

New York Divorce and Family Law Blog

What Is the Role of a Guardian in a Child Custody Case?

Posted by [Daniel Clement](#) on January 13, 2011

In New York divorce, when the parties are both seeking custody of children, it is common for the judge to appoint a guardian for the children. I am frequently asked, what is the role of this guardian?

The guardian is an attorney who is appointed to represent the children. If there are multiple children, it is possible there can be more than one guardian.

The role of the guardian is to articulate the children's interests, which are gleaned from conversations with the children, the parents, the children's teachers, doctors and any other person's deemed appropriate. In doing so, the Court, through the guardian's advocacy, can determine issues related to custody, visitation or access time, as well as other issues involving the children's health, education and welfare independent of the children's parents positions.

The guardian is not a neutral party. He/she is representing the children. Sometimes, the children's position will align with one of the parents; other times the guardian will advance a position that is a combination of both parents' theories of the case.

Unlike communications with your attorney, your statements, writings and emails

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to the guardian are not privileged. They can and will be used against you. Therefore, it is important to be circumspect and thoughtful when communicating to the guardian.

Custody cases are decided on the basis of what is in the children's best interests. A thoughtful discussion about why your position is in the children's best interests does not require a denigration of your spouse.

For instance, an important factor in custody disputes is recognizing which parent will most likely foster the children's relationship with the other parent. Constant criticism of your spouse or demonstration of any alienating behaviors could turn a potential ally into an adversary.