

Law Guardians & Domestic Violence

Law guardians are charged with representing the child in disputed custody or visitation cases. Law guardians have a great deal of power to influence the court's decision in custody and visitation cases, as Judges rely heavily on their recommendations. A Minnesota Task Force found that 74% of male judges and 63% of female judges actively follow the recommendations of law guardians and custody evaluators.¹ Cases involving domestic violence, child abuse and neglect and/or child sexual abuse are especially complicated and potentially dangerous. ***In these cases law guardians need the time, resources, training and supervision to make fair and appropriate assessments.***

Existing problems with how law guardians handle domestic violence cases

- 1.) Law guardians may not believe or investigate domestic violence, even when it is documented:
 - A study that analyzed 200 custody cases where abuse was alleged found that only 50% of these cases were investigated.²
 - Allegations and evidence of abuse may be "omitted" from reports by law guardians;³
 - Law guardians usually do not consult with domestic violence professionals involved in cases or follow up with potential witnesses of the alleged abuse; often children are not questioned about allegations of physical or sexual abuse;⁴
 - Law guardians may not examine or credit existing documented evidence of abuse;
 - If a mother alleges child abuse or child sexual abuse her attempts to protect the child are often dismissed or used against her to prove "parental alienation", an unproven and discredited theory based on the false assumption that mothers lie about abuse to gain advantage.
- 2.) Law guardians may substitute their own perception of what is best for the child, instead of advocating for the child's wishes. This is such a wide spread problem that the NYS Matrimonial Commission recently (January 2006) recommended that they be called "the attorney for the child" as a way to make their role absolutely clear.
 - Law guardians often do not have the time to develop trust with the child and thus have no basis for knowing what the child has experienced and what arrangement would best benefit the child in the future;
 - The assumption that a law guardian is better qualified than a parent to know what is right for the child is inherently flawed.
 - Law guardians often do not believe children when they disclose abuse or say they don't want to, or are afraid to, visit a parent and do not further investigate;
 - Law guardians are not properly trained on issues of domestic violence or child psychology;
- 3.) No practice standards or mechanism exist for complaints. There is no oversight of law guardians or evaluators:
 - There are no clear guidelines, required training, protocol, or role definition for law guardians;
 - Parents who believe their cases have been mishandled and/or their children are in danger due to custody or visitation decisions have no outlet for review;
 - There is no system of accountability for law guardians or system to monitor patterns of severe bias or ineptitude;
 - Repeated forensic evaluations (in one family's case there were 23 evaluations) is a form of harassment and is extremely costly for parents. It is also emotionally damaging to the mother and children. Some evaluators ask extremely personal and invasive questions;
 - There is no recognition of unequal power (based on position – for example, one parent is a lawyer, a DA, police officer, etc. - or income difference) between the parties, and no efforts to make the procedures fair for all parties.
- 4.) Gender bias can play a role in how parents are viewed or whether children are believed:

- Law guardians may not consider violence toward women relevant in custody cases and as a result recommend joint custody of the child in these cases. Often in their investigations, law guardians do not even assess for abuse of the mother and/or the child.⁵
- Regardless of the presence or absences of partner abuse, fathers who actively seek custody are awarded either primary or joint physical custody 70 percent of the time.⁶ Batterers are twice as likely (as non abusive parents) to actively seek custody of their children, as one way to punish or control their ex-partner;
- Law guardians often hold mothers to higher standards than fathers. Some believe that women are vindictive and liars;⁷
- Law guardians may have strong beliefs about how mothers or little girls should behave that prejudice their judgment; they may be less likely to honor girls wishes about custody or visitation than boys.

V.O.W.'s Recommendations for Change

1.) Training:

- Law guardians need to receive training on child development; understanding children's responses to domestic violence, child abuse and incest, and cultural competency. Training should be comprehensive, mandatory and ongoing. Skill level should be tested.

2.) Develop a protocol for evaluation procedures and conduct for law guardians and evaluators:

- Develop a detailed comprehensive and standardized format for evaluations and reports to the court that guardians/evaluators must follow;
- Set restrictions on questions that can be asked (for example: questions such as, "What kind of underpants do you wear?" are inappropriate and invasive and should not be allowed);
- Set restrictions on *when* calls can be made (for example: not before 8am and not after 9pm);
- Designate the amount of time and quality of interaction the law guardian and/or evaluator should spend with the child client;
- Disqualify any guardian with orders of protection or allegations of abuse against them;
- Limit the number of evaluations that can take place per case - no more than one a year - so that they can not be used as a form of harassment or waste the court's time.

3.) Develop guidelines specific to issues of domestic violence:

- Mandate that law guardians take documented past abuse into account when making recommendations;
- Develop standards by which law guardians must investigate alleged abuse;
- Require law guardians to document all investigations (phone calls, interviews, etc.) that s/he has made;
- Require that allegations of abuse be reported to the court.

4.) Rotate law guardians from borough to borough to ensure that they remain impartial.

5.) Reject the scientifically illegitimate theory of "parental alienation".

6.) Create an independent review panel to review complaints and watch for patterns of bias or ineptitude by law guardians and forensic evaluators.

7.) Give all parents and children an easy to read description of their rights and the grievance procedures available to them.

8.) Allow children over 10 to fire their law guardian if they feel they are not representing their wishes.

9.) Law guardian fees should be based on a sliding scale and paid into a blind fund that the law guardian submits bills to. This would ensure that law guardians do not side with the party that pays the greater part of their fee.

The Voices of Women Organizing Project (VOW) is a grass roots organization of survivors of domestic violence working to improve the many systems battered women and their children turn to for safety and justice. (November, 2003)

¹ Shafran, (2003). Evaluating the evaluators, *The Judge's Journal*, (42) 10-16.

² Brown, Frederico, Hewitt & Sheehan, (2001). The child abuse and divorce myth. *Child Abuse Review*, 10, 113-124.

³ Battered Mothers' Testimony Project (2002). Available at www.wcwonline.org.

⁴ Ibid

⁵ Brown ET. Al. (2001)

⁶ California Center for Protective Parents, www.protectiveparents.com

⁷ Shafran, (2003)