

Good example of guardian ad litem essay

[Law](#), [Criminal Justice](#)



Introduction

Guardian ad litem is appointed by the court in cases where in the process of dissolution of marriage there is a question as to who, between the two parents, is entitled to the custody of the child. In my role as a guardian ad litem in the case of Cathy, a 12 year old girl whose parents are terminating their marriage, there are several issues that I need to put into consideration. The information I have so far is that her mother, though a chain drunkard loves her a lot and is always ready for her assistance whenever she needs it. Her father, on the other hand, though not in gainful employment at the moment, would love to see his daughter getting the best in life. The task ahead of me, therefore, is enormous: to assist her in getting the custody of the best parent so that her rights are taken care of as a child. In this paper, I will present my report of the information that I got from Cathy, the various legal determinations regarding custody proceedings, the rights and obligations of the parents, the role of the court in this custody litigation and my role as a guardian ad litigator. As I stated before, my role is to act as a mediator, facilitator and a litigator to ensure that Cathy's rights of custody are met (McCathy, 2013).

Information from Cathy

In an attempt to prepare adequately for the custody proceeding, there is a wealth of information that I have to get from Cathy, which will enable me to represent her in the best way possible. The information I get from her will be confidential. In that regard, I will have to interview her in camera so that I ensure that I am the only person who acquires the information. First and first

and foremost, I need to acquire a lot of information about her emotional and social needs. In this regard, I will be intending to know a lot about what she likes most, what she hates, anyone that she loves most and those people that she does love seeing around. In this regard, I will insist on knowing who, between her two parents, she loves most and why she loves them that way. It will be important to know who, between parents; she spends most time with, who buys her lots of presents, who takes her to school, who buys her clothes and who takes her to hospital whenever she is sick. The information to this effect will assist me in urging the court accordingly as to whom, between the two parents deserves her custody the most.

I also need to know about her educational needs. Consequently, I would like to know in which class she is in at present whether she loves being in school, whether she loves her teachers, her fellow students and her parents who take her to school. I would love to know how she performs in school and whether she gets presents after good performance. If the answer is in the affirmative, I will want to know the parent who has given her the most presents. Finally regarding education, I would want to know about any problems that she might have experienced and how her parents have assisted her in solving the problems.

It will also be my interest to know about her age, how she has been developing over time both with the family members and the community at large. In this perspective I would also want to know from her whether she has ever visited her in-laws and how she interacted with her. Consequently, I would want to know about her emotional ties, her love to her parents and how connected she is with her parents.

It will be important to get her records regarding health, school, family and the community at large. Most significantly, I would like to know whether she has ever suffered from a disease in her lifetime which affected her health, school and interaction with other people. Her response as to how her specific parents were concerned will be of great help.

As I indicated earlier, I would make sure that this information is acquired in the most confidential manner possible. This will make sure that she is not exposed to ridicule by other children. Cathy, like other children, has right to parental, protection and to be raised in the best way possible. I would therefore want to know from her who, between the two parents, cooks for her and who washes her clothes. It will also be of importance to know who between her two parents cleans her whenever she is dirty. These will form part of the questions that I will ask Cathy in an attempt to prepare a comprehensive report which in turn will assist me in representing her adequately in court.

The rights and obligations of the parents

Parents have the equal custody of their children. As such, Cathy's parents have the right to live with her. This was the court of law position in *Albright v Albright* (*Albright v Albright*, 1983). The court would decide who had the higher right to take care of the child. Furthermore, the UN Convention of the Rights of the child makes various provisions regarding the rights of the child. To start with, article 9 of the convention provides that the child has the right of living with her parents unless there is a problem to that effect. Article 18, on the other hand, provides that the child has the rights of being raised well by her parents. As such, Cathy's parents are obligated under the United

Nations Convention to take care of her in the best way possible.

Additionally, they have the obligation of meeting the expenses of this litigation because it is being carried out in the interest of Cathy. Therefore, they should make sure that they contribute in meeting the expenses so that the court may determine as to whom, between the two of them, will have custody of Cathy.

Various court decisions regarding custody litigation.

Courts in the US have in numerous occasions been called upon to make various determinations regarding the custody of the child or the role of the guardian ad litem. In *Penn v McMonagle*, (*Penn v Mcmonagle*, 1990) for example, the court had been called upon to make a determination as to the role of the guardian ad litem. The court held that their role is to be given immunity against actions arising out of their litigation process. They are therefore supposed to be given sufficient protection to ensure the proceedings are carried out with due diligence and the importance that the proceeding deserves. In *Re Ethers* (*Re Ethers*, 1998), the court held that the most important role that the guardian ad litem is supposed to play was to ensure that the rights of the child are adequately protected to the best interest of the child. They therefore must do anything within their reach and means to obtain the rights of the child.

Patel v Patel (*Patel v Patel*, 2004), the court had been called upon to make a determination as to whether the primary caretaker of the child should be the one to be given automatic custody. The court held that indeed, there were instances that the primary caretaker of the child was to be given custody.

Moreover, in *Boykin v Boykin* (*Boykin v Boykin*, 1988), the court held that the

moral standards of the parent were indeed an important factor when deciding as to whom to grant custody of the child.

Furthermore in *Davenport v Davenport* (*Davenport v Davenport*, 1975), the skills both parents had regarding education and parental skills were both important factors to guide the court in determining whom to grant custody of the child. These are the decisions rely on in the court as I seek to protect the rights of Cathy of custody. Bearing in mind that both her parents are educated, the guiding factor will be to investigate who has better parental skills. The parent employment status will also be another important factor to make use of in presenting my case before the courts.

Cathy's rights and needs

I have already indicated that Cathy has the right to education, good parental care just like the other children and therefore she needs to be close to her parents. This will not be possible unless the court has made a determination as to whom between her parents, is entitled to be with her. She has the right to be fed, be in a clean environment and to be in a peaceful; community and therefore it is high time that the court makes a prudent determination to that effect. She also has a right to living with her family according to article 9 of the United Nations Convention for the Rights of Children. In a nutshell, Cathy has all the rights enumerated under that convention. It will therefore be in Cathy's best interest that the court makes a prompt determination towards ensuring that her rights are protected

The state has a duty of ensuring that children rights are protected to the later. The Child Abuse Prevention and Treatment Act of 1974 (CAPTA) provides for the duties of the state in the protection of the rights of the child.

The reason why there is the state and the courts in the perspective of taking care of children is to ensure that these rights are not violated. This is the reason why we will be approaching the court to make a determination about the welfare of Cathy

My role as a guardian

I will arguably play the bigger role as a guardian ad litem. In my duty as a guardian, I will ensure that I represent the rights of Cathy to her best interest and also ensure that I prepare sufficient information that will guide me in the litigation. I will have to be unbiased, non-partisan and fair so that Cathy is placed on the right hands for her custody. I will be a facilitator of justice and a guardian of the law towards ensuring that there is fairness and that the rights of both parents and the child are fulfilled to the later.

In my role also, I will be a negotiator, between Cathy and her parents so that the most suited parent is granted the custody of Cathy. My role also positions me as a surrogate parent of Cathy. This is because as we speak, her parents are terminating her marriage and she is at cross roads as to whom she will stay with. She loves both parents and she is worried she might lose both. That is where my role becomes a very important one regarding making a determination as to the future of Cathy.

I will also be both an educator and a legal advocate to Cathy. My role will entail educating her about her future and her rights and also representing her in court. Finally, I will be a fact finder, making the necessary investigations to make a sound determination as to who deserves her custody the most.

Important life issues that the court will determine

The court is bound to make a determination regarding the future of Cathy: whom she is going to live with, who will be taking care of her education, her food, her clothing and social life. In a nutshell, any decision the court will make will in one way or another affect Cathy's future. We will, therefore, urge the court to make the most prudent determination regarding her future.

Cathy's role in the proceeding:

Cathy will most likely play a more passive role and I will not allow her to testify unless the court insists that she answers a few questions, which I will oppose in the strongest words possible. This is because I am her advocate and will be representing her in court.

Parents role in the custody proceeding

The court will be required to know the following about the parents: their age, their willingness and ability to make provision for Cathy's basic care, their emotional ties with Cathy in the perspective of which parents has been in touch the most with her, their employment status and which parent had the immediate continued custody of Cathy. It will be the best approach in solving this problem

The role of the court

The court will ensure that these proceedings are carried out to the best interest of Cathy, with due diligence, use of technical and other means and also to expedite the process. The court will be the custodian of justice

References

Davenport v Davenport, 265, 524, 220, SE, 2d 228 (S. C 1975).

Albright v Albright, 437, S. O 2d 1003, 105 (S. C 1983).

Boykin v Boykin, 296, 100, 370, S. E . 2d 884 885 (S. C 1988).

Penn v Mcmonagle, 60 (Ohio, App, 3d, 149 1990).

Re Etters, 134 (Ohio, App, 3d 484, 490 1998).

Patel v Patel, 359 (S. C, 515, 533, 599, S. E 2d 114 2004).

McCathy, K. E. (2013). Guardian ad Litem: Laws in Other States. OLR
Research Report.