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Delaware Law Review

2001

4 Del. L. Rev. 77

LENGTH: 6425 words

ARTICLE: What does It Mean to Represent Delaware's Abused, Neglected, and Dependent Children?

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LEXISNEXIS SUMMARY:

... July 21, 2000, was a landmark day for Delaware's abused, neglected, and dependent children. ... In 1981 Delaware responded by establishing the Court Appointed Special Advocate ("CASA") Program. ... In enacting Delaware's CASA statute, the General Assembly recognized that:

... Since 1981 Delaware's CASA program has made valiant efforts to provide representation to Delaware's at-risk children. ... Other than the CASA program, Delaware has never enacted any other law addressing the CAPTA requirement that every child involved in a child welfare proceeding have a guardian *ad litem*. ... Specifically, CAPTA provides that a guardian *ad litem* is required to: (1) be an attorney or a CASA, (2) obtain firsthand a clear understanding of the situation and needs of the child, and (3) make recommendations to the court concerning the best interests of the child. ... With this new law, section 925 (17) of title 10 of the Delaware Code has been clarified to provide the Family Court with authority to "appoint attorneys and/or Court Appointed Special Advocates to serve as guardians *ad litem* to represent the best interests of a child in any child welfare proceeding." ... In short, guardians *ad litem* must be either Delaware attorneys or CASAs. ... Delaware's guardian *ad litem* statutes attempt to address this issue in several ways. ...

TEXT:

[*77] July 21, 2000, was a landmark day for Delaware's abused, neglected, and dependent children. It was on that morning at 9:00 a.m. that Governor Thomas Carper signed into law Senate Bill 415. n1 It has taken Delaware twenty-six years to get to this milestone, but Delaware is now well on its way to making these children our first priority. Senate Bill 415 seeks to ensure that every abused, neglected, or dependent child has a guardian *ad litem* representing the child's best interests in every child welfare proceeding from the day the child enters the custody of the Division of Family Services. n2 It establishes the rights and responsibilities of the guardian *ad litem* and makes the guardian *ad litem* a full party to any child welfare proceeding that concerns the child. n3 Delaware's most vulnerable, but often

unheard, segment of the population will finally have a voice, and the "big people" will have to listen. n4

IN THE BEGINNING

In 1974 the United States Congress passed the Child Abuse Prevention and Treatment Act ("CAPTA"). n5 CAPTA provided monies to states as an incentive to enact [*78] various programs and services to address child abuse. n6 In pertinent part, CAPTA required, and continues to require, that in every judicial proceeding involving an abused or neglected child, the state must ensure the appointment of a guardian *ad litem* to represent and protect the rights and best interests of the child. n7 In 1981 Delaware responded by establishing the Court Appointed Special Advocate ("CASA") Program. n8 The CASA program was pioneered by a judge in Washington State with a focus on training citizen volunteers to gather information and represent the best interests of children in court proceedings. n9 In enacting Delaware's CASA statute, the General Assembly recognized that:

children who appear in the Family Court as the subject of abuse, neglect or dependency proceedings often are situated in the middle of an adversary process. At times, these children have no one to represent their best interests, as opposed to the interests of the petitioner and respondent. Furthermore, when the child has no one to represent his or her interests, the Family Court may only receive information which supports the position of the petitioner or respondent. Therefore, the purpose of this chapter is to provide for a system to ensure that children who are the subject of abuse, neglect or dependency have their interest represented in those proceedings before the Family Court. n10

Since 1981 Delaware's CASA program has made valiant efforts to provide representation to Delaware's at-risk children. In the past nineteen years, the program has trained [*79] 428 volunteers to represent about 1,800 children. n11 CASA has never had sufficient volunteers, however, leaving more than one-half of the children in foster care without an independent advocate of their best interests. n12

Other than the CASA program, Delaware has never enacted any other law addressing the CAPTA requirement that every child involved in a child welfare proceeding have a guardian *ad litem*. This is in contrast to forty-seven states that mandate guardian *ad litem* representation of children in all abuse and neglect cases. n13 As a recent Family Court case noted, "In fact, in a recent study conducted by our Supreme Court, it was determined that 'if the State is to continue to receive federal funds through [CAPTA] ... it has an obligation to meet this requirement of Federal law.'" n14

[*80] THE AFTERSHOCKS OF SAMANTHA FRAZER

Many Delaware residents might remember the summer of 1998 and the case in which then ten-year-old Samantha Frazer asserted her constitutional right to be heard in a termination of parental rights proceeding that would determine the future course of her life. n15 The Delaware Supreme Court determined that Samantha's vital interests were at stake in the termination of parental rights ("TPR") n16 proceeding and that she was sufficiently of age to express her views and to understand the proceedings. n17 As such, Samantha had constitutional rights that merited protection. n18 Despite the uncertain path of Samantha's journey, her case taught Delaware something: that children desperately need a voice in court proceedings that potentially affect their lives.

Unfortunately, the Delaware Supreme Court's decision had an unintentional effect on numerous other children still in Delaware's foster care system, especially those who were the subject of TPR cases with CASA representation. The *Frazer* decision held that CASAs, at that time Delaware's only source for guardian *ad litem* representation, were not statutorily authorized to participate on behalf of a child in a TPR proceeding. n19 Moreover, the Court held that a guardian *ad litem* was required to advance the wishes and desires of the child or children for whom the guardian was appointed. n20 This mandate was in conflict with the CASA statute, which expressly charged CASAs with advocating the best interests of the children, whether or not those interests were consistent with the child's wishes. n21 It also conflicted with the definition of guardian *ad litem* set out in CAPTA. n22 Specifically, CAPTA provides that a guardian *ad litem* is required to: (1) be an [*81] attorney or a CASA, (2) obtain firsthand a clear understanding of the

situation and needs of the child, and (3) make recommendations to the court concerning the best interests of the child.
n23

Soon after the *Frazer* decision was announced, a parent petitioned the Family Court to rescind the appointment of a CASA in a TPR case. The parent relied upon *Frazer*, asserting that no statute authorized the intervention of a CASA in such a proceeding. n24 The Family Court held that in reconciling *Frazer* with CAPTA and the state statutory schemes, *Frazer's* importance lies in its "unprecedented recognition of the need for a child's wishes and desires to be represented through counsel as a critical component of the termination proceeding." n25 The Court limited the scope of *Frazer* to its facts and concluded that the appointment of a CASA as a guardian *ad litem* in a termination of parental rights proceeding was appropriate, authorized, and mandated. n26 It further concluded that the children in the case before it were too young and immature to verbalize their wishes meaningfully and therefore appointment of an additional legal representative for them under *Frazer* was unnecessary. n27

Several Family Court judges have since adopted this position and allowed CASAs to participate in TPR cases. n28 Moreover, they have determined that to the extent the child's wishes differ from what the CASA believes to be in the child's best interests, the Court should appoint a separate attorney to advocate the child's expressed wishes as set [*82] forth in *Frazer*. n29 Other judges have declined to follow this position, however, choosing instead to apply *Frazer* strictly. Some have removed the CASA from the traditional role and asked the individual to independently serve as a guardian *ad litem*, without the protections or structure provided by the CASA statute. Others have simply eliminated CASAs from TPR cases, leaving no independent advocate for the child's best interests. n30

Thus, a great deal of confusion arose in the wake of the *Frazer* decision, and Delaware's most at-risk children were paying the price.

CREATION OF AN INDEPENDENT ADVOCATE FOR CHILDREN

In 1999 Delaware's General Assembly marked its third year of ongoing discussions concerning creation of an independent office to "safeguard the welfare of Delaware's children." On January 27, 1999, House Bill 39 was introduced proposing an Office of the Child Advocate. n31 After substantial debate, House Bill 39 was stricken and on May 13, 1999, a substitute amendment was introduced. n32 That too was stricken, and on June 30, 1999, House Bill 404 was introduced. n33 On that same date, after much debate, House [*83] Bill 404 passed the House of Representatives and the Senate. n34 The Office of the Child Advocate was created on July 16, 1999, when Governor Carper signed House Bill 404 into law. n35 Among the statutory duties, the Office of the Child Advocate was charged with implementing and coordinating a program to provide *pro bono* or contractual attorneys to represent the best interests of Delaware's abused, neglected, and dependent children. n36 The section also made it clear that those attorneys "shall be allowed to participate fully in all relevant proceedings." n37

I began employment as Delaware's first Child Advocate on February 7, 2000. Immediate consultations were initiated with the CASA program to address legislatively the confusion created by *Frazer*. After much research and discussion, Senate Bill 415 was introduced on June 27, 2000, by Senator Patricia Blevins. n38 It passed the Senate 21-0 on June 28, 2000, and the House of Representatives 41-0 on June 30, 2000. On June 30, 2000, the Senate also approved the final budget for fiscal year 2001, which included funding for an additional full-time attorney in the Office of the Child Advocate. n39 Governor Carper signed Senate Bill 415 into law on July 21, 2000. n40

WHAT IS SENATE BILL 415?

The synopsis to Senate Bill 415 best states its mission:

This bill amends the current Court Appointed Special Advocate and Office of the Child Advocate statutes to ensure representation of children's best interests in every child welfare proceeding. These amendments bring Delaware into substantial compliance with the federal Child [*84] Abuse Prevention

and Treatment Act, which mandates guardian *ad litem* representation of children in foster care. These changes further clarify the role of a guardian *ad litem* as a full party in child welfare proceedings and appeals therefrom, thereby addressing confusion that has resulted from the Supreme Court decision of *In re Samantha Frazer*. n41

With this new law, *section 925 (17) of title 10 of the Delaware Code* has been clarified to provide the Family Court with authority to "appoint attorneys and/or Court Appointed Special Advocates to serve as guardians *ad litem* to represent the best interests of a child in any child welfare proceeding." n42 This statutory change addresses the Delaware Supreme Court's view in *Frazer* that the Family Court could only appoint CASAs "in child abuse and neglect cases," not TPRs, and that CASAs were not guardians *ad litem* within the meaning of the prior legislative framework. n43

With this explicit authority now in place, section 701(c) of title 13 was amended to provide any child who is the subject of a child welfare proceeding with a guardian *ad litem* to represent his or her best interests. n44 This language brings Delaware into substantial compliance with CAPTA. n45 Moreover, the statute provides that the guardian *ad litem* should be either a CASA or an attorney from the Office of the Child Advocate ("OCA"). n46 Under the statute, the "most complex and serious cases" are to be assigned to the OCA. Finally, the statute states that the Family Court may appoint an attorney to represent the child's wishes, in accordance with the child's constitutional rights recognized in *Frazer*. n47

[*85] The rights, responsibilities, and duties of the guardians *ad litem* are embodied in the OCA and CASA statutes and essentially mirror one another. Terms including guardian *ad litem*, n48 child welfare proceeding, n49 best interests, n50 and permanency n51 are now defined by statute. n52 These statutes require attorneys serving as guardians *ad litem* to receive regular child welfare training. n53 The guardian *ad litem* is to conduct an independent investigation of the circumstances giving rise to the appointment, submit a written or oral report to the Court, receive notice of every hearing involving the child, participate in all stages of the proceedings, be given access to all of the Division of Family Services' records on the child, monitor the case to ensure that the Court's orders are complied with, ensure that the child achieves permanency, receive notice of changes in placement or school regarding the child, receive notice of founded complaints involving the child, and request any appropriate relief from the Court on behalf of a child. n54 These duties and [*86] rights were ultimately crafted from a review of guardian *ad litem* statutes in other jurisdictions, as well as numerous secondary authorities. n55

Delaware's new statute also requires the guardian *ad litem* to ascertain the wishes of the child and make them known to the court. n56 If those wishes differ from the guardian *ad litem*'s position on the child's best interests, the guardian *ad litem* has the duty to alert the court to the conflict. n57 Again, this provision addresses the concerns expressed by the Delaware Supreme Court in the *Frazer* case. n58

In short, guardians *ad litem* must be either Delaware attorneys or CASAs. n59 They are charged with representing the child's best interests in all child welfare proceedings and appeals therefrom. n60 They are full parties to the proceedings and are required to fully participate as such. n61 In addition, should a child's wishes differ from the position of the guardian *ad litem* and that child is of an age to be able to express views and understand the proceedings, then the child is entitled to the appointment of an attorney to advocate those wishes. n62 The Family Court has dubbed these attorneys "*Frazer* attorneys." With the passage and enactment of Senate Bill 415, children's voices will now be [*87] routinely heard in Family Court. That is why July 21, 2000, was a great day for Delaware's most vulnerable children.

WHERE DO WE GO FROM HERE?

Nearly every state in the country has been providing guardian *ad litem* representation to children for many years. n63 Because of the valuable experiences in other jurisdictions, much is known about the pros and cons of these programs. n64 For example, it is known that specific guidelines for guardians *ad litem* that set out their rights and

duties will eliminate confusion and produce consistent results. n65 While Delaware has had the benefit of learning from the successes and failures elsewhere, not all issues have been addressed by Senate Bill 415. Perhaps the most significant unresolved issue concerns the conflict between the Rules of Professional Conduct and an attorney guardian *ad litem's* role in representing the best interests of a child. n66 In this area, three primary conflicts arise. The first pertains to an attorney acting as both advocate and witness. n67 The second involves the confidentiality of communications between the child and the attorney. n68 The third involves the duty to abide by a client's decisions versus representing the best interests of the child. n69

Attorney as Advocate and Witness

Among the statutory changes delivered by Senate Bill 415, section 9007A(3) of title 29 requires the attorney guardian *ad litem* to provide independent, factual information [*88] to the court regarding the case and to submit a written or oral report to the court for any court proceeding. n70 Delaware Rule of Professional Conduct 3.7 prohibits an attorney from acting as an advocate at a trial in which the lawyer is likely to be a necessary witness. Some jurisdictions have addressed this issue and have concluded that an attorney guardian *ad litem* should not testify, but that the attorney guardian *ad litem* should instead present witnesses and evidence and then make final recommendations during closing arguments. n71 This appears to be an appropriate course of action, but still one that will undoubtedly be debated, and perhaps litigated, in the future. Prior to the enactment of Senate Bill 415, Delaware had only encountered this situation where incompetent persons were in need of an attorney *ad litem* in Chancery Court proceedings. n72 No specific Delaware ruling, however, exists on the issue.

Courts in some other jurisdictions have also expressed concern regarding the admissibility of a report introduced by a guardian *ad litem*. n73 Some jurisdictions allow the report to be circulated to counsel for the purpose of facilitating settlement on behalf of the child but do not permit submission to the court. n74 Other states require the submission of a report to the trier of fact. n75 This is similar to Delaware's past practice of allowing CASA reports to be submitted to the judge, who can then determine what weight to give [*89] its contents. That practice, however, still leaves an issue of whether the attorney serving as guardian *ad litem* may be cross-examined on the contents of the attorney's report. n76 Currently, the Delaware statutory framework requires submission of a report to the Family Court, but that report may be either oral or written. n77 Until such time as more definite guidance on this matter is obtained, the more prudent approach appears to include the preparation of a report that is circulated among counsel involved in the proceedings, coupled with an oral recommendation to the Family Court in the form of a closing argument.

Confidentiality Between Attorney and Child

The second ethical issue involves the attorney guardian *ad litem's* duty to advocate the child's best interests in court proceedings. As such, the guardian *ad litem* might encounter a situation in which the child discloses confidential information to the guardian *ad litem* and specifically requests that it not be revealed to the parties or to the court. If this information is dispositive in determining the best interests of the child, it might become necessary for the guardian *ad litem* to disclose the child's confidence to the court. Delaware Rule of Professional Conduct 1.6, however, prohibits an attorney from revealing client confidences absent consent. Several jurisdictions that have addressed this issue recommend a modified confidentiality requirement such that the child's wishes are respected unless it is vital to the child's best interests that the information be revealed. n78 In contrast, the authors of several scholarly works recommend that confidentiality with the child be maintained and that if this presents a conflict, the court should appoint another [*90] individual to serve as guardian *ad litem* while the original attorney assumes a more traditional attorney/client role. n79

Best Interests Versus Expressed Wishes

Somewhat related to the confidentiality dilemma is the potential conflict between the duty of the guardian *ad litem* to represent the best interests of the child versus an attorney's duty to represent the client's interests and abide by the client's decisions. n80 In approaching this dilemma, several states have incorporated Professional Rule of Conduct 1.14

into their analyses, concluding that a child is a "client with a disability" under the rules. n81 Regardless, jurisdictions that have addressed this issue have concluded that the rule must be modified since the attorney guardian *ad litem* is "not bound by the client's expressed preferences, but by the client's best interests." n82

Further complicating matters is the experience elsewhere of attorneys not competently representing the child's best interests and/or not taking into consideration the child's wishes in making that determination. n83 Several state supreme courts have taken these matters into their own hands. n84 Delaware's guardian *ad litem* statutes attempt to address this issue in several ways. First, the statute requires that attorneys participate in regular child welfare training. n85 Second, the very definition of best interests in Delaware [*91] includes consideration of the child's wishes. n86 Third, the guardian *ad litem* is statutorily obligated to ascertain the wishes of the child and to make those wishes known to the court. n87 Fourth, when the child's wishes differ from the best interests recommendation, that child may be constitutionally entitled to an attorney. n88 Finally, the Family Court has the authority and ability to interview the child regarding the child's wishes. n89

Delaware has taken a huge step in improving representation of Delaware's abused, neglected, and dependent children. n90 As judges and lawyers move forward in this area, issues such as those discussed above are certain to arise. As long as we keep foremost in mind that children are human beings, not property, with rights of their own, we may continually learn from them, and from each other, what it means to represent a child.

Legal Topics:

For related research and practice materials, see the following legal topics:

Family Law
Delinquency & Dependency
Dependency Proceedings
Family Law
Family Protection & Welfare
Children
Abuse, Endangerment & Neglect
Family Law
Family Protection & Welfare
Children
Proceedings

FOOTNOTES:

n1 2000 DEL. LAWS CH. 451.

n2 *Id.*

n3 DEL. CODE ANN. tit. 29 § 9007A(2)(c) as amended by 2000 DEL. LAWS CH. 451.

n4 Trout, Michael, *Multiple Transitions*, The Infant-Parent Institute (1997)(VIDEO)(foster children share their perspectives on growing up in foster care, and ask that adults, "the big people," please listen to them).

n5 42 U.S.C.A., ch. 67.

n6 42 U.S.C.A., ch. 67.

n7 45 C.F.R. § 1340.14(g); 42 U.S.C.A. § 5106a(2)(B)(ii).

n8 65 DEL. LAWS CH. 95 (1981).

n9 The National Court Appointed Special Advocate Association, 100 W. Harrison - North Tower Suite 500, Seattle, WA, 98119, 1-800-628-3233.

n10 *DEL. CODE ANN. tit. 31 § 3601.*

n11 Statistics of the Delaware Court Appointed Special Advocate Program, State Office, 704 N. King Street, Wilmington, DE, 19801, (302) 577-2245.

n12 *Id.*

n13 AL. CODE ANN. § 26-14-11; AK. RULES CINA, RULE 11; AZ. ST. JUV. CT. RULE 22; AR. CODE ANN. § 9-27-316; CO. STAT. ANN. § 19-1-111; CT. STAT. ANN. § 46b-136; *FL. STAT. ANN. § 39.822*; GA. *CODE ANN. § 15-11-55*; HI. STAT. ANN. § 587-34; ID. STAT. ANN. § 16-1618; IL. STAT. ANN. ch. 705 § 405/2-17; IN. CODE ANN. § 31-34-10-3; *IOWA CODE ANN. § 232.89*; KS. STAT. ANN. § 38-1505; KY. STAT. ANN. § 620.100; LA. STAT. ANN. Ch.C. Art. 607; ME. STAT. ANN. tit. 22 § 4005; MD. CODE ANN. §§ 3-821 and 3-834; MA. GEN. LAWS ANN. ch. 119 § 29; MI. LAWS ANN. § 722.630; MN. STAT. ANN. § 260C.163; MS. CODE ANN. § 43-21-121; MO. STAT. ANN. § 210.160; MT. CODE ANN. § 41-3-303; NE. REV. STAT. ANN. § 43-272; N.H. STAT. ANN. § 169-C:10; *N.J. STAT. ANN. § 9:6-8.23*; *N.M. STAT. ANN. § 32A-4-10*; N.Y. FAM. CT. ACT. § 1016; N.C. STAT. ANN. § 7B-601; *N.D. CENT. CODE § 50-25.1-08*; OHIO CODE ANN. § 2151.281; OK. STAT. ANN. tit. 10 § 7003-3.7; *OR. REV. STAT. ANN. § 419A.170*; R.I. LAWS ANN. § 40-11-14; S.C. CODE ANN. § 20-7-110; S.D. CODE ANN. § 26-8A-18; TN. CODE ANN. § 37-1-149; TX. FAM. CODE ANN. § 107.012; UTAH CODE ANN. § 78-3a-314; VT. STAT. ANN. tit. 33 § 5525; *VA. CODE ANN. § 16.1-266*; WA. CODE ANN. § 26.44.053; W.V. CODE ANN. § 49-6-2; WI. STAT. ANN. § 48.235; WY. STAT. ANN. § 14-3-211.

n14 In the Matter of Brittney M.K.R., Samantha M. R., Minor Children, No. 97-11-12-TN, Ableman, J. (Del. Fam., Sept. 16, 1998) *citing* AN ASSESSMENT OF DELAWARE'S COURT PERFORMANCE IN CHILD WELFARE CASES WITH RECOMMENDATIONS FOR IMPROVEMENT, Court Improvement Project of the Delaware Supreme Court at 41-42, 89 (May 1997).

n15 In the *Matter of the Petition of Samantha Nicole Frazer*, 721 A.2d 920 (Del. 1998).

n16 The term "TPR" is used throughout this article as an abbreviation for "termination of parental rights."

n17 *Frazer*, *supra*, note 15.

n18 *Id.*

n19 *Id. at* 923.

n20 *Id.*

n21 *Id.*; *DEL. CODE ANN., tit. 31 § 3603(3)*.

n22 42 U.S.C.A. § 5106a(b)(2)(A)(ix).

n23 *Id.*

n24 In the Matter of Brittney M.K.R., Samantha M.R., Minor Children., *supra*, note 14 at 2.

n25 *Id.* at 6.

n26 *Id.*

n27 *Id.* at 7.

n28 In the Matter of Lewis B.C., C.A. No. 98-07-07TN, Kuhn, J. (Del. Fam., May 12, 1999) *aff'd* Del. Supr., No. 305, 1999 (June 23, 2000); In the Matter of Shamar E.S., Ahkee S., C.A. No. 99-08-12TN, Chapman, J. (Del. Fam., June 16, 2000); In the Matter of Destiny B.O., C.A. No. 99-02-02TN, Ableman, J. (Del. Fam., Sept. 10, 1999) *remanded* Del. Supr., No. 447, 1999 (Mar. 30, 2000) *aff'd* Ableman, J. (Del. Fam., May 1, 2000) *aff'd* Del. Supr., (June 6, 2000).

n29 In the Matter of Gina T., C.A. No. 98-10-09TN, Ableman, J. (Del. Fam., Nov. 10, 1999) *aff'd* Del. Supr., No. 584, 1999 (Sept. 7, 2000); In the Matter of Pamela N. K., C.A. No. 98-09-04TN, Kuhn, J. (Del. Fam., Oct. 22, 1999) *aff'd* Del. Supr., No. 540, 1999 (July 7, 2000); In the Matter of Rasheta D., Jacinda D., Two Minor Children, C.A. No. 98-08-07TN, Ableman, J. (Del. Fam., Mar. 2, 2000); In the Matter of Six Minor Children, C.A. No. 98-08-01TK, Nicholas, J. (Del. Fam. 2000).

n30 Division of Family Services v. Christine G., CK89-4602, Walls, J. (Del. Fam., Dec. 23, 1998)(reliance on the testimony of CASA in a proceeding not involving questions of abuse, neglect or dependency constitutes legal reversible error); In re: Dashan M., C.A. No. 97-08-01TK, Walls, J. (Del. Fam., Dec. 8, 1998)(CASA not permitted to participate in TPR proceeding); Division of Family Services v. Jeanette M. and Walther H., C.A. No. 97-2-2TK, Walls, J. (Del. Fam., Dec. 1998)(letter to counsel).

n31 The State of Delaware, 140th General Assembly, House Bill 39.

n32 The State of Delaware, 140th General Assembly, House Substitute 1 to House Bill 39.

n33 The State of Delaware, 140th General Assembly, House Bill 404.

n34 *Id.*

n35 1999 DEL. LAWS Ch. 167.

n36 DEL. CODE ANN. tit. 29 § 9007A (1999).

n37 *Id.*

n38 The State of Delaware, 140th General Assembly, Senate Bill 415.

n39 The State of Delaware, 140th General Assembly, Senate Bill 420.

n40 2000 DEL. LAWS Ch. 451.

n41 *Id.*

n42 *Id.*; DEL. CODE ANN. tit. 10 § 925(17) (2000).

n43 *Frazer, supra at 923.*

n44 2000 DEL. LAWS Ch. 451; DEL. CODE ANN. tit. 13 § 701(c) (2000).

n45 To ensure full compliance with CAPTA, the statute should probably have read "shall have." Due to monetary restrictions and a lack of *pro bono*, contracted, and/or full-time attorneys, as well as a lack of CASA volunteers and the accompanying staff, however, "should" was used in the statute.

n46 2000 DEL. LAWS Ch. 451; DEL. CODE ANN. tit. 13 § 701(c) (2000).

n47 *Id.*

n48 "Guardian *ad litem*" is defined as an "individual appointed by the Court to represent the best interests of a child whether or not that reflects the wishes of the child, who by his or her appointment, shall be a party to the child welfare proceeding. The guardian *ad litem* is charged with obtaining a clear understanding of the situation and needs of the child, and making recommendations to the Court as to what is in the best interests of the child."

n49 "Child welfare proceeding" is defined as "any Family Court proceeding and subsequent appeal therefrom involving custody, visitation, guardianship, termination of parental rights, adoption and other related petitions that involve a dependent, neglected or abused child or a child at risk of same as determined by a Family Court judge."

n50 "Best interests" is "as defined in Section 722 of title 13 of the Delaware Code."

n51 "Permanency" is defined as "the safe, stable, custodial environment in which a child is raised and the life-long relationship that child establishes with a nurturing caregiver."

n52 2000 DEL. LAWS Ch. 451.

n53 2000 DEL. LAWS Ch. 451; *DEL. CODE ANN. tit. 29 § 9007A(3)(b)* (2000).

n54 2000 DEL. LAWS Ch. 451; *DEL. CODE ANN. tit. 29 § 9007A(3)* (2000).

n55 The following sources are a representative sample of scholarly works and legal authorities on guardian *ad litem* representation that were reviewed in drafting Delaware's statutes: Jean Koh Peters, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS, (1997); Ann Haralambie, THE CHILD'S ATTORNEY: A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION AND PROTECTION CASES (1993); *American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases*, February 5, 1996; KS. SUPR. CT. RULES, Guidelines for Guardians *ad litem* (1995); UTAH CODE ANN. § 78-3a-912; *Clark v. Alexander*, 953 P.2d 145 (Wyo. 1998).

n56 2000 DEL. LAWS Ch. 451; *DEL. CODE ANN., tit. 29 § 9007A(3)(n)* (2000).

n57 *Id.*

n58 *Frazer, supra*, note 18.

n59 2000 DEL. LAWS Ch. 451.

n60 *Id.*

n61 *Id.*

n62 *Id.*; *Frazer, supra*, note 18.

n63 Peters, *supra*, note 55; Haralambie, *supra*, note 55.

n64 *Id.*

n65 *Id.*; *see also Clark, supra*, note 55.

n66 *Id.*

n67 Delaware Rule of Professional Conduct 3.7.

n68 Delaware Rule of Professional Conduct 1.6.

n69 Delaware Rules of Professional Conduct 1.2 and 1.14.

n70 2000 DEL. LAWS Ch. 451; *DEL. CODE ANN. tit. 29 § 9007A(3)(c)* and (d).

n71 *Clark, supra*, note 55 at 153; *S.S. v. D.M.*, 597 A.2d 870 (D.C. App. 1991),

n72 Court of Chancery Rule 176; *See In re Tavel*, 661 A.2d 1061 (Del. Supr. 1995) (dealing with the role of attorneys *ad litem*).

n73 *Clark, supra*, note 55 at 154; Bowker, *Protecting our Children in Custody Cases: The Wyoming Legislature Should Create an Attorney/Guardian ad Litem who Represents the Best Interest of the Child and Can Give the Child the Benefit of Limited Confidentiality*, 34 LAND AND WATER L. REV. 427 (1999); Hanft, *Attorney for Child versus Guardian ad Litem: Wyoming Creates a Hybrid, but is it a Formula for Malpractice?*, 34 LAND AND WATER L. REV. 381 (1999).

n74 *Clark, supra*, note 55 at 154.

n75 *See, e.g.*, Colorado Chief Justice Directive 97-02 (mandates that guardians *ad litem* file written reports with the court and all other parties); HI. REV. STAT. ANN. § 587-34 (report to the court and all parties in writing at six month intervals); KS. SUPR. CT. RULES, Guidelines for Guardians *ad Litem* (1995) (provide reports at every hearing)

n76 Colorado Chief Justice Directive 97-02; HI. REV. STAT. ANN. § 587-34; KS. SUPR. CT. RULES, Guidelines for Guardians *ad Litem* (1995); *cf. Delong v. Stanley*, No. 498, 1996 (Del. Supr., Nov. 4, 1997) (existence of hearsay in CASA report does not preclude its admissibility in a hearing before a judge sitting without a jury).

n77 2000 DEL. LAWS Ch. 451; *DEL. CODE ANN. tit. 29 § 9007A(3)(c)* and (d).

n78 *Clark, supra*, note 55 at 154.

n79 American Bar Association, *Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases* (Feb. 5, 1996); *Recommendations of the Conference on Ethical Issue in the Legal Representation of Children*, 64 FORDHAM L. REV. 4 (Mar. 1996); *Auclair v. Auclair*, 730 A.2d 1260, 1271 (1999).

n80 Delaware Rule of Professional Conduct 1.2.

n81 *Clark, supra*, note 55 at 153; *Auclair, supra*, note 79 at 1272.

n82 *Clark, supra*, note 55 at 153-54; *Auclair, supra*, note 79 at 1272.

n83 *See In re Jeffrey R.L.*, 435 S.E.2d 162, 174 (W.Va. 1993).

n84 *Id.* at Appendix A: *Guidelines for Guardians Ad Litem in Abuse and Neglect Cases*; KS. SUPR. CT. RULES, *Guidelines for Guardians ad Litem* (1995); Colorado Chief Justice Directive 97-02 governing the performance of GALs.

n85 2000 DEL. LAWS Ch. 451; *DEL. CODE ANN. tit. 29 § 9007A(3)(b)* (2000).

n86 *DEL. CODE ANN. tit. 13 § 722(a)* (1999).

n87 2000 DEL. LAWS Ch. 451; *DEL. CODE ANN. tit. 29 § 9007A(3)(n)* (2000).

n88 *Frazer, supra*, note 15.

n89 *DEL. CODE ANN. tit. 13 § 724* (1999).

n90 For additional guidance in this area, *see* WHAT I WISHED I LEARNED IN LAW SCHOOL: SOCIAL SCIENCE RESEARCH FOR CHILDREN'S LAWYERS, ABA Center on Children and the Law (1997); A JUDGE'S GUIDE TO IMPROVING LEGAL REPRESENTATION OF CHILDREN, ABA Center on Children and the Law (1998).