

Virginia State Bar Survey Comments

I am very concerned that Judges play favorites in appointing GALs, some of which never even conduct a face to face interview with the child and never do a home visit, nor do they file a report. In addition, there seems to be a trend that Judges allow the GAL too much decision making power in the proceedings often having the GAL draft the Temporary Order, Consent Order, arrange for co-parenting classes and give an opinion instead of recommendation. I think Some GALs are uncomfortable with such tasks but do not want to upset the apple cart with the Judge. Lastly, I am concerned that in one case a GAL went out to dinner with the father (father paid for the meal and I think it was wine) This was brought up at a conference where an attorney was present during the removal hearing and was shocked at the proffer of the mother's attorney. I serve as a GAL and I perform my own home visits, meet with the child or incapacitated adult (Guardian-Conservatorship cases) and file a GAL report. It is mandated that the GAL meet with the client, perform an independent investigation, and sometimes I do not make a recommendation in the report because sometimes you need to hear the testimony (parents respond differently under oath). I charge the state rate of \$55 out of court and \$75 in court. This is all I can think of now as I just got out of court. Thank you for your time and consideration.

Other states requires GAL's to be subject to cross-examination. Given the weight their opinions are given, it is very hard to explain to our clients why we cannot call the GAL to the stand especially since they are often allowed to introduce hearsay evidence.

More extensive hands-on training should be instituted immediately. Some review of each GALs work product should be performed by the judges before whom they appear. the Judges just do what the GAL recommends in 90% of the cases.

Each question should have space for comment, as some of the questions cannot really be answered by a yes or no response. Depending on the Court and depending on the Judges in a given jurisdiction there would be different responses to those questions asked. As far as questions 11 and 12 I answered no because the GAL is not the decision-maker, the Judge has that responsibility. However, I think GAL's are very effective in making suggestions which he or she believes benefits the child whom they represent. Assessing fees and the allocation of payment of GAL fees often times depends on the type of case, and the conduct of the parties. If conduct is outrageous that party pays a higher proportion of the fee. If not it typically is divided pro rata.

Most GALs are inexperienced. Most do not investigate as they should; I believe it is a product of the low rate of pay (\$50.00 per hour for out of court time, and because they do not know how to gather the information in a manner that is admissible. They forget they are lawyers, and try to act as social workers.

The Guardian AD Litem system is horrible. It does not foster resolution of cases and generally the Guardian takes a side and becomes an advocate. It is not all their fault. They are trained attorneys whose life and training is about advocacy not objectivity. Most are too young and without any life experience, or they are too old and out of touch. I wish we could end this system in its entirety except for incapacitated adults and use in civil settlement proceedings for personal injury cases of minors. Guardians are another impediment in the system not a pathway out of the jungle. I find most to be unreliable and so whetted to advocacy that they have no sight of objectivity, and justice is supposed to be blind folded isn't she?

These questions are hard, I think the survey should have a text response option to explain each answer. For Example do they turn in their reports before court, yes they do, but most wait until

but with the inconsistency in GAL performance and no effective consequences for poor performance, litigants are not guaranteed proper GAL service.

I believe that the most of the guardian ad litem's provide an excellent service to the commonwealth. However, in many areas it appears that some of the judges have abdicated their responsibility to the guardian ad litem. It is not always a rubber stamp but it is not far from it.

We have excellent Guardians in my jurisdiction that put a lot of thought and energy into their role. Unfortunately, however, there is one individual who fails to meet or communicate with the parties and does not do any third party investigation. His opinions are pre-formed and not subject to change at all during the course of his "investigation". He fails to communicate with the attorneys either prior to the settlement conference or court, and never does a GAL report. His billing is excessive and constantly a sore source with clients who have not had any contact with this individual, most times exceeding what the client has to pay me. Problem is, he is the judge's best friend and there is no recourse. The judge permits him to have an inordinate amount of GAL appointments and consistently sides with him in his rulings. The judge is very open in court about the favoritism, with clients picking up on it very easily. We are required to have settlement conferences prior to court in this jurisdiction so the GAL sets out his recommendation at that time. There is absolutely no possibility of winning if he is against you, which is hard to explain to the client. Especially when he has had no contact with the client and failed to take into consideration their "side". One attorney wrote a letter to the Supreme Court concerning this GAL. The Supreme Court forwarded the letter to the judge for action. The judge took action against that attorney but did not rectify the situation with the GAL.

Generally I view Guardian ad litem's as useful in cases where the parents cannot see beyond themselves, meaning they are not putting the child(ren) first. The problem, as I see it, begins when the Guardians do not conduct thorough investigations and end when the Guardians are not held accountable. Because of the very nature of Family Law practice, it is not unusual to have the same attorney be a Guardian on one matter and opposing counsel on another. It creates a very delicate balance for practitioners to walk when we are "forced" to highlight the downfalls or oversights of a colleague, especially in open court.

I had some trouble answering some of the yes/no questions because for some guardian ad litem's, I have no problem with them taking a more active role in setting schedules, etc... however for others who are not as diligent or easily swayed, I believe they should have less power in a case outside of the court room. I therefore gave responses that I believe are best for the less diligent guardian ad litem. In private cases, however many times we are able to agree on a guardian ad litem both attorneys trust and these are usually the ones who do not believe in hiding the ball and equally find what needs to be fixed in both clients for the child.

Judges in Fairfax do not expect or require written reports.

Regarding payment, GALs are paid by the commonwealth. The judge will order the parties to pay the commonwealth either prorating the costs or penalizing one party for needless litigation.

I have mixed emotion in re GALs. Some are excellent and greatly benefit the proper adjudication of parenting, custody and related matters. Many more are simply okay. And too many are mediocre to poor, and waffle in the late case workup, doing the adjudication hearing and particularly in reaction to perceived dispositions and leanings of the judge -- need I say this is disconcerting in the extreme displays more of a desire to curry favor with the judge than to do

Guardians ad Litem should be required to have a much greater amount of training than the mere six hours bi-annually. They should be required to provide no less than a written report at least three weeks before a trial. The majority of GALs are disorganized; appear focused on other things than their case assignment, and often fail to seek the minimum amount of independent sources of facts. The good GALs are "treasures", but they are few and far between.

#4 - I've found there are many more poor GALs in the jurisdictions I practice than good ones. There needs to be a checks and balance system for Guardian ad litem. I believe I am a good GAL. I conduct thorough investigations meeting with parents, health care providers, mental health providers, teachers, and the kids. There are some GALs who just meet with the parents the day before the hearing. But yet there "recommendation" is given as much weight. A lot of attorneys do not take it seriously and they defeat the purpose of having one.

#18 - Only as it applies to communicating to the Court what the children communicated to the Guardian. The benefit of a GAL is that the children do not have to come to the Court. Also, they need to fall into the category of a "good" GAL. See comment related to #4 above.

#11 & #12 - In my experience, some Courts give the GAL the authority to make temporary custody determination and parental evals. If the GAL has done a thorough investigation, this can be to the kids' best interests since they are able to look at all perspectives. However, in the cases where the GAL does nothing - this is not a good idea. See my comment to #4 above.

#19 - There needs to be an accountability system for GALs. There are too many that do the bare minimum. Another problem is the GALs who are afraid to advocate for the kids' best interests because they are afraid of upsetting one parent. These people should not be guardians.

There are too many questions related to the writing of reports. It is my opinion that reports are not only unnecessary in custody/visitation cases, but improper under the Standards for GALs because GALs should withhold a final recommendation until all the evidence in a case is presented to the court.

Questions 13 and 14 presume that the report is required and I have not been involved in a custody or visitation case in which a report has been filed since the Standards have been enacted. There was no option for "not applicable."

There seems to be some movement by the VSB and this Section to treat GALs as something other than they are--counsel for the child. They are not a tool for the parties' counsel; they are not a party or a witness. They continue to be afforded the same consideration as all other counsel. They should not be subject to discovery, particularly as being forced to set forth information provided by their wards may subject the innocent children to harm and abuse, exactly what we are trying to avoid.

Frankly, the VSB has spoken through the Standards and needs to leave things alone.

I do not support the use of GALs in custody and visitation matters, and do not make it my practice to ask for a GAL to be appointed when both parties are represented by counsel. GALs are attorneys; they are not social workers, which is exactly what a GAL should be, in my opinion. The training GALs receive is minimal compared to the credentials of an LCSW. A GAL

As for the reports being submitted before trial (if the GAL even does a report), the judge is now exposed to some of the facts of the case and the GAL's opinion/recommendation. There is no possible way this doesn't influence the court, even a little bit. Then we go to trial. The judges almost always go along with the GAL's recommendation, regardless of the evidence presented. This has happened to some of my clients and they end up feeling like they have not been heard and the judge was unfair. Many clients, after spending thousands on trial, don't have the money to appeal, so they have to wait for a material change in order to get back into court.

The worst is when I am representing one client in a hotly contested divorce and opposing counsel is the GAL on another one of my cases. I've found those attorneys particularly difficult to work with when they're the GAL, especially if things didn't go in their client's favor in the divorce case.

The current GAL program needs to be improved.

This survey assumes that all courts in a geographic area employ guardians ad litem in the same manner. Just the opposite is the case. In Northern Virginia all of the courts have more than one judge and each judge determines when and how to employ guardians ad litem in custody/visitation cases. JDR judges tend to use GALs more frequently (especially when both parties are pro se). Circuit Court judge tend NOT to use GALs unless requested by one of the parties (who must agree in advance to pay the GAL fee). When one or both parties are pro se, JDR judges frequently ask the GAL to conduct the direct examination of the unrepresented party to ensure that essential information comes into evidence.

In modification cases, when the parties are both pro se, some JDR judges expect the GALs to ascertain whether or not the requisite 'material change of circumstances' has been met, and if not met, expect the GAL to bring that to the court's attention in advance of scheduled hearing dates so as to free up additional time on the court's contested docket.

I have only had two cases continued due to the GAL failing to file a report. The need for a bifurcated trial in order to determine whether a GAL is needed would defeat the purpose of appointing a GAL in a lot of cases. Frequently the Court is assisted all the way to settlement by the appointment of a GAL. Questions 23 & 24 are difficult to answer. I believe financial affidavits are filled out by the parties independently of the guardian ad litem. A List of Allowance form is filed with the Court and paid by the state but the parties are frequently ordered to reimburse the Court for the amount submitted. What percentage of the parties actually do is unknown to me. If a GAL is appointed over one parties' objection, the other party can be held responsible for the entire cost of the GAL. Lastly, GALs are crucial to our jurisdiction.

In addition to divorce and custody issues, I have had good experiences with GALs in guardianship and conservatorship cases, and find them to be caring and professional in those cases as well.

The courts give too much weight to the GAL. In my experience, the GAL can take a dislike to one of the parents to the benefit of the other parent. They may also like one of the lawyers better than the other and it can affect his/her judgment.

Guardian ad litem are so important in these cases as the voice of the child and looking out for their best interests. Often in very difficult cases the GAL's is vital to really emphasize the proper points so that the Judge can really focus on making the right decision based upon the GAL recommendation. The pure focus on the child is a unique perspective that only a GAL can provide.

to tell Counsel what has been done and how they are leaning. (But that does not mean, that's what what they say when we get to trial. Very often, the take no real part in the trial, wait until the end, when they can already see how the Judge is going, and then sometimes just say that, even if it is completely opposite of what they were thinking prior to the Judge conducting the trial. In Judge Wiggins' courtroom in Arlington J&DR, for ex, you can always tell where she's going as the trial progresses, and the GALs will almost never oppose that. So, in her cases, the GAL is just an extra, and unnecessary expense.); re Question 14: Since the GAL rarely files a report, the case is never continued because he/she hasn't done one - moreover, even if the case were continued for lack of a report, what do you mean by "who pays for it?" A GAL won't ever be required to pay my fees to re-prepare for a case and that is the cost my client would bear - I really don't know what other cost you mean. Re Question 24: I definitely have an opinion - if the strict reading of the Code allows assessment, and if the Court assesses the costs (which they generally do but sometimes don't, I can never tell which they'll do or why), the Judge almost always requires the party with money to pay, even if the party without money was completely ridiculous and caused expense and/or delay throughout the process. In one case I had in Alexandria J&DR, the only reason my client (who won hands down and who was put through the wringer by the other side's antics) didn't have to pay the whole thing was that she had lost her job entirely only a week before the assessment hearing. So nobody had to pay. But for that, the Court was totally prepared to sock it all to her. I realize that, if we continue to have GALs, they have to be paid - but it ought to be related solely to income but also to who did what to increase costs along the way.

While some GALs are excellent, many are not. I have had cases where I was faxed a GAL report the morning of the trial in Chesapeake JDR. This was a case that had been going on for 10 months. Receiving the report in this fashion was wholly unacceptable. There is no mechanism to hold the GAL accountable - and this one was court appointed at the outset of the case because the GAL was in the courtroom. On the other end of the spectrum, I have used many excellent GALs who provide timely recommendations and reports - as well as helpful insight during the case. I have made it my practice to try to agree on a specific person to act as GAL with opposing counsel to insure an unbiased, fair and professional GAL is then involved. If the right GAL was appointed, I would then absolutely agree to allow the GAL to set a parenting schedule - but I could not choose that answer in the survey when so many GALs are sub-standard or simply going through the motions. A GAL's recommendation is routinely followed by the Court (as the main determiner in the case) - therefore the attorneys engaged in this sort of work should be beyond reproach. This is not always the case - and sadly so, for the parents involved in this litigation who are litigating the most important issue of their lifetime.

GAL's are and should be held to a high standard. They are litigators and should be prepared to represent their client as vigorously as any other attorney. They should be compensated in a manner equal to other attorneys.

We have some very excellent GAL's and others who are not even close. As a practice some collect their information only a few days (or hours) before a hearing and often do not corroborate the information before presenting it to court. Some fail to maintain continuing contact with their wards. Reports in my area, were at one time, considered hearsay, but Judges are inconsistent in regards to whether they want reports or not.

This was difficult to answer because it does not fully account for the differences in JDR cases vs. Circuit Court cases and the differences between private cases and dependency cases. In private

My biggest frustration with the GAL system here is that other than a Bar complaint there is no effective way to confidentially communicate with a court concerns about a lazy GAL, one that misrepresents information/opinion as facts, one that is not competent to deal with and understand mental health complexities and one whose professionalism is questionable (i.e. too much like a pal with opposing counsel or the adverse party in front of the client). Around here (metro Rich) there are some who take their role very seriously, are professional and either are already competent or become informed and competent about complex issues. However, too many consider this as means to express their personal mission or ideology or they are just not competent to actually try a case in a courtroom. I have seen some embarrassing direct and cross examination by GALS that would make you cringe.

The horrible state mandated pay is a big problem. Personally, I cannot afford to serve as a GAL because it would cost me so much in revenue to do so and many of my long experienced peers are in the same situation. Therefore, we are left to deal with very young attorneys as GALS whose last experience with divorce was as a kid in their own parents divorce. They have no idea about children and their developmental needs. They have no idea about developmental psychology and attachment theory.

Having kids of your own ought to be a qualifier.

We never get written reports around here because that would be too much like real work and the GAL would actually have to commit to a position or to organize their information etc before the trial date. Mostly around here they just wing it and equivocate. I would rather have a GAL who will be straight up with me about my about my client and their warts etc so that we can take some steps to mitigate the weaknesses and bring their best parenting skills forward.

I also think that the GALs for the most part really have no idea about their role and actually have never read their guidelines. They just guess. They really should be tested about the contents of the book that sets out the guidelines. I am amazed that some do not even know that there is a book. I make the new family law attorneys in my firm read the GAL guidelines and we meet and discuss even if they are not going to serve as GALs.

The mentor ship requirement is lacking because there is no over sight. Someone needs to mentor the mentors.

I think that there should be a Bar Section for the GALs and that they should have their own CLE training at their meetings about ETHICs first of all and then about their jobs and (hello) the law. The fact that so many are totally unaware that there is a part in Title 16.1 that pertains just to JDR Cts is appalling. They are also very ignorant about the rules of evidence and procedure.

Thanks for the forum to share my thoughts. I am happy to share more ideas on how to improve the system. I have practiced family law since 1988. That is a lot of experience. I have been a GAL back in the day. The best training to be a GAL I had was that I was a Mom. I think that the whole system is in bad need of improvement.

An issue with GALs that doe not seem to be addressed anywhere is what to do when GALs show bias? Proving this seems nearly impossible and, at the least, very awkward. What is or should be

was not prepared for court.

There are a few GALs in my area that are good. They do the job, they communicate with counsel and they are helpful with mediating between the parties. The ones I am referring to have been practicing a number of years and have their own practices they are accustomed to dealing with clients and their needs. Also it is helpful if they are parents themselves. People who do not have children do not understand parenting! It is significantly different than being an aunt or uncle. Attorneys with less than 5 years of practice are not helpful. The system is flawed. There should be better screening than simply going to a course and shadowing another GAL. Some times the GAL is incompetent; good luck getting them replaced! Judges do not want to hear it usually. GALs should be matched up to cases according to backgrounds etc. and abilities. Simply having a next on the list approach is a waste of time.

The real issue is the vast disparity of effectiveness among the GAL's. Some are very superficial and others do an excellent job of fulfilling the role of a GAL. The courts seem to be completely unwilling to avoid using the unsatisfactory GAL'S. I would like to see the judges be more selective in the appointments of GAL's. All too often, a specific GAL is appointed because that is the person available on the day the case is set to be tried.

Many of the answers to the above questions should not be either Yes or No. There is a wide variation in GAL performance in this area. Some follow the rules, some do not. Some judges hold the GAL accountable, others do not.

The GALs in this area of the state are used more like an independent investigator for the court. They report to the judge. They do not normally make a written report unless the judge requests it. The judges rely heavily on the GALs and generally the GALs have to show that they completed an investigation into the case and that they met with the required parties. Most of the judges in this area feel that the GALs are doing an invaluable job for the children of the Commonwealth.

GAL Reports are rarely ordered in JDR Court and almost always ordered in Circuit Court. As a long time GAL, I often file discovery requests, subpoena witnesses and request releases. I also file a GAL Report in JDR Court even though it is not ordered. Most newer GALs do not do any of these. Attending family bar seminars in Northern VA, I have learned that it is rare that GALs there do discovery or subpoena witnesses. Since LEO 1870, I send a letter and Consent to counsel form. I have provided this to other newer GALs for their use as well.

I feel that a GAL can convey the child's preference to the Court without having to bring the child. Unfortunately, too many GAL Reports are wrought with hearsay. Some if it is unavoidable because you are "reporting" to the Court but GALs should be cognizant of this and scale back as much as possible.

Unfortunately, some of my answers above should be modified to include "sometimes" and the like. For example, all of the Guardian ad litem's in my area are not below average. Many of them are. The few that are typically viewed as good or excellent are extraordinarily busy and often cannot devote the time and attention required throughout the course of the litigation and frequently play catch up as the trial approaches.

Also, although most guardians ad litem discuss their opinions with counsel prior to filing the reports, some of the newer ones (those with less experience or little business other than Guardian ad litem work) have a tendency to be much less forthcoming and in many cases feel themselves immune from questions by a party. Also, many of the Guardians ad litem in this area view themselves as the ultimate decision makers and do not accept/appreciate criticism, comment or input. This is especially true when they have really not performed their job as required by the

In JDR, the GAL is usually paid by the state to the extent the parties are unable to pay. In the Circuit Court, the parties pay. It depends on the judge if the fees will be equally divided or pro rata.

Written reports are counterproductive; they only box GALs into a position or force them to not take a position since it has to be done before the GAL hears witness testimony. Thank goodness my judge doesn't require them.

It's very hard to get a GAL in FFX, and indigent clients are often required to pay, even when represented by legal aid.

I will always remember from my initiation (session/CLE) into the Virginia State Bar from a foreign jurisdiction, that in this day-long session, a Family Court Judge stated the following, relevant here:

"I AM ALWAYS SO CONCERNED TO SEE ATTORNEYS BEFORE ME: WHO, BECAUSE THEY ARE ILL-PREPARED, SOMEONE GOES TO JAIL: LOSES THEIR LIBERTY !!"

P.S. I suspect that each case is different from the next, and thus her assertion, while dealing with the criminal ramifications of her "Juvenile and Domestic Relation Division", means that such STILL exists: and might ought to be looked at by those who know far more than me, and appear far more than me.....I DO know that I was the first in years to get a client retained in her public housing, this by threatening (sic) to file a Habeas in FEDERAL COURT: in order to change the ridiculous ruling of the U.S. Supreme Court:so UNJUST was the 24-hour, imminent eviction, etc.....more time (that's the problem with low gov't reimbursement RATE for attys): is it STILL the lowest of any of the 50 states???

The biggest issue I see as a GAL is that we are not notified when adoption proceedings begin or end in Circuit Court

It is my hope that this not part of a growing effort by the retained bar to disparage work by hard working GALs

Most of these questions should be answered by saying it really depends on the case. Normally, if attorneys are involved I send them a written report and recommendation. If no attorneys are involved our Judges often ask the GAL to give his or her report first as it usually really helps narrow the issues for trial. All of our Judges are very clear to everyone that the final ruling of the court rests with the court and not the GAL. And although our Courts rely heavily on the GALs, the Judges will rule contrary the GALs recommendation. Our District is small enough that our Judges know all the GALs well and they simply will not appoint an attorney who does not meet high standards. In addition to custody matters GALs also provide service in many DSS cases and for incapacitated adults.

With regard to number 24, it varies from jurisdiction to jurisdiction in the Northern Virginia area.

There are several questions that could not have a yes or no answer so i choose the lesser of two evils. In the area where i practice the GALs do not file a written report, Fairfax and frankly i do not think they should. I have changed my mind after the evidence has been presented in a couple of cases. I also did in a case after i had questioned the mother. So much can and does come out in trial that will and does change the outcome. CASA volunteers file written reports but they are not attorneys and do not make recommendations to the court as do GALs

I can only think of one GAL who did an excellent job, actively litigating for their client by filing motions, discovery, subpoenas, in 10 years of family law practice. Most GALs seem to wait to the last minute to do anything, including start the investigation. The GALs I have had experience with in Hampton and Newport News added nothing of value to the cases, in my opinion, and one or two even seemed almost hostile in dealing with me (from the other side of the water). Only a handful of GALs are above average, one is excellent -- in my experience. Most GALs are useful in trying to settle the case.

GAL's are very uneven; some very skilled and helpful, while others much less so.

Some of the above answers reflect a less than completely consistent practice. For example, # 24, there is never any one way in which the fees are allocated. It can be any one of the possible choices in any one case, or some combination thereof, but something entirely different in a similar case. Likewise, #23, some Judges will reappoint the GAL on appeal, others will summarily dismiss them. As for the helpfulness of a GAL not necessarily abiding by the rules of evidence or of appointing a GAL without a prima facie showing of a change in circumstances, sometimes the GAL's involvement is necessary in order to get to a prima facie showing, such as a conversation with a child that is himself too young to yet be called into court, or the benefit of the GAL being able to talk to an expert witness, such as a child's counselor, without all the expense of bringing that witness personally into court. That evidence should be available through the GAL, so long as there is accountability by the GAL, such as being subject to cross-examination, discovery, etc.

I have had multiple cases in the past couple of years where the GAL is given authority to set the visitation schedule pending the hearing. Further, I have had multiple cases in which the GAL does not even speak to one parent or visit one parent's home, and then gives an oral report to the Court as if there has been a full investigation. I have objected to GALs on multiple occasions, but they always get appointed. I have tried to allow my clients to testify about their interaction (lack thereof) with the GAL and in one case, the GAL objected and the Court sustained the objection. It has reached a ridiculous level.

I have practiced solely as a GAL for children in central Virginia for the last seven years. I think GALs should be held to their Standards of practice and bound by rules of evidence. I find the idea of subjecting GALs to discovery very problematic. If they are not doing their job they should be disciplined by the Supreme Court or removed from the appointment list. I think that more can and should be done to enforce the Standards of practice, but that being subject to discovery would seriously impact a GAL's ability to advocate for their client. I realize there are GALs who don't do the best job, but those of us working hard for \$55 per hour under difficult circumstances should not be penalized for that. I also think the discovery tool would be misused by parents' counsel. It should not be their role to monitor the GAL, but to bring any concerns to the court or the Supreme Court and let them investigate, as is done in a VSB complaint. I appreciate the effort to look at this issue and hope that productive discussion/change will result.

The practices are not consistent throughout the jurisdiction. The Circuit Courts will appoint GALs but only if requested by a party. In my experience, reports are generally filed by the GAL in Circuit Court cases and only rarely in juvenile court cases and that decision rests with the GAL. I did not answer 19 because I do not know the practice not having that situation come to my attention. I did not answer 20 because I am not clear on whether you mean subject to discovery as a representative of the client/child or in his or her individual capacity; if the former, then yes; if the later, no. I answered that GALs don't generally call their own witness or issue

PLEASE do not screw this up!!!!

In my experience, a competent GAL can make a custody case so much better. However, a GAL who is incompetent either because he/she does not understand the standards by which a GAL should be governed, or because he/she does not put the appropriate effort and time into a case, can create so many more problems. It is better to have no GAL at all than an incompetent one. The primary problem with the whole GAL system, as I see it is there is not accountability for GALs. Courts rarely entertain motions regarding a GAL's performance, or lack thereof. While I do believe a GAL should have discretion to decide the appropriate steps in his/her investigation, there are standards that govern, and the vast majority of GALs do not comply with the standards. The Courts do not police this situation. The court appointed lists in Juvenile and Domestic Relations District Court need to be policed and the poor GALs need to be removed from the list. We are not serving the citizens of the Commonwealth of Virginia by allowing GALs who do not take their job seriously and do not put in the effort to make the appropriate recommendations to continue to be appointed on custody cases.

The Standards in JDR and Circuit Court are often handled differently. For example, in JDR the Court will allow more oral reports. Also, in JDR the fees are invariably paid by the state (but often charged to the parties later) but in Circuit Court the GAL may charge the parties and at a higher (non state mandated) rate.

GALs for the most part are mediocre. They rarely conduct an independent investigation but rather accept the word of the parent they like. They do not assist the parties in obtaining information about the child e.g., access to medical records.

Judges rely too heavily on reports of the GAL because it makes it easier for them.

The entire system needs an overview. For example, a newly appointed JDR judge who sits in Greene, has thus far refused to interview a 17 year old child--she'll be 18 in August and the issue is visitation! Va.Code Section 20-124.3(8) requires the court to consider the reasonable preference of the child.

I chose "average" for quality of GAL performance in my area, because there is a huge difference in quality from one jurisdiction to another. For example, in Rockingham County, most GALs do a fantastic job but next door in Augusta County, a lot of the GALs barely look at the case ahead of time. As far as GALs being held accountable, some judges say "well, my hands are tied because so-and-so is on the list and I must take the next one in line" but I have also had some judges appoint someone different when I expressed dismay at the initial selection, because the reputation of that particular GAL was such that the judge knew he would do a poor job. Some judges (not in Rockingham County) pooh-pooh the idea of having a GAL at all: the attitude is "why can't you try your case without a GAL?" This attitude also pooh-poohs the reasonable preferences of the children, as if their say is not at all important. As far as asking for permission to talk to the parties, some GALs have started doing this because of that asinine opinion saying that they ought to, but as far as getting releases, the order of appointment gives the GAL access to pertinent records so releases really aren't necessary. As far as payment, our judges typically have the Commonwealth pay the GAL but then have the parties reimburse the Commonwealth for the GAL's fee, based on financial information and also whether one party or the other has

understand that they must function not only as glorified CASA workers, but also as attorneys advocating for the child's best interest. Others put in minimal effort and somehow function under the misconception that they should remain neutral. Further, there are some judges who imbue the GAL with far too much authority, in effect giving them the practical role of a judge in controlling, at least temporarily, the parenting schedules and other conditions placed on the parents. I have felt uncomfortable, at times, with the role I was ordered to play as a GAL--setting parenting schedules, etc. I stopped doing GAL work in part because I was routinely being ordered by judges to do this and I felt it was inappropriate. I felt the judge needed to take evidence and make a temporary ruling as the finder of fact. Putting me as the the GAL in that position made it more difficult for me to do the job I needed to do to adequately represent the best interest of the child.

Guardian ad Litem are an essential part of the Family Law Process, although certain changes should be made to their powers and duties. More time given for discovery outside of home visits.

-Matthew L. Kreitzer, Esq.

GALs have too many cases and are not spending adequate time on each case. I have found that GALs truly take it personally when an attorney advocates on behalf of a parent in opposition to the GAL. One GAL in particular has been known to be unprofessional and to have questionable practices, though the majority of the GALs I've worked with a professional. What is the mechanism for documenting such concerns and complaints?

I have serious concerns with the role of the guardian ad litem in my area. I think it is procedurally unfair that the guardian is not subject to the same hearsay rules that the attorneys are. Specifically that they can tell the court the things the child has said but the parties cannot. It is even worse when an in camera interview of the child is performed by the Court with the guardian present but not counsel for the parties. Then you have the child testifying, the guardian also telling the court what the child has said and the parties having no opportunity to confront the child witness or tell the court possible contradictory statements made by the child. I recently had a case where a 13 year old child was allowed to testify in camera and the guardian told the court statements the child had said to her. Prior to the child and the guardian speaking with the court the child told his mother that he was going to lie to the court to get what he wanted and the mother was unable to bring that to the court's attention. As counsel for the mother I made the guardian ad litem aware of that prior to the hearing but she did not bring it to the attention of the court so that the court could consider that when weighing the child's credibility. I think the court appoints GALs too frequently given the statute's narrow provision for appointing them when both parties are represented by counsel. The court is quick to rely on their recommendation and there is little opportunity to let the court know if you believe an inadequate investigation has been done or if there was a bias. The court tends to completely disregard any claim of such and looks negatively on a party that raises a concern with the guardian's performance. In a related issue I think there needs to be a rule amendment that states that the child's out of court statements are considered to be statements of an opponent party and an exception to the hearsay rule. In a lot of custody cases the child holds all the evidence. If they testify to the court but then the other parties are unable to introduce statements of the child then there is no way for the parties to confront the child's testimony.

I believe it would be extremely beneficial if Family Law attorneys were able to anonymously

offer a report based upon all information available to me, hearsay or not. Routinely though, and rightfully, judges limit the decision based upon what is presented at trial. Judges get it in Hampton Roads. I will say representing parents in other regions, gals are abysmal. Had one in King George County who refused to talk to me then didn't show up to trial but sent a colleague. In Portsmouth, I've yet to receive a written report. The job is a labor of love despite my extensive kavetching.

I practice mostly in the Stafford/Fredericksburg/Spotsylvania area. In my experience, many of the guardians ad litem appointed in these areas do the least investigation possible, i.e., they will talk to the child's teacher(s), but not necessarily to the parties' witnesses. They fail to communicate with counsel as to suggestions to improve co-parenting for the best interest of the child(ren), and take the position that the parties should agree with their recommendation for custody/visitation or they will recommend adversely against your client. They take this position because the court gives great deference to their GAL's recommendation. In the worst cases, a GAL will give a recommendation when he/she has done little investigation and is hearing the evidence for the first time at trial. I have been frustrated lately in high conflict cases, where the GAL's are not making sure that the child is attending counseling sessions because the primary custodian will not take him/her. This type of inaction forces the parties to incur unnecessary legal fees by asking for court intervention.

There is a statute that instructs GAL's as to their duties, but I find very few follow it.

When a GAL's shortcomings is brought to the court's attention, the court becomes very defensive of their GAL. I do not want to be the one to do this because the court may rule adversely against my client.

Some of the answers to these questions can't be answered with a straight "yes" or "no." I find that the guardians in Northern Virginia are either excellent, or poor. There does not seem to be much middle ground. I find that in general, the judges treat the guardians as experts, in that they permit the guardians to go far beyond their roles as attorneys for the children. They are asked their opinions as to what should happen, with no opportunity for counsel to cross-examine. Guardians should, in my view, present evidence, examine and cross-examine witnesses, and present argument, just as counsel for the parties would do. Instead, the guardians are used in a quasi expert/investigatory fashion that I find inappropriate. Hearsay is routinely admitted, when, for example, the judge asks the guardian, "what do the children want?" That is hearsay testimony. The question should instead be, "what does the guardian argue is in the best interests of the children - based on the evidence presented to the court."

The system of GAL must be abolished. At the very least the GAL should not be allowed to use hearsay.

The quality of the investigation varies quite dramatically depending on the Circuit (I am generally in 12th, 13th, 14th or 15th) and on the GAL appointed. It is generally understood that GAL's will rarely be removed, so filing a Motion is perceived as probably futile. Since the GAL cannot be examined, it is difficult conveying to the Court that the person whose recommendation they are considering and usually giving great weight to has not met with child in many, many months, or has not met with the child while the child is in the care of each party, or things of that nature. A majority of GALs are very involved and follow the Standards for GALs closely, but a disturbing number do not seem to care about the children, and either do not know that there are

of "Material Change" in the 15th. If so, every Modification case would take over a year from filing to final order.

Please note that where I practice there are some Circuit judges who almost never reappointed a GAL in the Circuit Court. If I even receive notice of an appeal in these courts, I usually submit an order relieving me.

#23 - J&DR Court GAL generally paid by Commonwealth, but may be subject to reimbursement from parties. Circuit Court GAL fees are the responsibility of the parties.

#4 - GAL's in this part of VA range from excellent to below average

About 20% of the GAPs in our area are stellar. They are good lawyers who care about their clients, and they work hard for little pay. The rest are either bored and suggest 50/50 custody as a panacea or just awful. I have a case pending over two years because the gal cannot get his/her act together.

My answers are likely colored by two fairly recent experiences. In one, the GaL told my client (while investigating pre-trial) that I should have been fired for my handling of the case. Once I became aware of the comment, I tried unsuccessfully to have her removed from the case. At a hearing, she did not deny making the comment when I raised it with the judge. In the other instance, a different GaL had an ex parte discussion with a Family Court judge in another state regarding an incident between the parties in that state resulting in a Protective Order proceeding. I was not made aware of that contact until the day of our hearing. I objected during the hearing when he brought up the discussion with the foreign court judge. Nothing was done by the judge hearing my case. Some judges give undue deference to the GaLs and allow them to essentially testify. Is the problem with the GaLs or with judges who fail to have high expectations for them? I suppose reasonable minds can differ on that.

These questions should have had the option of answering n/a or providing a written explanation, not just yes or no. Some of our GALs are excellent, many are not. Some GALs ask permission to speak to clients, subpoena records and witnesses, most do not. As for discovery, GALs should be treated as counsel and not as a party.

Whether GAL's can testify and/or report what children have told them is a very important issue. I, and many attorneys, are reluctant to call children as witnesses in court (even in camera). Some judges allow what would otherwise be hearsay, and others don't.

GALs are paid by the party with the most funds-this is often highly unfair as the other party often requires the costs to be incurred.

Very difficult to answer many of the questions as there are some GALs who are excellent, many who are not great, and some who are average.

Guardian ad litem are just like lawyers, and Judges, and persons. They have different abilities, personalities, life's experiences, and perspectives. Some are very dedicated, others treat the matter with less priority, or are themselves time-constrained to work on matter, yet come to Court claiming to understand the case and report as to what is in the best interest of the child they just met in the waiting room. In most cases it is better that GAL's are involved, but the involvement is not consistently quality work. Opinions of GAL's are strongly considered by the Court. Yet, the opinion of a GAL may be based truly, on that GAL's own personal values. It can change the course of a case for the parents and child based solely on who is appointed and how the GAL perceives the situation. To use the words casually, "it is the luck of the draw" as to who the GAL is, and yet the GAL has strong influence on each case. When both parties have counsel,

opinion should be "obeyed" like the Judge. GALs are paid by the Commonwealth and then reimbursed by the parties in JDR in the Valley. GALs are paid by the parties in Circuit Court. There is generally an equitable apportionment of the GAL fees in Circuit Court, taking into consideration who asked for the GAL, the incomes of the parties, who substantially prevailed, who necessitated much of the work/investigation by the GAL. The JDR Courts in our area will also consider equitably dividing the fees taking those things into consideration, if counsel makes an issue of it. Many GALs in our area have a "checklist" of things they discuss with the parties and children that they utilize to make either a written or oral report to the Court. Written reports are rare, however. I believe the system would benefit from requiring a written report from a GAL, which is circulated to the parties 7 days prior to trial or hearing. This would force some GALs to do their job in a more timely fashion. The question that asked about whether GALs in this area subpoenaed records or documents- that is a "sometimes" response also. Some GALs in our area have taken advantage of today's technology and brought video (ipad or laptop) of people's homes to Court which I find exceptional- when state of the home is relevant. I also find it helpful when the GAL can be authorized to require people to submit to random drug screens and the Court's here will do that. BUT, I feel strongly that it is not the place of a GAL to be a decision-maker in lieu of the Court.

Guardian ad litem should rarely if ever be used in custody cases. Even the statute provides that in a custody case, a GAL should NOT be appointed unless the children's interests would otherwise not be protected. Despite this, most JDR judges and some Circuit Court judges routinely appoint a GAL, even if neither side is requesting one. The same courts routinely appoint the same people. I have never had a GAL actually subpoena a witness or call a witness to the stand at the hearing. Most times, they don't even ask questions of the witnesses that are called by the parties. At the end of the case, they make "recommendations" usually based upon hearsay and these recommendations are weighed very heavily by the court and often followed, despite the evidence presented in the courtroom. While there are some good GAL's, they are the exception, rather than the rule. GAL's are often biased against one of the parties. A parent should not have to worry about "losing custody" of their child, because the GAL doesn't particularly like them, or, for some reason they like or bond more with the other parent. It often seems to become about who the GAL likes more as opposed to the best interests of the children based on evidence presented. Also, a lot of the GAL's are not only new attorneys but some don't even have children - yet, they are allowed to make recommendations about a parent's parenting with little legal experience and no parenting experience.

There are some good Guardian ad litem in the area. However there are some that do not do the work that is required as GAL. In those cases when there is a GAL who is not performing his or her duties, there is no expressed method to communicate to the Court or have the Court address this issue. As a matter of fact in the past, when it was communicated to the Court that a GAL was not performing the required duties, the Court not only did not address the issue but verbally reprimanded the other attorney who brought it to the attention of the Court. So, that GAL continues to be appointed as GAL.

There is also another issue with a GAL who is biased against a specific race of clients and who treats those clients in a manner that does not foster a good attorney/client relationship and that GAL acts contra to the best interests of the child.

So, in those cases of bad GAL's it seems like there is no recourse to bring the issue to the attention of the Court and when that issue is raised there is no resolution

12 -- qualified... for temporary or pendente lite only

There are no written reports in any custody/visitation cases.

There are good/excellent GALs and there are very bad GALs in this area.

In this community (Cville/Albe), I have rarely seen a written report from a GAL. I have had a GAL not even speak to the petitioning parent until the day of the hearing. Many rarely inquire with collateral sources of information. Too many treat each case the same way with a cookie cutter approach. The passivity can be quite disturbing. Few perform the due diligence to understand a case fully. Better training is required and cross examination of the GAL should be permitted.

We need to make some changes in the GAL system in the Richmond City metro area. GAL's are given too much power by J & D Court Judges to make amendments to custody and visitation orders when the case is pending.

It really is tough when the GAL reports are filed with the Court and opposing counsel late, which typically happens in 95% of all cases I have worked with that have GALs. It's truly unfortunate and prevents opposing counsel from preparing effective advocacy their client (who is usually impacted by the GAL report). There should definitely be court rules with regard to the filing the reports in advance - similar to proper notice for a hearing or something to that extent.

GAL practice in Hampton Roads is inconsistent and in need of serious reform. Most GAL's lack sufficient training and experience in mental health, parental capacity and general parenting skills to properly assess the best needs of children. I would much prefer a system of professional custody evaluators who have advanced training in these areas. Child psychologists, psychiatrists and marriage and family therapists are much better trained than the typical GAL (young lawyers, a year or two out of law school and often child-less or solo-practitioners who lack appropriate staffing to provide the level of service needed). Part of the problem is the terrible compensation paid in the juvenile court for court appointed GALs. The system provides a strong financial disincentive to engage in the work necessary to handle the case. For every hour spent as a GAL, earning a paltry \$55 or \$75 per hour, senior lawyers are having to turn away clients who can pay \$350 to \$400 per hour for their services as divorce lawyers. As such, there are not many senior lawyers, other than some solos with small client bases, that are willing to do the work of a GAL. All that being said, there are some outstanding GAL's in the area, but too often the GAL is appointed, particularly in J&DR court, based upon a rotational list, rather than with input from counsel. Also, if you get a bad GAL in juvenile court, you are stuck with that person through any appeal to circuit court. Just as the court appointed system for criminal work was revamped to require certification from the indigent defense commission, more stringent guidelines need to be developed for those who wish to serve as GALs. If we are going to keep the lawyer-as-GAL model, one reform would be to require all GALs to have practiced in the area of family law for a minimum of five years before even being eligible to serve as a GAL.

As for questions 15 and 16: there is no real way to challenge a poor performing GAL because the GAL is not subject to cross examination, but is allowed to essentially testify (guised as a report or recommendation). A custody evaluator would be more like an expert witness, subject to cross examination and discovery rules. Of course, if we ever went to the family court concept, we could develop a team of judges, lawyers and mental health professionals with the expertise to address the needs of the customers using the court system.

I don't believe the survey answers accurately depict the GAL process because a simple yes or no

and the judge.

Guardians should be required to file a written report and filed 5 days before trial

Quality of Guardian is spotty at best. No oversight by court. Not a good idea to complain in small jurisdiction.

Can be useful but need minimum time spent on each case.

Best full time or not at all.

Should be selected from lawyers within the jurisdiction.

Would love to have an extended group conversation about how to improve the system.

GAL should not be subject to cross-examination. GAL is not a witness. GAL is advocating best interests of child.

GAL is not required to interview every person that a party might request. I have seen that demand made just to try to wear out GAL. The party can call the person to Court to testify as a witness.

Most of the Judges in the jurisdictions in which I practice hold the GAL to same evidentiary standards when presenting issues and recommendations to the Court.

Q.20 - Should GAL be subject to discovery: If your questions is asking if GAL can be served discovery to answer or for a deposition - No.

You will be changing to role of GAL if GAL is subjected to answering discovery or being cross-examined.

In my jurisdictions, the Judges, Clerks and attorneys know who the good GALs are. The weak GALs do not get appointed.

GAL fees are apportioned based on percentage of income. I have seen GAL fee assessed against a parent who filed repeated baseless motions to amend.

In my jurisdictions, the GALs will talk to counsel before the hearing. However, there are some attorneys who will not ask that GAL's position until just before walking into Court.

Re problems with GAL report, a party can always cross-examine witnesses and other parties.

As a GAL, I always get permission to talk to a represented party before contacting a party. I document that permission in a letter to counsel with a copy to represented party. I have used releases to get medical records instead of a subpoena, but I always have the counsel approve the party signing the release before asking the party to sign. Most of the time the attorney asks that I send him/her a copy of what I receive which I do.

I would vote for the abolishment of GAL appointments unless the parties are pro se. More often than not, they are ineffective. Under the new rules, GALs cannot be examined by counsel and this seriously impacts counsels ability to apprise the court appropriately if the GAL has done a substandard job, which is often the case. Further, GALs are typically new lawyers without much

given to the GAL's report and/or investigation.

In my experience, there is significant disparity in the services provided by individual guardians ad litem. There are a few who serve the children well, conduct thorough investigations and make well reasoned and thoughtful recommendations. On the other hand, there are a number who do not conduct worthwhile investigations and whose recommendations are a waste of time. I have been involved in recent cases where the GAL has never laid eyes on the child he/she is appointed to serve even though the applicable rules require it. A number of the attorneys who serve as GAL in my area are new lawyers, and although they work hard and make a good effort, the lack of experience limits their usefulness. It is a rare case these days in which I will encourage my client to request a GAL. There's simply too great a risk that a bad one will be appointed, which not only messes up the case, but also costs the client additional funds.

The quality of GALs is extreme in my experience. The three or four who are good are very, very good. The ten or so who are not are very poor.

There is a real variance in the quality of the GAL's work in our area. There are GALs who do little to no work, and then there are those who get actively involved in the case. There are times when the GAL can pick a side early on and remain positional throughout the proceeding.

I practice regularly as a GAL and there is a big disparity in terms of GALs who do their job and those who don't. I do not know the percentage because I only work with the ones who are known to do an excellent job. I see a lot of potential for improving the program and believe that children in our jurisdiction desperately need good GALs to protect them from the difficulties of litigation. As a GAL I routinely send subpoenas, but it is difficult when there are costs involved and the parents disagree or attempt to thwart presentation of evidence. In Circuit Court, payment is an issue as well and some of the judges are not as supportive of GALs as others. Mostly, all of the judges are quite supportive and helpful to GALs who do a good job.

Excellent questions - I am glad this survey is being done. I understand how guardians ad litem can be helpful to the court. However, there are some serious due process issues involved if we are still treating family law like law and not like social work.

There are many Guardian ad litem who are not doing their job and the Judges reward them by continuing to appoint them. There is almost no way to point out to the Court that they are not doing their job without prejudicing your client. I am in Court for custody matters almost weekly in the 11th Circuit and I have only received 2 written GAL reports in 8 years. I feel the problems are directly related to the Judges not requiring more of the GALs.

In the 19th Judicial Circuit (Circuit Court or J&DR), if the parties want a GAL, they pay for his/her services. The costs are usually split 50/50% but either party can ask the court for a different split. GAL's are, in my experience, more frequently used in the J&DR District Court. Most of our Circuit Court Judges take the view that if you have two competent attorneys, you usually don't need a GAL.

While GAL's usually file a report, it is my opinion in an evidentiary hearing that such reports are hearsay and the GAL can be examined/cross-examined like any other witness.

Since the GAL is in an advisory role to the Court, I can not envision any circumstances under which he/she should be allowed to recommend or dictate the parenting schedule (your question #11 & #12)

Too many GALs are over committed. GAL work does not pay what private cases pay. As such, GALs who base most of their caseload on court appointed cases, and GAL appointments end up being too busy with the high volume of cases to give the appropriate time and attention to each

mixed feelings about the more important questions. GALs are useful precisely because the rules of evidence are inadequate for custody disputes and they provide a way around them. I want them to have that power and yet I also fear it and I know that real injustices can happen when we deny the constitutional right to be confronted with the witnesses against you. GALs shouldn't be subject to all the discovery process that parties sometimes are, but they shouldn't be allowed to completely hide the ball either.

These questions largely do not lend themselves to the black and white answers provided by the survey. Each case is different, our Judges differ and the quality of our GAL's varies WIDELY. A survey where most of the questions had a "comment" section would produce more accurate answers.

The practices greatly vary between Circuit and JDR Court. Also, some jurisdictions are much more inclined to appoint a GAL, as well as "rubber stamp" the opinion of a GAL.

There needs to be a better process through which family law attorneys can file complaints and/or comments about Guardians ad litem. There are some extremely poor GALs in Central Virginia and there is no process through which we can make it known. It creates terrible results for some families since the Courts rely so heavily on the GALs' reports.

GAL almost always think they have the ultimate authority to decide the issues in the case. If GAL likes one party over the other then the result is too obvious even before going to the court. There should be a limit and clear guidelines as to their decision making authority.

I don't prepare written reports but would not mind doing so. I believe there needs to be some way to drug test parents. Drug use here is rampant. But I don't want to do it myself. I also believe our Circuit Court Judges need to be able to appoint GALs and guarantee payment through the Court system. Too often children do not get their voices heard. This often happens when one party can afford representation and the other cannot. So the Court does not get a balanced view of the situation.

One of the biggest problems I have with GALs is their inconsistent practices. It's not fair to the clients when they don't know whether a report will be written or oral, known or not known before trial. I think GALs should have to share their opinion or findings prior to hearing. I also come from a jurisdiction where a GAL can be cross examined on their report, which I think is appropriate.

There is not typically a report at all in my jurisdiction. These questions assume there is a report expected.