

APPENDIX 10

Practice Direction (Representation of Children in Family Proceedings)

[April 2004]

THE PRINCIPAL REGISTRY OF THE FAMILY DIVISION

Representation of Children in family proceedings – President’s Direction – Pursuant to rule 9.5 of the Family Proceedings Rules 1991

1. The proper conduct and disposal of proceedings concerning a child which are not specified proceedings within the meaning of section 41 of the Children Act 1989 may require the child to be made a party. Rule 9.5 of the Family Proceedings Rules 1991 (‘FPR’) provides for the appointment of a guardian ad litem (‘a guardian’) for a child party unless the child is of sufficient understanding and can participate as a party in the proceedings without a guardian, as permitted by FPR rule 9.2A.
2. Making the child a party to the proceedings is a step that will be taken only in cases which involve an issue of significant difficulty and consequently will occur in only a minority of cases. Before taking the decision to make the child a party, consideration should be given to whether an alternative route might be preferable, such as asking an officer of the Children and Family Court Advisory and Support Service (‘CAFCASS’) to carry out further work or by making a referral to social services or possibly, by obtaining expert evidence.
3. The decision to make the child a party will always be exclusively that of the judge, made in the light of the facts and circumstances of the particular case. The following are offered, solely by way of guidance, as circumstances which may justify the making of an order:
 - 3.1 Where a CAFCASS officer has notified the court that in his opinion the child should be made a party (see FPR rule 4.11B(6)).
 - 3.2 Where the child has a standpoint or interests which are inconsistent with or incapable of being represented by any of the adult parties.
 - 3.3 Where there is an intractable dispute over residence or contact, including where all contact has ceased, or where there is irrational but implacable hostility to contact or where the child may be suffering harm associated with the contact dispute.

- 3.4 Where the views and wishes of the child cannot be adequately met by a report to the court.
 - 3.5 Where an older child is opposing a proposed course of action.
 - 3.6 Where there are complex medical or mental health issues to be determined or there are other unusually complex issues that necessitate separate representation of the child.
 - 3.7 Where there are international complications outside child abduction, in particular where it may be necessary for there to be discussions with overseas authorities or a foreign court.
 - 3.8 Where there are serious allegations of physical, sexual or other abuse in relation to the child or there are allegations of domestic violence not capable of being resolved with the help of a CAFCASS officer.
 - 3.9 Where the proceedings concern more than one child and the welfare of the children is in conflict or one child is in a particularly disadvantaged position.
 - 3.10 Where there is a contested issue about blood testing.
4. It must be recognised that separate representation of the child may result in a delay in the resolution of the proceedings. When deciding whether to direct that a child be made a party, the court will take into account the risk of delay or other facts adverse to the welfare of the child. The court's primary consideration will be the best interests of the child.
 5. When a child is made a party and a guardian is to be appointed:
 - 5.1 Consideration should first be given to appointing an officer of CAFCASS as guardian. Before appointing an officer, the court will cause preliminary enquiries to be made of CAFCASS. For the procedure, reference should be made to the practice note issued by CAFCASS, contemporaneously with this direction.
 - 5.2 If CAFCASS is unable to provide a guardian without delay, or if for some other reason the appointment of a CAFCASS officer is not appropriate, FPR rule 9.5(1) makes further provision for the appointment of a guardian.
 6. In cases proceeding in a county court, the court may, at the same time as deciding whether to join a child as a party, consider whether the nature of the case or the complexity or importance of the issues require transfer of the case to the High Court.
 7. Issued with the concurrence and approval of the Lord Chancellor.

Elizabeth Butler-Sloss
President