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(Date)

Maine District Court  
(Address)  
(City, State, Zip)

Re: (W vs. W), Docket No. (ABC-FM-2000-XXX)  
Guardian Ad Litem for (Names of Kids)

To the Presiding Judge:

Thank you for providing me with the opportunity to serve as Guardian Ad Litem for *Dad* and *Mom W's* children, *Son #1* and *Son #2*.

*Son #1* (age 12) is a very handsome young man, reserved and reticent, but with moods typical of boys his age. He is not one to readily share his feelings, but is serious and deep with his own opinions and emotions. *Son #1* is a good student, popular with his classmates and teachers. *Son #2* (age 10) is a real charmer. He's both sensitive and outgoing with a wonderful sense of mischief and a smile that could melt glaciers. Both boys are athletic and very involved in schools sports activities, as is their older brother *Bro*. *Dad* and *Mom* are fortunate to share these wonderful sons of theirs.

During the course of my involvement, I met with the children on six separate occasions. I saw them in the presence of each parent, both parents together, and also had separate conversations when neither parent was present. I also met alone with each parent twice and conferred with both of them together prior to a court mediation. I conducted telephone interviews with C. W. (*Son #1's* teacher), J. E. (*Son #2's* teacher), S. S. (*Son #2's* teacher), S. P. (former babysitter), R. D. (*Dad's* reference), B. and D. F. (*Mom's* reference), and N. S. (maternal grandmother). I conducted personal interviews with M. M. (*Dad's* sister), M. and S. W. (paternal grandparents), and *Bro* (older half sibling).

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## Background

*Dad* and *Mom* were married on (date of marriage). They had been friends first before becoming involved as a couple. It was the first marriage for *Dad*. *Mom* was previously married with a son, *Bro*, who was two-and-a-half years old at the time of her marriage to *Dad*. Both expressed that there were difficulties off and on throughout their thirteen-year marriage. *Mom* states that *Dad* was controlling. *Dad* states that *Mom* could be a wonderful person, but prone to becoming unhappy at home and with her various jobs. According to *Dad*, whenever *Mom* becomes unhappy, it's always someone else's fault.

Although both acknowledge difficulties from early on in the marriage, they worked together renovating their (community) home which had been the home of *Dad's* grandparents, and raising *Bro*, *Son #1* and *Son #2*. In the traditional mode, *Mom* provided more of the childcare responsibilities, with *Dad* spending more time with work commitments.

By last November, *Dad* and *Mom's* difficulties reached the point where *Mom* decided the marriage should be terminated. They had lost trust in each other. Following their discussion, according to *Mom*, *Dad* told *Son #1* and *Son #2* that their mother wanted a divorce and was leaving. They have continued to share their home since then, but have in effect been separated. There is virtually no communication between them. They are no longer supportive of the other's parenting decisions. As they have been unable to work together and reach agreement on how to co-parent and share parental rights and responsibilities they have sought the court's assistance.



In reviewing the issues of parental rights and responsibilities and parent/child contact, I am considering the best interest of the children as set forth in M. R. S. A. 19-A§1653(3) as follows:

- A. The age of the child.** *Son #1* is twelve years old and on the verge of the age where peer relationships become nearly as important as the relationship with his parents. He has been supported by both parents in his school and social activities. With the breakup, he has aligned himself with his father and exhibited some anger and resentment toward his mother. While it is not uncommon to see this separation between a twelve year old boy and the mom who has served as primary care provider, these tendencies have not been discouraged by his father, and in the context of the breakup an alienation of his mom has resulted. *Dad* needs to reinforce the relationship between *Son #1* and *Mom* while also encouraging the positive bond which exists between him and his son.

*Son #2* at age ten clearly seeks the approval, devotion and attention of both parents. With the pendency of the divorce, he has followed his brother's lead and aligned himself more with his father. There have been instances of his acting out and *Mom's* attempts to discipline are no longer supported by *Dad*, resulting in very mixed messages, confusion and turmoil within the household that they all continue to share. At the age of ten, *Son #2* needs consistent, mutually supported relationships with both his mother and his father.

- B. The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare.** Up until approximately a year and a half ago, *Dad's* work schedule was such that *Mom* served as primary care provider for all the children in the household. She was more involved in school, activities and doctor's appointments, including the transporting to and from. She also undertook more of the children's care at home, including discipline, but relying on *Dad* to support her and enforce her decisions.

With *Dad's* work schedule changing to days, he became more involved with all three children. Since last November with the decision to terminate the marriage, *Dad's* involvement with *Son #1* and *Son #2* has increased to the exclusion and deterioration of their relationship with *Mom*. *Mom* believes *Dad* is actively undermining the relationship between her and the boys. *Dad* believes she has been her own worst enemy and is driving the children away. It is clear that there is no consistency in their parenting of the children. *Dad* encourages the boys to make their own choices and decisions. When *Mom* deals with the boys, *Dad* does not back her up and they no longer mind her or do what she wants. The lack of a mutual parenting approach has made living under one roof extremely stressful.

Not to be ignored in the household is the older half brother *Bro*. He has been present in their lives from their birth. The relationship between the boys was characterized in many different ways, but all views, despite their discrepancies, painted a picture of a normal, close, sibling bond with rivalries among them. As the household has progressed in a divorce mode, *Bro* has aligned himself with his mother. He also believes his stepfather is alienating his brothers from her.

While it is not surprising, the paternal grandparents' and maternal grandmother's sympathetic support of their individual son, *Dad*, or daughter, *Mom*, has not served to lessen the rift between the parties nor help them in the ability to co-parent effectively through the divorce process.

- C. The preference of the child, if old enough to express a meaningful preference.** Both *Son #1* and *Son #2* have expressed their preferences to maintain their primary residence with their father in the home they have always known.

*Son #1* was initially reticent to discuss his feelings, but after a few meetings became more outspoken in our conversations. His father has been more open in discussing the divorce and its consequences while *Mom* has been less inclined to discuss pending post divorce arrangements with the children. *Son #1*'s preference must also be considered in the light of *Dad*'s tendency to let him do what he wants and *Mom*'s tendency to make a decision and then present it as a plan without fully informing him or considering his input. A very specific minor example of the latter was *Mom*'s decision to take all three boys out to dinner on a recent Sunday evening. *Son #1* wasn't sure of the plans and didn't want to go without knowing what was included in the evening's activities. *Dad* has left it to the boys to agree or not with their mother, and when they were unwilling to accompany her, became available to spend the evening with the boys.

*Son #2*'s preference was very simply and eloquently spoken. "I want to be with my dad because he told me I can go with my mom whenever I want to." He is a sensitive boy who wants to please and be with both parents. Over the course of my two-month involvement as Guardian Ad Litem, his preference for residing with *Dad* over *Mom* increased. This may be due in part to his desire to stay in the home, which he believes will be his father's residence, but also *Son #2*'s desire to please and not further upset his father. *Dad* wears his heart on his sleeve and the impending divorce, which was not his choice, has been difficult on him.

- D. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity.** The children continue to live in the home they have always known with both parents in residence. They would very much prefer to remain in that home, although *Son #1* told this guardian that he would prefer to be with his dad even if it meant moving to another home.

The home is very nice and with the additions and improvements *Dad* and *Mom* have made which include separate bedrooms for the boys and a pool, is more than adequate. Clearly, the parties can not continue to occupy the home together and it is impossible to assess the arrangements, as yet unknown, that will exist for the party who relocates.

- E. The stability of any proposed living arrangements for the child.** Again, it is impossible to determine the stability of the arrangements for the party who vacates the residence, but both *Dad* and *Mom* are settled and solid individuals. It is difficult to believe that either one would have arrangements that were not stable for their children.
- F. The motivation of the parties involved and their capacities to give the child love, affection and guidance.** Both parties are motivated by their sincere love for their children. However, their different approaches to parenting and their present unwillingness to support each other have resulted in mixed messages and inconsistencies which do not serve the best interests of the children. *Mom's* attempt to establish any guidelines or boundaries is entirely undermined by *Dad's* approach of permitting the children to make their own choices. While *Son #1* and *Son #2* are approaching adolescence, they remain only twelve and ten. In providing guidance for these children, the parents need to reinforce, support and respect the other parent in their relationship with the boys.
- G. The child's adjustment to the child's present home, school and community.** The children have always maintained their home in the (location) community. Both *Son #1* and *Son #2* have benefited from special attention in the (community) school system and it is recommended that their progress not be compromised by a change in schools.
- H. The capacities of each parent to allow and encourage frequent and continuing contact between the child and the other parent, including physical access.** Both parties express their commitment to allowing frequent contact between the children and the other parent. The psychologist who met all three boys concluded that *Dad* was alienating *Son #1* and *Son #2* from their mother. Even if not intentional, an environment of "us against them" has been present since November, with all three boys having chosen sides. One of the teachers referred to the situation as "The War of the Roses." The net effect is that *Son #1* does not want contact with his mother and *Bro* does not want contact with his stepfather. All of the parties might benefit from some post divorce family counseling to restore relationships.
- I. The capacity of each parent to cooperate or to learn to cooperate in childcare.** The level of cooperation between these parents is low. Teachers for both *Son #1* and *Son #2* observed that their current progress is not as strong as at the beginning of the school year. *Son #2's* teacher

stated that one parent decided he should be on medication with the other taking him off. The parents competed about who would or could pick him up after school. The stress at home has given *Son #2* an excuse to perform less well in class. *Son #1's* teacher stated that while he's doing fairly well, he's not as focused as earlier in the school year. The parents are in contact with different teachers and sending and/or receiving differing messages.

The parents' level of cooperation is compounded by their unwillingness to communicate, especially on *Mom's* part, and *Dad's* unwillingness to support *Mom* in her dealings with the children. Improved communication and mutual support are necessities for *Dad* and *Mom* to see their sons successfully through the next several years.

- J. Methods for assisting parental cooperation and resolving disputes and each parent's willingness to use those methods.** Both parties attended the Kids First program and thought the program was helpful. They both responded well to suggestions made by this Guardian Ad Litem. They were able to attend a PET together, with the teacher commenting on their apparent cooperation in the session.
- K. The effect on the child if one parent has sole authority over the child's upbringing.** These children need both of their parents involved in their upbringing. They are both very dedicated caretakers for their children. This is not a case where either parent having sole authority would be in the best interest of the children.
- L. The existence of domestic abuse between the parents, in the past or currently, and how that abuse affects: (1) the child emotionally; and (2) the safety of the child.** N/A
- M. The existence of any history of child abuse by a parent.** N/A
- N. All other factors having a reasonable bearing on the physical and psychological well being of the child.** See above.
- O. A parent's prior willful misuse of the protection from abuse process...** Both parties sought a protection from abuse order with neither petition being granted by the court. The level of stress and hostility with both parties remaining under the same roof has been difficult, and it is understandable they would seek for a court ordered separation. While the

facts alleged did not rise to the level permitting the court to enter a protective order against either, the parties' filing of these petitions does not constitute a willful misuse of the protection from abuse process.

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### **Conclusions**

There are competing considerations in this case. Although the parents are divorcing, the children should not also be torn apart as a family. *Bro*, while not a child of the marriage, is the brother only four years older than *Son #1*, and has always been with his younger siblings. *Dad*, with his open and forthright manner, while perhaps unwittingly, has contributed to the deterioration in the relationship between his sons and their mother. *Mom*, too, owns some responsibility.

The very strong preference of *Son #1* can not be ignored. He has expressed that he would run away rather than maintain a primary residence with his mother. Even discounting the likelihood of that, his present attitude and lack of cooperation with and respect for his mother, would set up a situation fraught with discord should his preference be denied. It would not be in his best interest to place him in a primary residential arrangement with his mother if he's constantly acting out.

*Son #2's* needs and desires call for regular active involvement and time with both parents.

With these varying considerations, the conclusion is that the parties should have shared parental rights and responsibilities and a shared residential arrangement which maximizes time with each parent, respects *Son #1's* preference, allows for regular extended time with the boys older brother *Bro*, and also takes into account the school schedule.

### **Recommendations**

1. Shared parental rights and responsibilities.
2. Residency with *Mom* every Thursday after school until Friday, and three out of four weekends, so that they remain Thursday through Sunday evenings for those three weekends. If Monday is a holiday, the stay should extend through Monday evening.

3. Residency with *Dad* every Sunday evening through Thursday morning and every fourth weekend from Friday after school. If Monday is a holiday and follows *Mom's* weekend, then residency with *Dad* should begin Monday evening.
4. Those holidays which are not celebrated on Mondays including Christmas, Thanksgiving, Easter and July 4<sup>th</sup> should be shared or alternated.
5. Father's Day with *Dad* and Mother's Day with *Mom*.
6. School vacations over Christmas and in February and April should be shared or alternated.
7. Each parent should have the option of two weeks (not necessarily consecutive) uninterrupted vacation time with the children.
8. Counseling for *Son #1* and *Son #2*.
9. Both *Dad* and *Mom* should participate in the Next Step program and seek post divorce counseling to assist in their co-parenting.

Thank you for the opportunity to serve as Guardian Ad Litem for *Son #1* and *Son #2* W.

Sincerely,

Glenn R. Anderson

GRA/lg

cc: (Attorney 1)  
(Attorney 2)