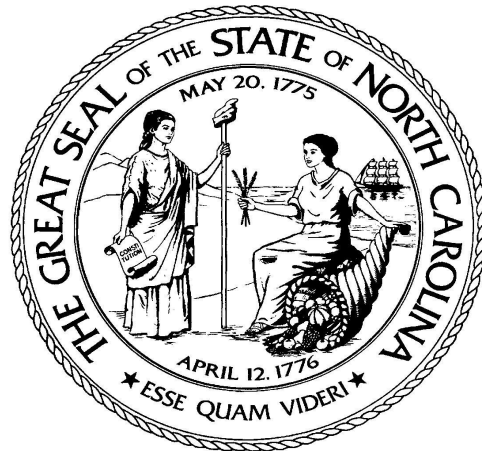


# NORTH CAROLINA GENERAL ASSEMBLY



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## HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS

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**REPORT TO THE  
2010 SESSION  
of the  
2009 GENERAL ASSEMBLY**

**MAY 2010**

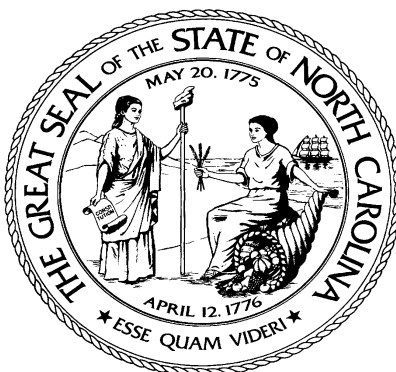
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# TRANSMITTAL LETTER

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STATE OF NORTH CAROLINA

HOUSE SELECT COMMITTEE ON  
CIVIL CUSTODY GUARDIANS



April 28, 2010

TO THE MEMBERS OF THE 2009 HOUSE OF REPRESENTATIVES:

Attached for your consideration is the report of the House Select Committee on Civil Custody Guardians established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representatives of the 2009 General Assembly.

Respectfully submitted,

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Representative Darren G. Jackson  
Co-Chair

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Representative Grier Martin  
Co-Chair

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## COMMITTEE PROCEEDINGS

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Below is a brief summary of the Committee's proceedings. A more detailed record of the Committee's work can be found in the Committee's notebook, located in the Legislative Library.

### February 4, 2010

The House Select Committee on Civil Custody Guardians met Thursday, February 4, 2010 in Room 1228 of the Legislative Building at 10:00 AM. Tim Hovis, Committee Counsel, was called upon to give a review of the Committee Charge. In his discussion he indicated that Section 3 gives the actual charge to the committee of what it should study. It is largely taken from the final version of proposed bill, HB 1275. The Chair recognized Cheryl Daniels Howell, Albert Coates Professor of Public Law and Government, UNC School of Government, to give an explanation of civil custody guardians. Ms. Daniels provided a legal context for the discussions the committee will be having, clarified terms used in this area of the law, and described the current practice on this issue. The Chair then called The Honorable Beth Keever, Chief District Court Judge, to present a judge's perspective on the use of civil custody guardians in Mecklenburg County. Judge Keever discussed qualifications and certification of guardians, responsibilities and compensation of guardians, appointment and retention procedures for guardians, as well as other pertinent information regarding guardianship. Next, the Chair called on Jay Bryan, Attorney, to discuss the use of civil custody guardians in Orange County and other legislative considerations. The final presentation was given by Kimberly Bryan, Attorney and member of the Family Law Section of the North Carolina Bar Association. Attorney Kimberly Bryan discussed opposition by the Bar Association to proposed HB 1275.

### March 17, 2010

The House Select Committee on Civil Custody Guardians met on Wednesday, March 17, 2010 in Room 544 of the Legislative Office Building at 11:00 AM. The first speaker was Suzanne Reynolds, Professor of Law, Wake Forest University School of Law. Ms. Reynolds discussed the role the Children's Law Center of Central North Carolina, which represents the "best interest" of the child in high conflict custody cases. Ms. Reynolds also provided her perspective on a statewide civil custody guardian program, including training and fees. Next, John Parker, Lead Attorney, Custody Advocacy Program, Council for Children's Rights, discussed the mission and guidelines for the Custody Advocacy Program in Mecklenburg County, which represents children in custody and visitation cases. Dr. Helen Brantley, Director, Forensic Psychiatry Service, University of North Carolina at Chapel Hill, was then recognized to discuss standards for assessment and the competency and training of civil custody guardians. Dr. Brantley also provided considerations for the creation of a statute authorizing civil custody guardians in North Carolina. The final speaker was Deana Fleming, Legal Counsel, Administrative Office of the Courts, who provided an overview of the guardian ad litem program.

### **April 8, 2010**

The House Select Committee on Civil Custody Guardians met on Thursday, April 8, 2010 in Room 421 of the Legislative Office Building at 10:00 AM. The Committee discussed proposed legislation. Considerations included:

- The appointment of guardians ad litem in high-conflict custody cases.
- The appointment of attorneys for minors involved in high-conflict custody cases.
- Adoption of local rules by the chief district court judge.
- Qualifications, training, and ethical considerations for civil custody guardians.
- Costs or compensation of civil custody guardians.
- Immunity from liability for civil custody guardians.

### **April 28, 2010**

The House Select Committee on Civil Custody Guardians met on Wednesday, April 28, 2010 in Room 1224 of the Legislative Building at 10:00AM. The Committee discussed changes to the proposed legislation. The Committee also discussed proposed findings and recommendations and approved a final report.

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## FINDINGS AND RECOMMENDATIONS

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**FINDING 1:** The Committee finds that the current law regarding guardians ad litem in custody and visitation cases is set forth in *Van Every v. McGuire*, 125 N.C. App. 578, 481 S.E.2d 377 (1997). There, the Court of Appeals determined that Rule 17(b)(3) of the North Carolina Rules of Civil Procedure authorizes the court to appoint a "guardian ad litem for an infant or incompetent person. . .when it is deemed by the [trial]court in which the action is pending expedient to have the infant, or insane or incompetent person so represented." Many other states have similar authority that is set forth statutorily, but North Carolina's authority arises only from the common law. The Committee heard testimony indicating that the lack of statutory authority could be problematic, especially in custody cases, since Rule 17 applies to parties only and children are not parties in custody cases.

**RECOMMENDATION 1:** The North Carolina General Assembly should codify this authority in the North Carolina General Statutes.

**FINDING 2:** The Committee finds that guardians ad litem are being appointed in a limited number of custody and visitation cases, such as high conflict cases and cases where there is significant disagreement regarding the evidence. Currently, there are multiple approaches to appointing guardians ad litem in custody and visitation cases. For example, the Committee received information about how this process works in Orange, Forsythe, and Mecklenburg and Wake Counties. Although these approaches vary, all of them appear to be operating successfully.

**RECOMMENDATION 2:** The Committee recommends that the statute addressing this subject should not hinder or unnecessarily restrict the good work that is currently being carried out across the State.

**FINDING 3:** The Committee finds that chief district court judges should have an important role in this process because they are uniquely qualified to understand what works best in their districts. The Committee recognizes the importance of judicial discretion regarding whether or not to appoint guardians ad litem and attorneys in custody and visitation cases. The Committee further finds that the adoption of local rules is essential for those districts choosing to allow the appointment of guardians ad litem and attorneys in custody and visitation cases.

**RECOMMENDATION 3:** The Committee recommends that the appointment of guardians ad litem and attorneys in custody and visitation cases should be optional. However, if a chief district court judge authorizes their use, then the chief district court judge should be required to adopt local rules. At a minimum, these local rules should set forth criteria related to the role, qualifications, responsibilities, training, ethical standards, and

compensation of guardians ad litem and attorneys and any other factors deemed relevant by the chief district court judge.

**FINDING 4:** The Committee finds that pursuant to Resolution 2009-33 (Senate Joint Resolution 1109), the General Assembly is scheduled to reconvene for the short session on May 12, 2010. The adjournment resolution limits the subjects that may be considered in the short session. However, bills and resolutions implementing the recommendations of study commissions, including this committee, are eligible for consideration in the short session.

**RECOMMENDATION 4:** The Committee recommends the adoption of 2009-LUz-154C.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

**H**

**D**

**BILL DRAFT 2009-LUZ-154C [v.4] (03/22)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)**

**4/28/2010 4:59:31 PM**

Short Title: Authorize Appointment/GAL/Atty/Custody. (Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE APPOINTMENT OF A GUARDIAN AD LITEM OR AN ATTORNEY FOR THE MINOR CHILD IN ACTIONS FOR CUSTODY OR VISITATION, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 50-13.1 is amended by adding the following new subsection to read:

"...

(j) The chief district court judge in any judicial district may adopt local rules authorizing the appointment of a guardian ad litem or attorney in child custody and visitation cases. If the chief district court judge does not adopt local rules, the district court judges in that district may not appoint guardians ad litem or attorneys in these cases. If authorized by the chief district court judge, a judge presiding over an action for custody or visitation may appoint a guardian ad litem or attorney for the minor child pursuant to local rules for the district in which the action is pending. Local rules adopted pursuant to this subsection shall, at a minimum, address the following:

(1) The role of the guardian ad litem, if appointed.

(2) The role of the attorney, if appointed.

(3) Qualifications of the guardian ad litem or attorney.

(4) Duties and responsibilities.

(5) Training.

(6) Ethical standards.

(7) Compensation.

(8) Any other factors the chief district court judge deems relevant to an appointment under this subsection.

The court may require an appointment under this subsection without the consent of the parties only if the court determines the parties have the ability to pay for the services or that pro bono services are available.

1        Except in actions arising out of the operation of a motor vehicle, a guardian ad litem or  
2 attorney acting pursuant to this subsection shall not be liable for damages for acts or omissions  
3 of ordinary negligence arising out of that person's duties and responsibilities as a guardian ad  
4 litem.

5                **SECTION 2.** This act becomes effective October 1, 2010 and applies to custody  
6 and visitation proceedings initiated on or after that date.



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## COMMITTEE AUTHORIZATION

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**Section 1.** The House Select Committee on Civil Custody Guardians (hereinafter "Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representatives of the 2009 General Assembly.

**Section 2.** The Committee consists of the 7 members listed below, appointed by the Speaker of the House of Representatives. Members serve at the pleasure of the Speaker of the House of Representatives. Vacancies of the Committee are filled by the Speaker of the House of Representatives, and the Speaker may dissolve the Committee at any time.

Representative Martin	Co-Chair
Representative Jackson	Co-Chair
Representative Farmer-Butterfield	
Representative Hurley	
Representative Insko	
Representative Stevens	
Representative Whilden	

**Section 3.** The Committee may study the feasibility and desirability of creating a statewide Civil Custody Guardian Program. Specifically, the Committee may:

- (1) Review and evaluate other states' statutes and practices and North Carolina pilot programs that establish guardians or child conservators to help the courts, families, and especially children with issues involving custody and visitation.
- (2) Recommend standards for appointment and service as custody guardians, including:
  - a. Qualification and certification of guardians.
  - b. Responsibilities of guardians.
  - c. Compensation of guardians.
  - d. Appointment and retention procedures for guardians.
  - e. Any other factor involving the appointment of guardians.
- (3) Consider whether the standards for a custody guardian program should be statutory or through administrative rules.
- (4) Consider the impact of any recommendation upon services currently provided in North Carolina.
- (5) Evaluate the likely impact of a best practices recommendation on children, families, courts, attorneys, and the administration of justice.
- (6) Consider other relevant issues it deems appropriate.

**Section 4.** The Committee shall meet upon the call of its Co-Chairs. A quorum of the Committee shall be a majority of its members.

**Section 5.** The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes.

**Section 6.** Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1.

**Section 7.** The expenses of the Committee including per diem, subsistence, travel allowances for Committee members, and contracts for professional or consultant services shall be paid upon the written approval of the Speaker of the House of Representatives pursuant to G.S. 120-32.02(c) and G.S. 120-35 from funds available to the House of Representatives for its operations. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of the Co-Chairs of the Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.

**Section 8.** The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives shall assign clerical support staff to the Committee.

**Section 9.** The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations.

**Section 10.** The Committee may submit an interim report on the results of the study, including any proposed legislation, on or before May 1, 2010, by filing a copy of the report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before February 1, 2011, by filing the final report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee terminates on February 1, 2011, or upon the filing of its final report, whichever occurs first.

Effective this the 17<sup>th</sup> day of November, 2009.



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Joe Hackney  
Speaker

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## MEMBERS

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