutral, or at least a non-adverse, position in the case. Following the mediation model, the guardian *ad litem* can exhort and navigate the parties to an agreement without taking one side against the other and without creating psychological obstructions to the possibility of an agreement. When the parents' view of their child's needs have become clouded, or when the parents and the state are in opposing positions about

those needs, the guardian *ad litem* can serve as a clear-sighted guide back to those needs and interests.

Finally, the parallels between the two positions of guardian *ad litem* and judge are not lost upon lawyers who represent adverse parties. Like the judge, the guardian *ad litem* is concerned with the balance between the needs of the child and the rights of the parents; like the judge, the guardian *ad litem* is interested in the fullest presentation of the facts regardless of whose position is supported or diminished by those facts; like the judge, the guardian *ad litem* has no proper investment in either of the adverse positions of the parents, or of the state and the parents, but rather seeks for the child and the parents a satisfactory resolution of the problem that has brought them to court. This third-party position, insofar as it is a non-adverse one, is a potentially powerful stance for the guardian *ad litem* to assume.

Given such a posture before the adverse parties and the court, it becomes very important that the guardian *ad litem* not waste the resources available in the prestige and power of that position. How the guardian *ad litem* fashions a position to present to the court depends on the amount and quality of information available from the child, parents, siblings, relatives, and third party observers. This is as true for the guardian *ad litem* who seeks to negotiate a satisfactory plan with the parents through their lawyers (or directly if the parents are unrepresented) as it is for the guardian *ad litem* who must take the child-client's case through a full court hearing. While the guardian *ad litem* is not responsible for obtaining information from parents who are represented by counsel, clearly the guardian *ad litem* is better able to provide the child with more effective assistance if the parents supply clear and comprehensive information upon which to base a mutually acceptable proposal. Inadequate or inaccurate information from the parents may well mean failure in implementing the terms of the negotiated plan. Equally frustrating to the success of any proposal is the parents' resistance to what essentially is a negotiated result. If no compromise position can be devised between the child's lawyer and the parents, then the guardian *ad litem* is in the position of advocating to the court the position, or a near-approximation of it, that would have come out of the negotiation.

The negotiation model presupposes a willing child-client as well. Lawyering for the child in this respect closely resembles lawyering for the adult. During the interview process, the guardian *ad litem* should try to learn what it is that the child wants and needs, both from the statements of the child and from those who have cared for the child. In the client counselling part of the guardian *ad litem*'s in-

teractions with the child, the guardian *ad litem* has the responsibility to advise the client about what can and cannot be achieved and what is likely to occur in court. While an adult who seeks legal assistance typically has goals in mind, the child usually has gained the court's attention without having sought it. Thus, the child-client needs guidance in identifying goals with which to form a position to present to the court. It is not unusual for a child, once prompted, to have ideas about what the child wants to have happen within the family. Shaping those ideas into a realistic platform to present to the court for incorporation into its decision-making is not difficult once the guardian *ad litem* has been able to establish with the child what are appropriate goals to seek in the legal process.

The role of the guardian *ad litem* as a mediator can be valuable both to the child and to the other parties involved. In cases where the state has brought the action against the child's parents, the likelihood of the parents' compliance with the orders of the court may be significantly increased if they agree to the actions required of them. While the state has the full power of its enforcement strength and may not see the need to gain the willing compliance of the parents with its social action plan, the child may have a very deep stake in the successful outcome of the state's plan for reunification, that is, in the willing compliance of the parents with that plan. The child has no more power than that afforded by the guardian *ad litem*'s willingness to file motions to enforce litigant's rights. Even then, such motions can do no more than compel the parents' compliance through the court's contempt power or ability to require bonds to be posted. Given these two motivations, the child's interest in the guardian *ad litem* as mediator becomes a powerful one.

There are cases where the allegations of the parents' wrongdoing toward the child should and must be litigated in order to provide prompt grounds for the termination of their rights to the child or to remove the unwarranted scrutiny of the state from the family. Clearly, in these cases, the object of the guardian *ad litem*'s mediation should reflect the needs of the child and should give way when there is a plain showing by the parents or the state that this is such a case.

Issues which develop between parents over the custody and care of the child can be treated similarly. When there are no allegations of wrongdoing by one of the parents towards the child, the mediator role of the guardian *ad litem* can be even more valuable. In mediating a settlement between the parents, the guardian *ad litem* helps the child avoid the difficulties of speaking for or against a parent when the child voices a preference, especially if voiced in an inter-

view with the judge. The guardian *ad litem* as mediator also maintains the focus of the parents' attention on the needs of the child instead of on their own quarrel with each other. Shaping the resolution of the dispute to meet the child's needs can have valuable repercussions by encouraging the parents to maintain that focus.

The guardian *ad litem*, who represents the one party in the middle, can map out a middle ground between the state's position and that of the parents, without requiring a hearing on the facts for the assessment of merit and blame. The guardian *ad litem*, who represents the independent neutral party, can fashion an action plan for the adversarial parties for which agreement and not compulsion can be gained. Finally, the guardian *ad litem*, who represents the un-reproachably innocent party in every action, can bring to bear the full power of the child's innocence in advocating for a particular outcome. In such a mediation, the parents may offer their consent with their dignity intact and in fact may comply more readily with the terms of the agreement than if the court had ordered that compliance of them. The state, whose bureaucracy will not be subjected to the time burden of trying the issues of the case and whose ostensible interest in the case in the first place was the child, suffers no prejudice in its case by attempting first to work with the parents on an amicable basis.

#### ADVOCATING FOR THE CHILD IN THE COURTROOM

When the parents' or state's case involving the child-client cannot be resolved without resort to the courtroom and a judge's decision-making, the guardian *ad litem's* role as the child's representative and protector in the legal system escalates in importance. While a child can be traumatized at any point in the legal process as that process focuses its attention on the child, nowhere can that trauma be more dangerous than during the court hearing itself. Children who are the subjects of custody or visitation disputes as well as children who are named by the state as child abuse or neglect victims are all at risk of psychological injury in the hearing process. The fact that they may be called upon to testify, apparently against at least one of their parents, is enough to injure. That they may be required to disclose the most private of their thoughts about their life within the family and with their parents bespeaks a real possibility of psychological invasion and harm. Here, as much as at any other place in the process, the child needs an ally who understands how the system works, who can explain and forecast the way the process goes forward, who recognizes possible options available to the child, and

who has the power to intervene and even to stop the system when it endangers the child's welfare.

A very important part of the guardian *ad litem's* service to the child-client comes into play when the child has testimony to offer regarding the facts of the case. Presenting that testimony in ways that are least traumatic to the child requires the sophisticated skills of the trained child advocate. The lawyer must assess the options available for presenting that testimony: If *in camera*, should anyone besides the judge and stenographer be present; if there are others present, should anyone but the judge or guardian *ad litem* ask questions of the child? If not *in camera*, should the testimony be given in open or closed court; should the testimony be given in front of the child's parents or only their legal counsel; should the guardian *ad litem* negotiate to be the only person asking the child questions; should the guardian *ad litem* or the judge be the child's examiner?

Many of the answers will be provided by local forum practice. Often the judge hearing the matter has strong preferences for one practice or another. Advocating for a different practice or an additional one may still be very important—the guardian *ad litem*, like any lawyer, must always be aware of preserving rights to and creating a record for an appeal. Also, and perhaps as important, the child-client's sense of that advocacy, even in the face of a decision against the guardian *ad litem's* argued position, can help the child to understand that the guardian *ad litem's* interest in and advocacy for the child-as-client is genuine. Helping the child to feel respected as a true party to the case and less alone in the legal process is a worthy goal in itself and should be factored regularly into the guardian *ad litem's* understanding of the case.

If the child is to give testimony to the court, the guardian *ad litem* has the task of making that testimony as meaningful as possible. A child-witness may easily be too distracted and too frightened by the strangeness of the event to give valuable evidence to the court when called upon to testify. Easing the child's fears and removing some of the distractions is not difficult for the guardian *ad litem* to do. A visit or two to the courthouse and, if possible the courtroom or chambers where that testimony will be given, can provide the child with an atmospheric and visual context in which the child will testify.

Knowing the actual location of the courtroom or judge's office removes some of the mystery of the event itself. Other information can help reassure the child as well: How to find the restrooms, who the sheriff's officers and stenographers are and why they are in the courtroom, who else will be present during the testimony, why law-

yers and parents and the judge sit where they do, what is on the judge's bench. With the permission of the judge and with advance notice to the parties' lawyers that no *ex parte* communications regarding the case will be made to the judge, the guardian *ad litem* could arrange to have the child meet the judge before the day of the court appearance and could have the child tour the courtroom when it is empty and sit in the different chairs of counsel, witness, jury box, and even on the bench if the judge has no objection.

Not only does this give the child a sense of familiarity with the room and the players in the court process, it also allows the guardian *ad litem* to observe the child's ability or inability to become comfortable in the surroundings. Also, during the visit to the courtroom or chambers, the guardian *ad litem* can gauge how audible the child's voice is in the room and can get the child used to speaking loudly by having the child play by shouting to the guardian *ad litem* standing in the furthest corners of the room. Becoming familiar with the setting may be a great psychological assistance to the child; becoming familiar with the guardian *ad litem* in the court setting and being reassured of the lawyer's comfort with the process and the courtroom and the judge may be an even greater help to the child. Nothing will substitute for the experience of actually testifying, but the child may be comforted during the days preceding the hearing and maybe during the appearance itself by the knowledge gained in the courtroom visits.

A second major issue for the guardian to confront is the issue of presenting the child's position to the court. When the child-client is verbal and mature enough to understand the nature of the court's decision-making, the lawyer should be prepared to present the child's views to the court. When those views do not coincide with the lawyer's assessment of the child's interests, the lawyer should understand that, by virtue of gaining a voice before the court, the child has a right to place a position before that court for its consideration.

The difficulty the guardian *ad litem* experiences in the representation of the child-client, though, is when the child seeks an outcome which the guardian *ad litem* believes will bring harm to the child. This, too, has its counterpart in the representation of adults. The child's wishes should be relayed to the court. The guardian *ad litem*, having been appointed to protect the due process rights of the child, should be clear that the child's expressed wishes must be made known to the court. However, the guardian *ad litem* is also appointed to protect the well-being of the child. One cannot be sacrificed for the other, and it is in the question of advocacy that this issue is most clearly played out.

One path to follow is to present the child's position without arguing its false merits or its flaws. Another is to present the child's position and disclaim any concurrence with it. A third is to present the child's position and then argue for a different result that the guardian *ad litem* finds more acceptable; the lawyer's position may be in partial agreement with the child's or it may be in opposition to the child's. The decision to appoint counsel to speak for the child, though, is one that acknowledges the right of the child to be heard as a party before the court. This last option, that the lawyer will argue for a result that is in opposition to the child's wishes, undermines the reason for appointing a lawyer to represent the child in the first place.

One resolution to the dilemma of whether to express the child's wishes and whether then to advocate for the child's position may be found in the precise role the lawyer has been asked to fulfill. If the lawyer has been appointed as a guardian *ad litem*, then there is an expectation that the lawyer will present a position to the court that approximates that unknowable "best interest" of the child, at least as the lawyer sees it.

If the lawyer's own position is substituted for that of the child and the lawyer then takes on the role of guardian *ad litem* instead of legal counsel or law guardian, the court and the child should be informed of that change. Should the appointing court disagree with the role the lawyer articulates, the court can direct the lawyer to act in accordance with its expectations. The lawyer, in this instance, discharges the professional duty to represent the child-client competently<sup>15</sup> and may well have no reasonable alternative to protect the perceived interests of the child. One strong justification for the lawyer's bi-sected position is that an abused or neglected child may not have the means to make a rational judgment.<sup>16</sup> That is to say, if the

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15. Rule 1.14 of the Model Rules of Professional Conduct states that, "When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client." MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.14(a) (1983). The accompanying comment goes on to state that

a client lacking legal competence often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. Furthermore, to an increasing extent the law recognizes intermediate degrees of competence. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.

*Id.* comment.

16. One of the ethical considerations in the Model Code of Professional Responsibility states that, "If a client under [mental or physical] disability has no legal representative, his lawyer may be compelled in court proceedings to make decisions on behalf of the client. If the client is capable of understanding the matter in question or

child were well, the child would opt for a position like that of the lawyer's assessment of the child's interest; hence, the lawyer advocates for that judgment in place of the child's own expressed wishes. If the judgment of the lawyer is substituted for the child's, that substitution should be made explicitly both to the court and to the child.

One very important part of the lawyering role of which the guardian *ad litem* should stay mindful is that the child experiences the whole of the legal process through the guardian *ad litem*. The guardian *ad litem* is not only the child's ally but also a source of authority from whom the child may seek no recourse. The guardian *ad litem* serves as the doorway through which the child has access to the court; for the child, that same doorway can also be a barrier.

If the child feels frustrated by the guardian *ad litem*'s refusal to present the child's own views to the court and does not understand or accept the lawyer's justification for that denial, the child may not accept the case outcome or the court's presence in the family's affair as legitimate. This may have serious ramifications later in the child's developing understanding of the role of the family court system generally. If the guardian *ad litem* does not tell the child about the divergence in their positions and the decision to present the child's views while arguing for a dissimilar result, the child will learn of that disparity later from parents or siblings or others who will hold the child responsible for the guardian *ad litem*'s articulated position. Not only may the child feel undermined by the guardian *ad litem*'s action, but the child may feel betrayed by the appointment of a representative who served to alienate family members without offering the child any notice of such a risk.

Advising a lawyer who is confronting this issue is no easy charge. The reality of the appointment is a two-sided coin. The child's voice, if there is one, is sought by the court in making the appointment, whether or not the court openly acknowledges this purpose. Protecting the child from risk of further harm is equally at stake in the appointment. The guardian *ad litem* must consider carefully the similarities in representing children and adults when making any decision to go against the wishes of the child-client. Keeping the client fully informed about the lawyer's thinking and strategy on each issue of the case, working towards an agreed upon goal, advising the client about the likelihood of success and failure for each of the goals the client seeks, and declining to advocate any position that will yield likely harm to the client but agreeing to make known to the court

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of contributing to the advancement of his interests, regardless of whether he is legally disqualified from performing certain acts, the lawyer should obtain from him all possible aid. . . ." MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 7-12 (1980).

that position of the client are all ways in which lawyers represent adult clients. These too are ways in which lawyers can offer valuable and good service to child-clients.

## CONCLUSION

The guardian *ad litem* who is appointed to represent a child is asked to perform one of the most important lawyering tasks in our legal process. The lawyer who represents children is charged with a multi-faceted responsibility that, while it resembles adult representation, is unique in its future repercussions and its present results. The effectiveness of the lawyer-client relationship with a child can echo meaningfully and positively for a long time to come in that child's life. That relationship can also have a profoundly positive impact on the adult parties whose adverse positions place the child between them as a focal point of controversy. That relationship can have a powerful effect on the parents who have become opposing parties to the state. It provides an opportunity for those parents to experience respect for their own relationship with the child from a person who is clearly in a position of authority over their future; it also provides those parents with the forceful example of an adult who will not settle for anything less than the safety and well-being of that child. In our legal community, rich in the traditions of representing adults before the law, we are just becoming familiar with the issues inherent in representing children. It is clear that we have matured as lawyers when we bring the law to our children. In accepting appointments to serve as lawyers to children, we accept the challenge to go beyond what we have known and to take on the task of expanding our law to include historically disenfranchised children. In accepting such appointments, we acknowledge our willingness to bring the power of our law to our children.

