

COURTS NOT OF RECORD: JUVENILE AND DOMESTIC RELATIONS COURTS.

Juvenile court has no authority to appoint guardian ad litem for juvenile defendant, in addition to appointment of legal counsel, to represent child in criminal or delinquency proceeding.

The Honorable W. Edward Meeks III
Commonwealth's Attorney for Amherst County
December 14, 2001

You ask whether § 16.1-266 of the *Code of Virginia* authorizes a juvenile and domestic relations district court ("juvenile court") to appoint a guardian ad litem for a juvenile defendant, in addition to the appointment of legal counsel, to represent the child.

You advise that a juvenile court seeks to appoint a guardian ad litem, in addition to appointing legal counsel, to represent a child. You state that the guardian ad litem will be compensated from public funds.

The jurisdiction, practice, and procedure of the juvenile courts in the Commonwealth are entirely statutory, and are set forth in Chapter 11 of Title 16.1, §§ 16.1-226 through 16.1-361.¹ Section 16.1-266 governs the appointment of counsel for children under the jurisdiction of the juvenile court. Section 16.1-266(B) provides that, in detention review hearings or adjudicatory or transfer hearing cases, a "child and his or her parent, guardian, legal custodian or other person standing in loco parentis shall be informed ... of the child's right to counsel." The juvenile court must also provide an opportunity for the child to obtain and employ counsel,² or if the child is indigent, appoint counsel to represent him,³ or obtain a waiver of the child's right to representation by counsel.⁴ The first sentence of § 16.1-266(D) provides that, "[i]n all *other* cases which in the discretion of the court require counsel or a guardian ad litem to represent the interests of the child ..., a discreet and competent attorney-at-law may be appointed by the court." (Emphasis added).

It is axiomatic that "[t]he manifest intention of the legislature, clearly disclosed by its language, must be applied."⁵ Moreover, a statute stating the manner in which something is to be done or the entity which is to do it evinces a legislative intent that it not be done in another manner or by another entity.⁶ Statutes are to be read as a whole rather than in isolated parts.⁷ It is clear that juveniles enjoy only the right to counsel in a criminal or delinquency proceeding, not the right to guardians ad litem.⁸

Based on the plain language of § 16.1-266(B) and (D), I am of the opinion that a juvenile court has no authority to appoint a guardian ad litem for a juvenile defendant, in addition to the appointment of legal counsel, to represent the child in a criminal or delinquency proceeding.

¹See Walker v. Dept. of Public Welfare, 223 Va. 557, 562, 290 S.E.2d 887, 890 (1982).

²Va. Code Ann. § 16.1-266(B)(1) (Michie Repl. Vol. 1999).

³Section 16.1-266(B)(2).

⁴Section 16.1-266(B)(3).

⁵Barr v. Town & Country Properties, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990) (quoting Anderson v. Commonwealth, 182 Va. 560, 566, 29 S.E.2d 838, 841 (1944)).

⁶See Grigg v. Commonwealth, 224 Va. 356, 364, 297 S.E.2d 799, 803 (1982); Christiansburg v. Montgomery County, 216 Va. 654, 658, 222 S.E.2d 513, 516 (1976).

⁷See Jones v. Conwell, 227 Va. 176, 314 S.E.2d 61 (1984); Gallagher v. Commonwealth, 205 Va. 666, 669, 139 S.E.2d 37, 39 (1964); Op. Va. Att'y Gen.: 1996 at 26, 27; 1994 at 93, 95; 1985-1986 at 177, 178.

⁸See Wilson v. Com., 23 Va. App. 318, 477 S.E.2d 7 (1996) (holding that General Assembly did not intend to require circuit court to appoint guardian ad litem whenever court issues subpoena to compel juvenile's testimony or initiates criminal contempt proceedings against juvenile who is represented by counsel).

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