

Magistrate Mark A. Huberman, OAM President
Mahoning County Domestic Relations Court
120 Market St.
Youngstown, OH 44503
Phone: (330) 740-2208
Fax: (330) 740-2503
email: mhuberman@mahoningcounty.org

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Doug Stephens, Director of Judicial & Court Services
Ohio Supreme Court
65 S. Front St.
Columbus, Ohio 43215

RE: Subcommittee on Guardians ad litem
Supreme Court Advisory Committee on Children, Families and the
Court

Dear Doug,

On behalf of the Ohio Association of Magistrates, I would like to take this opportunity to respond to the Committee's report concerning the use of *guardians ad litem* in Ohio courts. The OAM strongly agrees that there is a need for the Committee to develop a standardized definition of the responsibilities of the guardian ad litem. This must take into account the reality that courts across the state have developed different criteria as to whom may serve as a guardian ad litem. In many jurisdictions only attorneys may serve, while in others with limited numbers of attorneys, professionals from other sectors of the community (such as social workers, mental health professionals, school officials, and others) have served with distinction. The definition and statement of responsibilities as established by the task force in Recommendations 1 through 7 establishes a very good framework for the guardian ad litem and appropriately permits flexibility in the supervision by the appointing court.

The OAM also believes that training is an essential element in developing high quality service to the children in our state. However, mandatory training requirements must take into account the fact that many jurisdictions are facing tight financial problems. Therefore, training should be made available from state level resources but should involve community-based trainers who are attuned to the specific local procedures and needs.

The Association appreciates that there are differences in the uses of guardians ad litem because of the types of cases heard in juvenile and domestic relations court. Juvenile cases concerning the termination of parental rights have certain statutory

constraints placed upon the guardian ad litem report. Abuse, neglect, and dependency require certain other statutory procedures which might limit the recommendation process. However, it appears that the committee has attempted to narrowly restrict the use of the guardian ad litem report. Recommendation 14 seeks to treat the report as having no status as a “pleading”, but rather as a closing argument not to be considered as evidence as to the issue before the court and not to be given any greater weight than any other pleading. The Association shares the same concerns as the committee regarding the issue of hearsay in guardian ad litem reports; however, it is our belief that the guardian ad litem should prepare a written report and recommendation, provide a copy to each side in a reasonable amount of time prior to trial, and be subject to examination by all parties at hearing. After all parties have had the opportunity to examine the guardian ad litem and determine the basis for the recommendation, the report should be permitted into evidence for the trial court to attribute whatever weight of evidence it determines appropriate.

In short, the Ohio Association of Magistrates believes that the role of the guardian ad litem is to investigate the circumstances surrounding the best interest of the child, make a written recommendation to the court and participate in the litigation, particularly when the guardian ad litem is an attorney. The final report and recommendation should be subject to examination, and should be entered into evidence at the conclusion of the case. How the court determines the use of interim reports at pre-trial hearings should be left to local rule, as should the determination as to whether a guardian report be sealed or held confidentially by the court. Further the court should be required to establish a local rule concerning the payment of guardian ad litem fees.

The Ohio Association of Magistrates thanks you for your attention to our concerns and applauds your dedication to the issue of guardians ad litem in Ohio.

Sincerely,

MARK A. HUBERMAN
OAM PRESIDENT

cc: Hon. Thomas R. Lipps, Hamilton County Juvenile Court
Rick DeHeer, Stark County Juvenile Court