



April 30, 2007

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Via Email: lasmussen@nsc.state.ne.us

RE: Comment on Proposed Guidelines for Guardians ad Litem for Juveniles in Juvenile Court Proceedings

Dear Chief Justice Heavican and Associate Justices of the Court:

We appreciate the opportunity to submit these comments on the *Proposed Guidelines for Guardians ad Litem for Juveniles in Juvenile Court Proceedings (Proposed Guidelines)*. The Nebraska Appleseed Center for Law in the Public Interest (Nebraska Appleseed) is a non-profit, non-partisan law project that works to address systemic issues facing low-income Nebraskans and remove obstacles to self-sufficiency. In 2003, Nebraska Appleseed established its Child Welfare System Accountability Program which seeks to protect the legal rights of children in foster care and to work for lasting and meaningful reform of the system.

We believe the *Proposed Guidelines* represent a significant improvement on previous proposals and current practice. In particular, we support the *Proposed Guidelines'* suggestion that guardians ad litem (GALs) should consult with the juvenile not only during statutorily required intervals but at additional times throughout the case and should advocate for the juvenile to be present at all court hearings as appropriate. In addition, we support the *Proposed Guidelines'* recommendation that GALs not accept excessive caseloads¹ and that the Supreme Court may establish a statewide uniform minimum hourly rate of compensation for GALs.

Perhaps most importantly, we strongly support that the *Proposed Guidelines* make clear that the guardian ad litem may testify only to the extent allowed by the Nebraska Rules of Professional Conduct. This is essential in order for children to have strong and effective advocates. Previous proposals suggested that GALs may testify notwithstanding Rule 3.7 (Lawyer as Witness). Attorneys representing the best interests of children must not be exempted from this or any other ethics rule.

¹ While we generally support that the *Proposed Guidelines* state that GALs should not accept excessive caseloads, we urge the Court to adopt clear guidelines for what constitutes "excessive."

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If GALs are called to testify they are immediately placed in the untenable position of trying to simultaneously defend themselves (under cross-examination and impeachment) and advocate for the child's best interest. This invariably weakens the GAL as an advocate for the child.

Our primary concern with the *Proposed Guidelines* is that they do not go far enough to clarify remaining issues inherent in the "dual role" – in which a GAL in Nebraska is both an advocate who is deemed as the parent of the juvenile and charged with a duty to protect and advance the juvenile's best interests and also counsel for the juvenile. Of critical importance, the *Proposed Guidelines* must address the existence of attorney-client privilege and the duty of confidentiality within the "dual role." Presumably, no attorney-client privilege extends to the "best interest" or GAL-as-parent role. Privilege, however, would extend to the extent a GAL is acting as counsel for the juvenile. But does attorney-client privilege exist with regard to the "dual role?" What happens when the "dual role" is bifurcated and new counsel is appointed for the child? This confusion undoubtedly leads attorneys and children alike to believe that privilege exists in situations where it may not. The *Proposed Guidelines* must clarify this issue and, furthermore, should remind attorneys to explain confidentiality issues to the juvenile at the very beginning of their appointment and as appropriate throughout the course of the case.

Aside from this needed clarification, we believe the *Proposed Guidelines* improve upon the existing "dual role" model by clarifying that, subsequent to a GAL's assessment and request, the court may appoint separate counsel for the child where the juvenile expresses a preference which is inconsistent with the GAL's determination of the juvenile's best interests.

In conclusion, we believe the *Proposed Guidelines* represent an improvement on previous proposals and are likely to assist guardians ad litem in providing quality representation to children in Nebraska. We look forward to the Supreme Court's continued leadership on issues involving children in the courts and continued commitment to creating a system of representation that enables attorneys to effectively serve them.

Thank you again for the opportunity to submit these comments.

Respectfully submitted,

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