

REPORT TO THE
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**An In-Depth Follow-Up Audit
of the
Office of the Guardian ad Litem**

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Digest of An In-Depth Follow-Up Audit of The Office of the Guardian ad Litem

This report presents an in-depth follow-up to *A Performance Audit of the Office of the Guardian ad Litem* that was published in 2005. The Guardian ad Litem (GAL) program provides attorneys to represent the best interests of children who are victims of abuse or neglect during court proceedings. The office's fiscal year 2009 budget is \$5.9 million. Staff includes 39 attorneys and 28 other employees.

Increased Funding from the Legislature Has Contributed to Program Improvements. Since our 2005 audit, the Legislature has funded more attorneys and support staff positions, increasing the program funding by 44 percent. Although reliable caseload data remains elusive, increased staff appears to have helped reduce GALs' caseloads by over 30 percent. Although lower caseloads remain desirable, we do not have any data showing that Utah's caseloads are high compared to other jurisdictions.

GAL Performance in Juvenile Court Cases Has Improved. Compared with the results of the 2005 audit, GALs are now more consistently completing their statutorily required duties.

Guardian ad Litem Oversight Committee Helps Address Ethical Concerns. Established in 2005, the committee was created by the Judicial Council to address ethical concerns arising from the council's statutory responsibility to directly supervise the Office of the Guardian ad Litem. However, the Legislature has not changed the Judicial Council's responsibility to directly supervise the GAL office.

Case Management System Is Inadequate. The juvenile court's case management system, CARE, has a GAL module that permits activity tracking on each case but provides limited management information. There is no reliable system to track district court cases at this time.

Fee Collection Efforts Need Improvement. Utah law authorizes the court to charge fees for GAL services unless it is determined that the client is unable to pay. However, we found two concerns that thwart the court's ability to order and collect fees. First, most GALs rarely

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file motions for fees so they are seldom ordered. Second, when fees are ordered, there is no reliable collection process, so they are seldom paid. The office should establish standard processes to request and collect fees to help offset the cost of the GAL program.

Director Should Review Administrative Support Provided to Attorneys. Some GALs are better than others in completing tasks such as documenting case activities and requesting fees, perhaps because they have better staff support. The director should evaluate whether existing staff can be used more productively.

Continued Policy Improvement Is Needed. The director is moving in the right direction by creating a useful policy manual; recent policy initiatives are promising. Additional clarification would be helpful in defining the “best interest” of the child; this vague standard is subject to inconsistent application by GALs. The Legislature could establish objective criteria for evaluating the best interests of a child in statute rather than relying on the director to do so in policy.

Guardian ad Litem Program Was Designed for Juvenile Court. The GAL program was designed to provide legal representation to abused and neglected children in child welfare proceedings. Whenever the state removes a child from the home or files a petition alleging abuse or neglect a GAL is appointed. Thus, the state initiates these juvenile court cases on behalf of a child.

Guardian ad Litem Program Is Frequently Used in District Court. Although designed for state-initiated abuse and neglect cases in juvenile court, the GAL program is also used in privately-initiated cases in district court. While GALs provide useful services to children in divorce cases, some appointments involve little evidence of abuse or neglect. District court cases consume about 25 percent of the office’s resources. The drain of resources from juvenile court reduces the office’s effectiveness in child welfare proceedings.

Legislature Should Provide More Guidance on Using GALs in District Court. Guidance is needed both on (1) the conditions that trigger the appointment of a GAL in district court and (2) the terms (e.g, length and duties) of the GAL’s appointment. The Legislature could provide detailed guidance in statute or require the district court to clearly justify and limit GAL use each time it appoints a GAL.

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Chapter I

Introduction

This report presents our in-depth follow-up to *A Performance Audit of the Office of the Guardian ad Litem* that we published in 2005. The results of the earlier audit are summarized on page 3 of this report. The purpose of the Office of the Guardian ad Litem (GAL Office) is to provide legal representation during court proceedings to children in abuse and neglect situations. Utah's program relies on state-paid attorneys to represent children based on what the attorneys determine to be the best interests of the child. In reviewing this program we found it difficult to compare Utah's program with other states' programs because each state appears to operate differently.

Each of Utah's eight judicial districts has at least one GAL office, 12 offices total. The GAL Office's fiscal year 2008 budget was about \$5.5 million. For fiscal year 2009, the Legislature increased the office's budget to about \$5.9 million. The program currently employs 67 full-time-equivalent employees (FTEs)—39 attorneys and 28 non-attorneys, including secretarial support staff and Court Appointed Special Advocate (CASA) coordinators. With the fiscal year 2009 budget increases, the office plans on hiring two additional attorneys and two non-attorney staff positions. Additional information on the budget and FTE positions is discussed in Chapters II and III.

Guardian ad Litem Program Provides Attorneys to Represent Children in Court

In Utah, the use of guardians ad litem for representing children in child protection cases predates the establishment of the GAL Office in 1994. Appointing a guardian ad litem in Utah's juvenile courts started in 1987. A statutory change in 1992 required judges in district court, as well as juvenile court, "to consider appointing a guardian ad litem if the case involves child abuse, child sexual abuse or neglect." Since the establishment of the office in 1994, the state has funded attorney guardians ad litem in both juvenile and district courts.

The Office of the Guardian ad Litem provides legal representation to children in abuse and neglect situations during court proceedings.

The office has 67 FTEs, and its fiscal year 2008 budget was \$5.5 million.

Utah funds attorney guardians ad litem in both juvenile and district courts.

Juvenile court appointments of attorney guardians ad litem (GALs) are mandatory in child welfare cases brought by the state. *Utah Code* 78A-6-902(2) requires that “an attorney guardian ad litem shall represent the best interest of each child who may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of the day that: (a) the child is removed from the child’s home by the division; or (b) the petition is filed.” The division referred to in the statute is the Division of Child and Family Services, which is responsible for investigating allegations of child abuse and neglect. A petition is the formal document the division files in order to commence proceedings in a juvenile court alleging that a child is abused, neglected, or dependent.

District court appointments of attorney GALs are discretionary. *Utah Code* 78A-2-227(1) allows an appointment “if: (a) child abuse, child sexual abuse, or neglect is alleged in any proceeding; or (b) the court considers it appropriate in any proceedings involving alleged abuse, child sexual abuse, or neglect.” If the office is appointed in a civil case, the court may assess all or part of the office’s costs against the private parties involved. However, if the office is appointed in an adult criminal cases and the defendant is convicted, the court must assess all or part of the office’s costs as part of the defendant’s sentence. In Chapter III, we discuss the office’s fee collections, which we believe should be increased, and in Chapter IV, we discuss the appointment of GALs in district court, which we believe should be more limited.

The mission of the GAL Office is to “preserve and strengthen families whenever possible, and when it is not, to achieve permanency for children in a timely manner.” The *J.W.F v. Schoolcraft* (Utah Ct. App. 1988) decision set forth the office’s duty “to stand in the shoes of the child and to weigh the factors as the child would weigh them if his judgment were mature and he was not of tender years.”

Comparisons Among States Are Difficult

One challenge we faced during this audit, and previous GAL office audits, was comparing Utah’s program to other states’ programs. From state to state, GAL programs operate with significant differences. Some of those differences include:

- In child welfare cases, Utah requires the GAL to be an attorney; some other states allow lay volunteers or CASA workers to serve as GALs, sometimes with attorney support when needed.
- Utah relies on state-employed attorney GALs; some states contract with private attorneys.
- Utah has a state-level GAL program; some states rely on county-level GAL programs.
- Utah directs attorneys to advocate for the child's best interests even if the child disagrees; some states have attorneys who advocate for the child's wishes.
- Utah's GAL program is housed in the judicial branch, similar to many other states' programs; some states' programs are located in the executive branch.
- Utah allows state-funded attorney GALs to be appointed in divorce and custody cases where the conflict is between two private parties; some states only appoint GALs to child abuse and neglect cases where the state has petitioned the court.

In part, because of these differences, we were unable to make many useful comparisons to other states. For example, it is not meaningful to compare caseloads with another state that relies on lay GALs or private attorneys. Further, it is difficult to get reliable information about a state where each county administers a program. Other differences also made it difficult to compare Utah's program to other state programs.

2005 Legislative Audit Reported Concerns with Program

We were asked to conduct this in-depth follow-up audit in response to the concerns identified in our 2005 performance audit of the GAL program. In 2005 we found some program weaknesses that needed to be addressed by the GAL Office, the Legislature, and the

It was difficult to make program comparisons between Utah's and other states' guardian ad litem programs due to significant differences.

Concerns reported in our 2005 audit included GALs not performing statutory duties and a lack of policy standards.

Judicial Council. The Judicial Council is the governing body of the judicial branch.

In Chapter II of the 2005 report, we found that GALs were not performing some of their statutorily required duties. However, measuring the lack of performance was difficult because the program was lacking policy standards. Utah law requires the program director to establish policies for managing the program. We found the GALs had an inconsistent understanding of statutory duties and did not maintain adequate documentation. Our recommendation in Chapter II was that the GAL director implement formal program policies to address standards for file documentation and guidance on performing statutory duties and other GAL functions.

In Chapter III of the 2005 report we found GALs' caseloads to be high yet also recognized that the integrity of the program's data in measuring caseloads was questionable. In addition, we were concerned that the statutory duties required of GALs in juvenile court were outdated or unnecessary. We also discussed the GALs' involvement in district court. Our 2005 recommendations included the following:

- The director should implement a reliable case management system.
- The Legislature should consider funding additional GAL positions to reduce caseloads.
- The Legislature should review the statutory duties of the GALs in juvenile court to ensure the duties are necessary.
- The Legislature should review the GAL role in district court and determine if their involvement should be limited and if the duties required for district court cases should be the same as those required for juvenile court cases.

The 2005 report addressed an ethical conflict that exists in placing the GAL program in the Judicial Branch, where it is overseen by the Judicial Council.

In Chapter IV of the 2005 report, we found that a concern exists with the Guardian ad Litem Office being housed in the judicial branch and overseen by the Judicial Council. We found the Judicial Council is unable to provide adequate oversight of the GAL program because there is an ethical problem with judges supervising advocates who appear before them in court proceedings. We provided the Legislature with a list of several options that would give more oversight to the GAL program, including moving the program to the executive

branch. Also, pending legislative action, we recommended that the Judicial Council consider ways to improve oversight of the program, such as appointing a board of non-judges for oversight.

This current audit follows up on issues previously addressed. In addition, this audit develops issues briefly mentioned in the previous report relating to the GALs' involvement in district court cases.

Audit Scope and Objectives

The scope and objectives of this audit include the following areas of review:

- The changes in the GAL program's performance since the 2005 audit, including the effect of increased funding, completion of statutory duties, and oversight issues
- The status of the GAL case management systems of the juvenile and district courts, the adequacy of fee collection efforts, the use of staff resources, and status of the program's policy manual
- The extent of the GAL program's use in district court and review of options for limiting its use

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Chapter II

Guardian ad Litem Program Has Improved Since 2005 Audit

We believe the Guardian ad Litem (GAL) program has improved significantly since our 2005 audit. A major reason the program is performing better is that the Legislature increased funding so that more staff could be hired. Our review of case files suggests that these additional resources have led to GALs completing their required duties more frequently. In addition, the Guardian ad Litem Oversight Committee (Oversight Committee) was established by the Judicial Council to address an ethical concern with judges supervising advocates who appear before them in court proceedings.

Increased Funding from the Legislature Has Contributed to Program Improvements

The 2005 audit addressed staff and funding concerns. Since that audit, the Legislature has funded more attorneys and support staff positions, increasing the program funding by 44 percent. In the last three years, although reliable caseload data remains elusive, increased staff appears to have helped to reduce GALs' caseload by over 30 percent.

Legislature Has Funded More GALs and Staff

Since 2006, the Legislature has increased funding for the program from about \$4.1 million to about \$5.9 million, which includes staffing increases and cost of living increases. This is an increase in the program's funding of 44 percent from 2006 to 2009. The increased appropriation has allowed a significant increase in the number of attorneys since the 2005 audit. Figure 2.1 shows the funding increases.

Since the 2005 audit, the Legislature has increased guardian ad litem program funding by 44 percent, helping to reduce caseloads by over 30 percent.

Figure 2.1 Funding for the Guardian ad Litem Office Has Increased Significantly Since 2006. The program funding has grown 44 percent in the past three years.

	Fiscal Year			
	2006	2007	2008	2009
Appropriated*	\$4.1	\$4.4	\$5.5	\$5.9
Increase from previous year*		.29	1.1	.40
Percent increase from previous year		7%	25%	7%

**In millions*

Figure 2.1 shows that the largest funding increase was in fiscal year 2008. The Legislature appropriated funding for an increase of 11 staff, as well as for equipment and furnishings. The increase for fiscal year 2009 adds two additional attorneys and two secretarial support staff positions. The figure below shows how both the number of attorneys and total staff of the office have increased since our 2005 audit.

Figure 2.2 GAL Caseload Is Spread Among More Employees. The number of GALs funded for fiscal year 2009 is 31 percent more than were available in 2005.

FTEs	2005 Audit	2008	2009
Administrative Attorneys	2	2	2
Attorney GALs	29.75	37	39
Non-Attorney Staff	22.25	28	30
Total	54	67	71

Figure 2.2 shows that between our earlier audit and fiscal year 2009, the number of GALs and total staff both increased by about 31 percent. During fiscal year 2008, the office had 37 GALs, or 24 percent more than in 2005.

GAL Caseloads Have Been Reduced

Although the increase in attorneys since our prior audit has reduced caseloads, poor caseload information makes it difficult to know the amount of the reduction. However, information reported by the office indicates that, since 2005, the number of children

A \$400,000 increase in the fiscal year 2009 GAL budget is for two additional attorneys and two support staff.

represented has decreased while the number of GALs has increased. GALs also told us their caseloads have been reduced and are more manageable, although they still feel they are too high. While fewer cases would allow attorneys to devote more time to each case, an appropriate caseload standard is uncertain.

Due to the questionable accuracy of the current and past caseload numbers, we cannot be certain about the amount of the average attorney's caseload reduction, but it is considerable. According to the 2005 audit, 29.75 FTE attorneys represented 9,476 children in 5,163 cases. Thus, the average caseload was 174 cases or 319 children per attorney.

At the time of this audit, 37 FTE attorneys were reportedly representing 8,058 children in both the juvenile and district courts. The office now prefers to report workload in terms of children rather than cases, but assuming the average number of children per case has remained the same, there are about 4,379 total cases. We believe more aggressive case closure practices and more attorneys have helped reduce attorney caseload. The average caseload is about 118 cases, or 218 children per attorney. The apparent workload reduction is about 56 cases or 100 children per attorney—a decrease of over 30 percent since 2005. Adding in the two new attorneys for fiscal year 2009 should further reduce caseload to about 113 cases or 207 children. However, neither the 2005 or the current caseload counts are very reliable.

Accuracy of Caseload Data Remains Questionable. The office has long had problems with its caseload data. Our 2005 audit reported that “we had to piece together individual GAL reports to obtain estimated caseload” and recommended that the “director implement a reliable case management system to track caseloads and provide case statistics.” This audit found that caseload information from the office's annual reports has been erroneous, and data we obtained from GALs, especially for district court cases, is not reliable. Chapter III will discuss case management systems in more detail. This section just briefly notes some of the data reliability problems that make it difficult to quantify the level of caseload reduction.

Workload information published in the GAL Office's annual report has not been correct. In the office's 2006-2007 annual report,

We believe caseloads have been reduced, but poor data makes measuring the reduction difficult.

At the time of this audit, caseloads averaged 218 children per GAL, compared to 319 in 2005.

Caseload information in past annual reports has not been reliable.

We believe that current caseload numbers are still misstated, and more cases can be closed.

we identified several column totals that did not equal the sum of the amounts shown in the respective columns. For the column titled “Average Juvenile Court Children Served Monthly,” the sum of the averages shown for each of the state’s eight court districts is 5,925, but the statewide total printed at the bottom of the column is 6,096. Similarly, for the “Average District Court Children Served Monthly” column, the sum of the individual amounts shown for each district is 2,783, but the report shows the statewide total as 1,478.

Another obvious problem is with the number of new cases reported. According to the annual report, the First District had only two new district court appointments and the Sixth District had zero. When we checked with the districts, however, both reported different numbers for that year. The First District reported over 40 new appointments, and the Sixth District reported 9 new appointments. We spoke with the GAL director about some of the inaccuracies, and he agreed that the annual report did not have reliable case numbers.

Although we believe caseload information has improved, we still question the accuracy of the current caseload data. For current caseloads, at least two GALs’ caseload numbers were found to be inflated. Both GALs’ current open caseloads contained cases that should have been closed. One of the GALs estimated that 60 percent of his “open” cases could be closed. We also asked several GALs to review their currently open district court cases for cases that could be closed if the GAL had a week to devote to closing the case. We wanted to rule out cases that required another party’s attention and only focus on cases that require the GAL’s input to close the case. Six GALs reported that anywhere from zero to 33 percent of their cases could be closed.

The district court caseload is based solely on the GALs’ reporting of caseloads; upon finding errors in those reports, we question those reported caseloads. In addition, although we believe that the juvenile court’s case management system, Court Agency Record Exchange (CARE), is reliable in reporting the number of new cases, the closed-cases reporting could contain human error. At least one GAL’s juvenile court caseload did contain cases that should have been closed, thereby overstating her total caseload. The director says that more cases have also been identified as ready for closure but have yet to be

closed. A discussion of the program's case management system is found in Chapter III.

Appropriate Caseload Standard Is Uncertain. Despite the staffing increases the office has received, the director believes that more attorneys are needed. Although the director desires a workload of no more than 100 children (about 56 cases) per GAL, we are not aware of any state or jurisdiction that meets that standard. We also question focusing on children rather than cases since sibling groups do not directly multiply the work a GAL must complete. A staffing formula developed by a Court Improvement Program study in 1995 and presented to the Judicial Council and the Legislature focuses not on children or cases, but on court coverage.

The GAL director believes attorney GALs should represent no more than 100 children. He cites the American Bar Association (ABA) and the National Association of Counsel for Children (NACC) as recommending that standard. However, the ABA's director for the Center on Children and the Law told us the ABA has never created a "black letter" standard to that effect. The ABA's director did emphasize that no attorney at the ABA would argue with the soundness of following such a guideline because it makes sense that effective representation may not occur when an attorney is advocating an extremely high number of clients. Obviously, fewer cases equates to more time per case. However, we were unable to identify any state or jurisdiction that meets the 100 children per attorney GAL goal.

We think it makes more sense to measure workload in terms of cases rather than children. Our 2005 audit acknowledged a recommended standard of 100 children, but we focused on cases for a number of reasons. Most importantly, we do not believe that workload directly multiplies with sibling groups. In general, a case with four children is not necessarily four times the work of a case with one child. In addition, the former director agreed that looking at workload in terms of cases was reasonable; however, she preferred to look at staffing needs in terms of court coverage.

Both the current and former directors have emphasized the importance of court coverage in determining staffing needs. In 2005, the former director stated a reasonable staffing level for juvenile court cases was one attorney GAL per judge. For district court, she felt

We are unaware of any state that meets the goal of 100 children per attorney GAL.

Measuring workload by the number of cases, not children, may more accurately represent a GAL's workload.

The GAL Office currently meets its formula for juvenile court coverage, with 10 additional attorneys to cover district court.

We do not have any data showing that Utah's GAL caseloads are high compared to other jurisdictions.

additional attorneys were needed, but she did not have a simple formula. Similarly, the office's 2006 annual report stated:

The formula developed by the Court Improvement Program Study (1995) recommended one Guardian ad Litem Attorney be assigned to each Juvenile Court Room along with one assistant attorney general and one parent counsel.

Currently, there are 29 juvenile court judges and commissioners, so based on the coverage formula, 29 attorney GALs are needed. For fiscal year 2009, the office has 39 attorney GALs in addition to two attorneys with administrative duties. That leaves 10 attorney GALs for district court, which seems adequate. Chapter IV addresses the use of attorney GALs in district court from the viewpoint that limits are needed to control the drain of resources from child protection cases in juvenile court.

In conclusion, the appropriate workload standard for attorney GALs is uncertain. As discussed in Chapter I, comparisons with other states are problematic because there are so many differences in the fundamental structure of the GAL programs. However, we do not have any data showing that Utah's GAL caseloads are high compared to other jurisdictions. Finally, given the Court Improvement Program study quoted above, we do not believe additional GALs are needed at all in the juvenile court, and parent counsel might be a higher priority.

GAL Performance in Juvenile Court Cases Has Improved

This in-depth follow-up audit of the GAL program allowed us to perform the same test on the juvenile court files that we conducted in 2005. The results of that test show improvement in GALs completing their statutory duties. In addition, better management direction may have contributed to program improvements.

Review of Files Shows Improvement In Completing Statutory Duties

A review of 20 juvenile court cases from five districts shows an improvement in the GALs documenting statutory duties.

Figure 2.3 GALs Are Performing More Statutory Duties. Results from our 2008 file review, compared to our 2005 file review, show that GALs have improved their documentation and we believe, the services they provide.

Statutory Duty (<i>Utah Code 78A-6-902</i>)	Percent Duty Completed	
	2008 Results	2005 Results
1. Conducted or supervised an independent investigation.	100%	83%
2. Personally met with the minor.	95	31
3. Personally interviewed the minor if the minor was old enough to communicate; determined minor's goals and concerns.	77	24
4. Personally assessed or supervised an assessment of the appropriateness and safety of the minor's environment in each placement.	80	26
5. Personally attended [or delegated attendance to] all administrative and Foster Care Citizen Review Board hearings.	20	20
6. Personally, or through a trained volunteer, paralegal, or other trained staff, kept the minor advised of the minor's case.	64	12
7. Reviewed proposed orders for services, treatment and evaluation, assessment, and protection of the minor and the minor's family.	95	86
8. Personally, or through a trained volunteer, paralegal, or other trained staff, monitored implementation of a minor's treatment plan.	95	77

A repeat of the same test we conducted in 2005 shows GALs are performing more of their statutory duties.

As shown in Figure 2.3, GALs are better at documenting their performance of statutory duties. We believe this, along with reduced caseloads, is an indication of the GALs providing better services to their clients. See Appendix A for additional detail on this figure comparing the 2008 and 2005 survey results.

Although GALs have improved at completing their statutory duties, we have concerns about some of the duties themselves. For example, few GALs attend Foster Care Citizen Review Board (FCCRB) meetings (number five on Figure 2.3). FCCRB meetings are not held on many cases, but when there is a meeting the GAL frequently does not attend. In her letter of response to our 2005 audit, the former program director stated “GALs do not view FCCRBs as a productive use of time, because they duplicate court reviews.” She goes on to say “Court reviews are more effective because the FCCRB makes recommendations which then require court orders to be implemented whereas in an in court review any modifications of service arrangement or orders can be made by the judge.” Requiring GALs to attend these meetings, by law, may no longer be necessary. The GAL director should work with the Oversight Committee to identify any statutory changes he feels are needed and propose them to the Legislature.

New Management Direction Has Contributed to Program Improvements

Based on our observations and discussions with GALs, we believe that new management of the program has contributed to program improvements. The current GAL program director was appointed to the position in June 2007. After reviewing the GAL files in 2005 and then reviewing them in 2008, we found the files to be better organized and maintained. We found there was more uniformity and consistency among files.

We believe the new director has created a more cohesive program.

We also found that the program appears to have more uniformity and more management direction. The new director is currently focusing on building a sense of unity among the different program offices by standardizing procedures and having each office host a training session so the other offices can observe operations. The director has visited the district offices and implemented uniform methods of closing and archiving files. And, with the guidance from the Oversight Committee, the director has dealt with staffing and personnel issues. The new director has also assigned managing attorneys in each office to help program administration at the office level. Overall, we feel the new director has brought an increased focus on good management practices to the office.

Finally, we spoke with the GALs and asked them how they feel about working with the new director. Some GALs told us that he seems receptive to comments and responds quickly to questions and other problems. GALs also indicated the director provides good direction and is pushing for better accountability and training. Overall, the director seems to be working to increase the effectiveness of the office.

GALs support the direction of the new program director.

Guardian ad Litem Oversight Committee Helps Address Ethical Concerns

The Guardian ad Litem Oversight Committee was established in 2005 and is comprised of seven non-judge members. The committee was created by the Judicial Council to address ethical concerns arising from the council's statutory responsibility to directly supervise the GAL Office. As stated in our 2005 audit report, "There is an ethical problem of judges supervising advocates who appear before them in court proceedings." Although the Oversight Committee helps address the concern, the statutory duty of the Judicial Council to provide direct supervision has not changed.

The nature of the ethical concern was stated in a non-binding, concurring opinion of the Supreme Court of Utah in *State v. Harrison* (2001), by Associate Chief Justice Russon, with the agreement of Justice Durrant:

Placement of the Office of the Guardian ad Litem within the judicial branch raises an ethical concern.

I write only to express my concern about the statutory scheme that places the office of the guardian ad litem director within the judicial branch of government under the direct supervision of the Judicial Council, the governing body of the state courts. While the said office is of the utmost importance for the protection and well-being of children, its placement within the judicial branch of government is directly contrary to the role of the judiciary in our society. Its placement should be within the executive branch of government. . . . Courts must maintain absolute neutrality and be free from bias or prejudice, or even the appearance of such, in the conducting of judicial trials. Indeed, the Code of Judicial Conduct requires judges to "exhibit conduct that promotes public confidence in the integrity and impartiality of the judiciary."

Because of this dilemma, the Judicial Council was providing only administrative, and not direct supervisory, support of the program. This left the program with little direct oversight and accountability. The 2005 audit recommended that the Legislature review the oversight structure of the office. We also recommended that, pending legislative action, the Judicial Council consider ways to improve oversight, such as appointing a board of non-judges to oversee the office.

The Judicial Council created an Oversight Committee made up of non-judges to address ethical concerns.

Oversight Committee Helps Address Ethical Concern. The Judicial Council acted quickly to improve oversight by creating the Guardian ad Litem Oversight Committee by court rule. The responsibilities of the committee, as set forth in Rule 4-906, include developing and monitoring policies, recommending rules of administration, monitoring caseload, recommending adequate staffing, fielding complaints, and assisting the Judicial Council in appointing the director.

The committee has met regularly and discussed a variety of issues, such as their concerns with GAL caseloads. For example, in the June 2006 Judicial Council meeting, the then-chair of the Oversight Committee reported that “the Committee will . . . aggressively consider alternative means of reducing caseload. Some of the those alternative might include: statutory time limits in district court cases; district court judges appointing private guardians ad litem; requesting and awarding attorney fees as required or permitted by statute, and; creating a workload standard.”

Although the Oversight Committee identified these alternative means of reducing caseload, little action has resulted. Instead, the suggestion of limiting caseload by refusing cases has been brought up several times in committee meetings. Action, aside from expecting additional funding for more personnel, is needed. We hope alternative strategies to address caseload issues will emerge from the Oversight Committee in the near future. Some possible strategies the committee may want to consider are discussed later in this report.

The Oversight Committee needs to pursue alternative strategies to address caseload concerns.

Statute Has Not Been Changed. Although creation of the Oversight Committee helps address the ethical concern, the statutory scheme has not changed. *Utah Code* 78A-6-901 states:

(1) There is hereby created the Office of Guardian Ad Litem Director under the direct supervision of the Judicial Council in accordance with Subsection 78A-2-104(14).

(2) (a) The Judicial Council shall appoint one person to serve full time as the guardian ad litem director for the state. The guardian ad litem director shall serve at the pleasure of the Judicial Council.

Thus, the oversight of the office remains under the Judicial Council. The director still serves at the pleasure of the Judicial Council, a body of judges. Although the Judicial Council has helped create a buffer by establishing the Oversight Committee, the Legislature could take further action.

One option would be for the Legislature to move the GAL Office to the executive branch, perhaps in the Department of Administrative Services. The Office of Child Welfare Parental Defense is in that department. That option was discussed in our 2005 report, but we did not conduct additional work on this area for this report. However, it should be noted that although it is difficult to compare among states, the guardian ad litem function is more often placed in the judicial branch than the executive branch.

Another option would be for the Legislature to create the Guardian ad Litem Oversight Committee in statute. That option might allow the elimination of the Judicial Council's responsibility to directly supervise the Guardian ad Litem Office and to appoint the office director. If this option were pursued, additional input from the Judicial Council should be sought to identify possible unintended consequences.

In conclusion, the Oversight Committee addresses the ethical concern of judges supervising advocates who appear before them in court by providing a buffer between the Guardian ad Litem Office and the Judicial Council. However, the Legislature may still want to address the statutory scheme that places the office under the direct supervision of the Judicial Council.

By law, the GAL Office remains under the direct supervision of the Oversight Committee of the Judicial Council.

The Legislature could take further action to address GAL Office oversight.

Recommendations

1. We recommend that the Guardian ad Litem Office report workload in number of cases as well as number of children.
2. We recommend that the Guardian ad Litem Office, in conjunction with its Oversight Committee, study whether any statutory duties should be changed (such as eliminating the requirement to attend Foster Care Citizen Review Board meetings). The results of that study, and any suggested changes, should be proposed to the appropriate legislative committees along with the rationale for the suggested changes.
3. We recommend that the Guardian ad Litem Oversight Committee consider alternative strategies to address caseload concerns.
4. We recommend that the Legislature decide if action should be taken to change the Judicial Council's statutory responsibility of directly supervising the Guardian ad Litem Office.

Chapter III

Management of GAL Program

Needs to Continue Improvements

As we addressed in Chapter II, the Guardian ad Litem program has improved operations. However, we believe additional improvements will further the GAL's effectiveness in fulfilling its mission. Four areas are addressed in this chapter:

- The case management system is inadequate.
- Fee collection efforts need improvement.
- The director should review administrative support provided to attorneys.
- Continued policy improvement is needed.

Currently, the director is unable to track district court caseloads, and we have concerns with the juvenile court case management system. We believe that it is necessary for the director to be able to accurately track both juvenile and district court caseloads for effective program management. In addition, more aggressive fee collection efforts could bring in additional funding to help the program recoup some program costs. Weighing the benefit of reallocating resources to provide for more administrative help to the attorneys would help the program ensure the most effective use of resources. Finally, providing more policy direction to the GALs could create more uniformity in executing the program and could clarify statutory intent.

Case Management System Is Inadequate

Without a case management system that tracks both juvenile and district court cases, the GAL director is unable to observe workload as a whole or to direct the program effectively. The juvenile court's case management system, CARE, has a GAL module that permits activity tracking on each case but provides limited management information. However, the GAL program has no reliable system for tracking district court cases.

The office's new case management system, CARE, is only used for juvenile court cases.

CARE's activity-tracking function offers improved documentation of GAL's activities.

Juvenile Court CARE System Provides Limited Management Information

The CARE system is used to manage the juvenile court caseload and offers two functions: activity tracking and management reports. We believe the activity-tracking function in CARE provides a benefit to the GALs. Being able to log activities and review the current status of a case by printing a report of the activities logged is an improvement from having to review past handwritten notes from the file. However, the GALs told us the data entry is time-consuming.

As for CARE's management-reporting function, we found the reports to be limited and unreliable. CARE offers very few reports, and we found them to have errors.

The CARE system came online to the GALs in December 2006. In February 2007, we conducted a limited review of the GAL module of CARE and found it promising. Since the CARE system has now been in use for about a year and a half, we are better able to evaluate the system's usefulness to GALs.

CARE Provides Useful Activity Tracking if Data Is Entered.

GALs with juvenile court cases can use CARE to track the activities they have performed on a case, such as child visits and case investigation progress. GALs are able to take handwritten notes, enter the detail into the system, and then print out a report that lists logged entries. We believe this ability to track activities is an improvement over reviewing GALs' handwritten notes.

We asked the director and GALs how well the CARE system is working for them and heard both favorable and unfavorable comments. GALs said it needs some fine tuning, but it is working. Using the CARE system is an easy way to review older cases. Additionally, it relieves some of the tediousness of previous tracking, and it has helped GALs monitor contact with clients and the fulfillment of other duties. It also may provide notices the GAL would not have necessarily received before, such as notifying a GAL if the client gets picked up by Juvenile Detention. It helps with the dockets and orders. One GAL stated she can update CARE while in the courtroom waiting for a case.

We also heard that CARE can be overwhelming and that it takes a lot of time and discipline to log information. Some GALs find the task less cumbersome because they have staff to enter the data. Others reported they do not have administrative staff help and are behind because it takes so long to enter the data. According to the director, he initially requested that juvenile court GALs have all of their activities for each month logged by the 10th of the following month. However, he found GALs were struggling with this tight deadline and now allows them to take until the end of the following month to log the previous month's entries. In order for CARE to be useful, the GALs must enter the data, and the data must be timely. We believe as GALs become more familiar with the system, these problems will be worked out. Later in this chapter we discuss the possibility of reallocating staff resources to provide GALs more administrative help with CARE data entry.

CARE Provides Limited and Unreliable Management

Reports. We reviewed CARE to see what management reports it provides. When we started this audit, six management reports were available in CARE. By the end of this audit, we found that two of these reports had been pulled off-line to fix errors we discovered while conducting the audit. Two additional reports are unused because the director determined that they lack value. Currently, only two of the initial six reports are used. Figure 3.1 depicts the current status of the six reports.

Figure 3.1. CARE's Reporting Function Is Limited. Only two of the six management reports are in use.

	Report Name	Status of Report Use
1	Cases Open Over 13 Months with No Permanency	Off-line
2	Transfers	Off-line
3	No Client Contact	Unused
4	No Court Hearings — Over 90 Days	Unused
5	GAL Monthly Report	In use
6	GAL Case Load	In use

Two reports are now off-line. The first of these reports, which was discontinued, generated a list of clients for whom permanency had not been established within 13 months. Juvenile court strives to obtain permanency by 12 months. This report incorrectly listed attorneys

CARE's management reporting function is weak and does not offer the director a reliable tool for evaluating case information.

who are no longer GALs and administrative staff in the “GAL Assigned” column. This report was not being run and was not providing a value to the program. Due to the errors, the office pulled the report. The second report, “Transfers,” was also disabled due to errors.

According to the director, two of the remaining four reports also provide no value to him. For example, regarding the third report, “No Client Contact,” we asked the director what measure of time would make this report useful to him. He said it depends on the type of case being measured. Protective order cases run a shorter period of time; therefore, the measurement of when a child has been seen is different than it is in other types of cases. The report also listed GALs who are no longer employed by the office. The fourth report, “No Court Hearings — Over 90 Days,” provided little or no value to the director, either.

The fifth report, “GAL Monthly Report,” is in use; however, we found errors when comparing beginning case count, new cases opened, and closed cases to end case count. Also, the report showed that one individual GAL had more cases than her entire district. This was a programming error that was eventually fixed after we brought it to the attention of the GAL Office and the programmers.

The sixth report, “GAL Case Load,” is also in use and provides a benefit. The report lists all the currently open juvenile court cases for each GAL. There is a field in the report listing the “Last Client Contact” date. Sometimes this field is blank, indicating the client has never been contacted. A potentially helpful feature missing from this report is a “Date Opened” field, which would provide a reference point for monitoring the frequency of attorney-client contacts.

Also, CARE does not have the ability to produce an aging report to identify cases by how long they have been open. Currently, CARE users cannot evaluate the timeliness of caseload turnover. An aging report is vital because it would allow management to measure productivity and efficiency.

The director said the most of the reports created in CARE provide little use to him. The current set of reports that CARE is capable of generating does not measure standards he is interested in. He stated

CARE does not produce an aging report for the director to evaluate caseload turnover.

that CARE is not where it needs to be in providing management reports. CARE reports are currently limited to a point in time. Reports generating averages, such as average caseload over a period of time, cannot be run. Therefore, CARE provides limited statistical analysis. The director said he would like to be able to pull demographic statistics and averages for each district. However, the director said best practice standards need to be created before the CARE reports can reflect what information is meaningful for report purposes. He said they are in the process of reworking CARE reporting and gathering best practice suggestions.

In order for CARE to be a useful tool to the GAL Office, it must be adapted to the office's needs. The director must define measurable standards for which CARE can supply the data.

Program Has No Reliable System For Tracking District Court Cases

Although the CARE system has some shortcomings, we are even more concerned with the tracking of the district court caseload. There is no reliable system for tracking district court cases. GALs may keep self-generated case lists and informal activity logs, but there is no system that all district court GALs can use to track their cases.

In reviewing self-reported district court GAL case lists, we found several different ways of managing the data. Some GALs use an Excel spreadsheet to track their cases. Others use a word processing program, while some just provided us a list of names through email.

Because there is no formal district court tracking system, the director has no way of monitoring district court caseloads, aside from GAL-provided reports, which are unreliable and not always provided by the GAL to the director's office. As many as 20 different GALs handle at least some district court cases. Reported caseloads for these 20 GALs, at the time of this audit, totaled 2,123 district court children, or 26 percent of the program's total caseload. We believe this is a large amount of the total caseload that the director is unable to reliably track. The director has also expressed this concern to us.

We believe the GAL Office has been reporting inaccurate caseload numbers in its annual reports. We reviewed the district court caseload reports provided to the director's office and found missing data and

Because district court caseload data is self-reported by GALs, statistics reported by the GAL Office are not very reliable.

inaccurate calculations. We also found that some caseloads are overstated in district court, containing files that should be closed. However, the director recently established a new case closure policy that is discussed later in this chapter.

Measuring the GALs' workload must first start with reporting accurate caseloads. Once accurate caseloads can be determined and verified, the director can analyze workload and better allocate resources where needed. It is necessary for the director to be able to measure the demands placed on all the attorneys, not just those in the juvenile courts. The director recognizes the shortcoming of not being able to reliably measure the entire caseload. He told us that he is currently working with the Administrative Office of the Courts' Information Technology Department to find a way to use CARE for managing the district court's caseload.

Fee Collection Efforts Need Improvement

Utah law authorizes the court to charge fees for GAL services unless the client is determined to be unable to pay, or impecunious. However, we found two concerns which thwart the court's ability to order and collect fees. First, most GALs rarely file motions for fees so they are seldom ordered. Second, when fees are ordered, there is no reliable collection process, so they are seldom paid. The GAL Office needs to establish standard processes for addressing these concerns in order to collect fees and offset the cost of the GAL program. We believe that clear policy is needed directing GALs to request fees on all cases unless the inability to pay is demonstrated. Also, when fees are ordered, standard procedures are needed to collect them, including submitting unpaid claims to the State Office of Debt Collection in a timely manner.

Utah Code 78A-2-227(4) for district court cases and 78A-6-902(6) for juvenile court cases, authorizes the court to order fees and other costs relating to the appointment of a GAL "that the court determines to be just and appropriate." The court is prohibited from assessing these fees and costs against a parent or legal guardian "who is found to be impecunious." In order to be found impecunious, the party must submit financial disclosures, including

Attorney fees are rarely requested. When fees are ordered, they are rarely collected.

Utah law allows the GAL costs to be assessed, unless the parties are determined to be unable to pay.

income, assets, monthly expenses, debt, etc., to prove inability to pay. The court then determines if the party qualifies.

Clear Policy Needed for GALs To Routinely Request Fees

In reviewing fee order practices, we found that few GALs have requested and been ordered fees. The lack of a clear office policy may be one reason that attorneys are not filing motions requesting fees whenever possible. However, in July 2007, the director encouraged GALs to request fees, and fee receipts have increased. Still, some GALs with district court caseloads have no record of having fees ordered. We believe that attorneys should file orders requesting fees on all cases where the client's inability to pay has not been determined.

Few GALs Have Requested and Been Granted Fees. Fees are ordered most often in district court cases but are also allowed in juvenile court cases. Records of granted fee orders exist for 17 GALs, both past and presently employed, in both district and juvenile court. However, of the 37 currently employed attorneys working caseloads, 28 of them have no records of fees ordered. The director and the GALs tell us that many GALs are not requesting fees. Four of the 14 judges and commissioners we spoke with commented that rarely, if ever, has a GAL requested that the court order fees for the office.

Figure 3.2 shows that only one attorney has routinely requested fees. This has been confirmed by the director. This GAL said that he is able to file motions requesting fees for so many clients because he relies almost completely on administrative help to do so. We obtained the fee records from the office in May 2008. The fee records, which began in October 2002, show 242 fee orders, or 72 percent of the total number of orders on record, granted to that one attorney.

Few GALs are requesting and being granted fees.

Figure 3.2 Fees Ordered Differ by GAL. One GAL is responsible for the majority of the fees ordered. Only nine of the GALs listed below are currently employed with the office. The other GALs listed were employed with the office in the past. Twenty-eight current GALs are not included in this figure because they have no fees attributable to them.

One GAL far exceeds all others in having fees ordered.

Fees Ordered by GAL Since October 2002				
GAL	Ordered Dollar Amount and Percent of Total		Number of Orders and Percent of Total	
A	\$ 227,958	75.6%	242	71.8%
B	38,996	12.9	34	10.1
C	8,084	2.7	8	2.4
D	7,850	2.6	5	1.5
E	4,676	1.6	4	1.2
F	3,500	1.2	14	4.2
G	1,658	0.6	6	1.8
H	1,650	0.5	7	2.1
I	1,500	0.5	3	0.9
J	1,425	0.5	3	0.9
K	1,155	0.4	2	0.6
L	1,063	0.4	2	0.6
M	675	0.2	2	0.6
N	500	0.2	1	0.3
O	300	0.1	2	0.6
P	281	0.1	1	0.3
Q	250	0.1	1	0.3
Total	\$ 301,521	100.0%	337	100.0%

In addition to the \$301,521 outstanding fees, the program was also awarded about \$63,000 of additional fees, but the office neglected to record the name of the attorney who requested the fees. Therefore, we were unable to allocate them to the individual GALs, and those fees are not included in this figure.

Almost all of the fees granted to guardian ad litem A are from district court cases. If fees were requested by and granted to GALs at a similar rate in other district court cases throughout the state, we calculated that fee orders from district court cases alone could exceed \$1 million annually.

Figure 3.3 Fees Ordered Differ by Court District. Of the eight judicial districts, the Fourth District is responsible for the majority of the fees ordered to be paid to the program.

Fees Ordered by District Since October 2002				
District	Ordered Dollar Amount and Percent of Total		Number of Orders and Percent of Total	
1*	\$ 0	0 %	\$ 0	0 %
2	750	0.2	2	0.6
3	13,750	4.6	33	9.8
4	285,521	94.7	299	88.7
5	1,500	0.5	3	0.9
6*	0	0	0	0
7*	0	0	0	0
8*	0	0	0	0
Total	\$ 301,521	100.0%	\$ 337	100.0%

**Districts One, Six, Seven, and Eight have no fees attributable to them on record.*

Fourth District is essentially the only district requesting and being ordered fees.

Figure 3.3 shows that the fourth district is responsible for most of the fees ordered. This, of course, is the district where guardian ad litem A in Figure 3.2 is located. However, even without his contributions, the fourth district would still lead in the number of orders. As with Figure 3.2, this figure does not include the \$63,000 the Guardian ad Litem Office left unallocated to a specific GAL or district.

Director Has Encouraged GALs to Request Fees. The office policy manual that the director provided to us did not include any formal policy on requesting fees, but it did include an email that provided some good guidance on the topic. The July 2007 message from the director to GALs stated:

It has been the policy of our office . . . to request an order for attorney fees in most district court cases, and in those juvenile court cases where the parents have the ability to pay. . . . Every guardian working in district court must make it a habit to request an award of attorney fees in pretty much every case. . . . Juvenile court guardians should request fees in those cases where the parents have hired private counsel, or where it otherwise appears they have an ability to pay.

We commend the director for encouraging GALs to request fees, and we believe this has resulted in some additional collections. State accounting reports show that between fiscal years 2007 and 2008, fees collected increased from \$7,344 to \$40,072.

One concern we have with the guidance provided by the director is that it gives the GALs too much discretion. Some GALs told us they are reluctant to request fees because it may create a burden on the family. Although the director's email states that in cases where parents have the ability to pay GALs should file motions requesting fees, the director confirmed that the intent of the policy is to allow the GALs discretion when deciding whether or not to request fees on the case.

We think GALs should request fees on all district court cases unless an inability to pay has been predetermined by the courts. It is the court's role, not the GAL's, to make that determination based on the parents' filing an affidavit of impecuniosity, showing the parent's inability to pay.

Standard Process to Collect Fees Is Needed

The collection of hundreds of thousands of dollars of potential revenue is not being actively pursued. Since October 2002 through May 2008, the Guardian ad Litem Office has recorded over \$360,000 of ordered fees. Little of that amount has been collected, yet the bulk of the fees ordered was never sent to the Office of State Debt Collection (OSDC) by the GAL Office. Records provided by the GAL Office indicate that about \$300,000 of fees remain unpaid, but we are unsure the records are reliable.

In addition, at least 81 percent of the total amount of fees was ordered previous to 2008. Therefore, these fees have been allowed to age, possibly beyond a reasonable time of collection. The GAL Office has only sent outstanding fee orders to OSDC once, on November 10, 2005, at which time 15 fee orders totaling about \$19,000 were transferred.

Collection Process Needs to Be Followed. In an email to GAL staff dated July 31, 2007, the director stated that the office's fee request and fee collection process is to submit the fee order to the

The GAL Office has about \$300,000 of outstanding fees owed to them that they never forwarded to the Office of State Debt Collection.

office's program assistant, who will make a preliminary effort to collect. If the office is unable to collect, the program assistant is to send the unpaid orders to the OSDC. However, this practice is not being adhered to.

Utah Administrative Rule 21 establishes the procedures by which agencies are to attempt initial collection and transfer delinquent accounts receivable to the OSDC. It states:

State agency customers shall be billed within 10 days from the event creating the receivable. . . . The payment demand date shall be no later than 30 days from the event date. . . . State agencies shall contact customers for payment by phone or written notice when payment is not received within 10 days after the payment demand date (R-21-1-4). A state agency . . . shall transfer collection responsibility to the Office [of State Debt Collection] . . . when the account receivable is not paid within 90 days of the event or is delinquent 61 days (R-21-1-5).

This practice is not being followed with regards to the GAL Office's accounts receivable. When we contacted the director of management services for the Administrative Office of the Courts, he stated that he was unaware the Guardian ad Litem Office was involved in the collection of fees. Now that he is aware of the problem, he stated that his office will implement a plan to monitor the GAL Office's accounts receivable in cooperation with the OSDC.

Better Fraud and Other Controls Are Needed in Tracking Accounts Receivable. In our review of the GAL Office's accounts receivable, we also found internal control weaknesses within the fee collection process. We are concerned that the office's method of tracking accounts receivable does not reasonably safeguard against potential misstatement, fraud, or error. Adequate controls have not been put in place to verify that every award of fees is sent to the main office where initial collection efforts occur. Once the fee order has been received at the main office, there are oversight concerns related to the record-keeping and reporting functions to ensure they are accurate, reliable, and timely.

We were limited in our ability to verify many components of the accounts receivable data. The Guardian ad Litem Office should more

The Administrative Office of the Courts' Management Services will begin monitoring the GAL Office's accounts receivable to ensure ordered fees are not being forgotten.

Controls are needed to ensure all ordered fees are documented, verifiable, and followed up on.

diligently maintain its records related to ordered amounts. Together with improved record keeping, a better system of controls is needed to support the reliability of fee order and collection records. We recommend that the GAL Office establish a method of tracking accounts receivable that will ensure the data's completeness and verifiability.

The fees collected on behalf of the GAL Office can help defray administrative costs. This is a revenue source that should be more aggressively pursued by both the GALs and the administrative office in submitting unpaid claims to the OSDC.

Director Should Review Administrative Support Provided to Attorneys

The GAL director should explore options to ensure that the administrative needs of the program are met. The prior two sections of this chapter described concerns with GALs' completion of administrative tasks such as CARE data entry and fee requesting. Some attorneys are better able to complete these important functions, perhaps because they have better staff support. In some situations, additional staff support may pay for itself through greater fee collections.

Support staff can help attorneys generating motions for fee requests and input data into CARE.

GALs have told us they need secretarial help, and the director and Oversight Committee agree. For example, at the July 2006 Guardian ad Litem Oversight Committee meeting, the former chair suggested making budget requests for support staff a priority so that attorney GALs can be more effective. Besides requesting additional support staff, the director should evaluate whether existing staff can be used more productively.

Staff Help GALs Meet Program Needs

In addition to attorneys, the GAL program employs support staff and Court Appointed Special Advocates (CASA) coordinators. Support staff help GALs by completing administrative tasks. CASA coordinators help GALs by recruiting and training volunteers to assist the GAL on some cases. While both support staff and CASA coordinators help GALs, their use and productivity raise concerns. Figure 3.4 shows the distribution of each type of staff by office.

Figure 3.4. GAL Program Staffing Includes Attorneys, Support Staff, and CASA Coordinators. Support staff and CASA coordinators assist GALs in meeting the needs of the children served.

Office	FTE Attorney	FTE Support Staff	FTE CASA Coordinators	Total FTEs
Admin. Office*	2	2.5	1	5.5
Logan	2	1.375	1	4.375
Layton	7	3	1	11
Salt Lake	10	5.18	1	16.18
West Jordan	4	1	0	5
Tooele	1	0	0	1
Provo	6	3.07	.5	9.57
Cedar City	1	1	.5	2.5
St. George	2	1.25	.75	4
Salina	1	.5	.5	2
Castle Dale	1	.5	.5	2
Price	1	.5	.5	2
Vernal	1	.5	.5	2
Total	39	20.375	7.75	67.125

*The administrative office is located in the Matheson Courthouse in the Third Judicial District.

All GALs Are Attorneys. The program has 39 attorneys, 37 who work cases and two who administer the program. All of the 37 attorneys who work cases as guardians ad litem are responsible for representing the best interests of abused or neglected children in court proceedings and have statutory duties to fulfill for each child they represent. Each child's case also involves some necessary administrative tasks, so support staff is important for enabling GALs to focus on representing the best interests of the child in court.

Support staff allow attorneys to focus on representing the best interests of the child in court.

CASA coordinators are state employees who recruit and train CASA volunteers to help GALs on some cases.

Most Support Staff Help with Administrative Tasks. The program has about 20 support staff. Most of the GAL support staff is secretarial, but the FTEs shown in Figure 3.4 include a .18 FTE licensed clinical social worker in Salt Lake and a .375 FTE investigator in Logan. We are uncertain why specialized support staff is housed in some offices but not others. In addition, some attorneys appear to have little access to support staff. The West Jordan office's four attorneys have only one support staff, and the Tooele office's attorney has no support staff.

CASA Coordinators Manage Volunteers. CASA coordinators recruit and train volunteers to assist GALs on some cases. Figure 3.4 shows that the program has 7.75 CASA coordinators, but that may not be accurate. One coordinator told us that although she is budgeted as 50 percent support staff and 50 percent CASA coordinator, she really spends about 90 percent of her time on support staff functions and only about 10 percent on CASA functions. Similarly, another coordinator budgeted to spend half of her time on CASA functions estimated she really only spends about 15 percent.

Unlike the CASA coordinators, who are state employees, CASA volunteers donate their time. These volunteers are assigned to assist GALs on some cases; for example, they may help by visiting clients or completing investigatory work. Last year, CASA volunteers provided input for 380 children in juvenile court cases, a small portion of the total GAL cases. CASA volunteers were not assigned to any district court cases.

GAL Program Should Consider Realigning Staff Resources

The GAL director should evaluate alternatives for improving the administrative support provided to attorneys. According to data in Figure 3.4, the office has a ratio of .52 support staff per attorney. In addition there are .20 CASA coordinators per attorney; however, as noted above, some CASA coordinator time is used to assist with administrative tasks. Combining both types of non-attorney staff provides a ratio of .72 per attorney.

For comparison, we spoke with the Attorney General's (AG) Office about the staffing in their Child Protection Division, which seems most similar to the GALs' area of practice. The AG's Office

reported to us that they have .88 staff (which includes legal secretaries and paralegals) per attorney. However, we did not attempt to compare work assignments to determine if the AG's division provides a valid comparison.

The director could take a variety of approaches for improving the administrative support to GALs. One option to consider is converting one or two attorney positions to support staff. While that would be a difficult step to take, some GALs now report they are burdened with administrative work that could be more cost-effectively completed by secretaries. However, we think the director should first review the productivity of non-attorney staff, including both support staff and CASA coordinators.

Support Staff Productivity Should Be Reviewed. Some GALs appear to receive better staff support than others. The director should review the use of support staff to ensure support staff time is spent productively. Although we did limited work in this area, our impression after talking with GALs is that some support staff may help one attorney but not another in the same office. Further, some support staff may need additional direction about the type of tasks they should be performing for attorneys.

To illustrate the issue, one GAL in the Provo office described the value of his support staff. This attorney, who is responsible for 75 percent of the fee amounts ordered in the state, said that he relies almost completely on secretarial help to file motions for fees. He stated, "I would not be able to get fees if I had to do a significant portion of drafting the pleadings or tracking my hours." Apparently, it is largely the efforts of his support staff that enable fees to be requested.

The confusing aspect of the excellent support received by the Provo GAL is that other offices appear to have similar staffing levels. Figure 3.4 shows Provo has about three support staff to six attorneys. Many other offices have a very similar ratio, but the GALs in other offices are very seldom able to request fees.

CASA Coordinator Productivity Should Be Reviewed. We did not evaluate the CASA program in detail; however, we did identify some questions about the productivity of the CASA coordinators.

Although staffing levels appear similar, a GAL in Provo seems to receive better staff support than others.

CASA coordinators do not appear to be very productive, but they may be helping with support staff tasks.

Based on how their time is budgeted, the CASA coordinators do not appear to be very productive. However, it could be that much of their time is spent on support staff tasks rather than CASA tasks.

On paper, it appears that the CASA coordinators do not generate enough volunteer hours to justify their cost. During the past few years, the program reports that volunteers have donated 10,500 to 12,000 hours of time to assist on cases. In contrast, 7.75 CASA coordinators are paid for more than 16,000 hours each year. The director reports that a .5 FTE was recently added, so last year only about 15,000 CASA coordinator hours were paid, but that is still more than the volunteer hours generated. Therefore, the CASA volunteers do not appear very productive. However, we did not review the type or quality of assistance provided by volunteers.

Based on the apparently low productivity of the CASA coordinators, it seems the director should consider reallocating at least some CASA coordinator resources to staff support. In reality, that may already have occurred, but it is not reflected in the program's records. As noted, some CASA coordinators report that their actual work effort is different than their nominal work assignment.

In conclusion, because some important administrative tasks are not being completed, the director needs to evaluate ways for improving the support attorneys receive. One option is to consider converting an attorney position into additional support staff. Instead, it may be possible to increase the productivity of existing non-attorney staff, as indicated above.

Continued Policy Improvement Is Needed

Our previous audit addressed the need for clear policy to help the office fulfill its responsibilities. We believe the new director is moving in the right direction by creating a useful policy manual; additionally, recent policy initiatives are promising. For example, during our audit, we found the director was trying to improve policy guidance on completing statutory duties, closing cases, and requesting fees.

Another important area where we think additional policy guidance would be helpful is establishing objective criteria for evaluating the

best interests of a child. While the *Utah Code's* section on divorce-related issues does provide guidance on determining the best interests of children whose parents are divorcing, that guidance may not fully apply to abuse and neglect cases.

Recent Policy Initiatives Are Promising

While changes are still needed, the GAL Office's policy manual has improved since our 2005 audit. According to the director, the office's policy manual is still a work in process; the manual is too big and includes unnecessary information. In addition, some topics need to be more clearly covered. We found the director is trying to improve policy guidance to his staff. While it is too early to judge its effectiveness, the director has provided additional policy guidance in three areas which will be discussed in the remainder of this section.

New Statutory Duty Checklist Is Helpful. Chapter II reported on our review of GAL's completion of their statutory duties in juvenile court cases. Our file review showed improvement since our 2005 audit, but in some cases we found no documentation that statutory duties were completed. In the 2005 audit, one of our suggestions for improving documentation of activities was that "GALs could have a summary or checklist of each duty performed."

In March of this year, the director instituted a statutory duties checklist that all GALs are supposed to maintain in each client's file. See Appendix B for the document. The checklist also provides guidance on what it takes to satisfy the completion of a particular duty. For example, this checklist provides examples of what could be included to justify that an independent investigation has been performed. Some of the items include a background check, police reports, and school and therapeutic information. We believe such a checklist could be helpful to ensure the GALs' statutory duties are being performed.

New Case Closure Policy Should Provide Needed Direction. In Chapter II we noted that at least two GALs' caseload numbers were inflated because cases that should have been closed were listed as open.

In April of this year, the director instituted a new case closure policy. We believe this is a much-needed policy. The policy states,

New case closure policy could help clean up old files so that GAL time can be more efficiently used on currently active cases.

If a case has remained open for a period of six months with no activity the GAL should file an appropriate motion to terminate the appointment . . . unless in the professional judgment of the GAL there exists a valid need to keep the case open.

The policy goes on to require that if the GAL determines the case should stay open, the reason for keeping it open must be documented in the file. GALs are instructed to conduct a quarterly review of their cases, which cannot be delegated, and confirm by email to the director's office that the review has been completed.

Fee Guidance Is Better, but Formal Policy Is Needed. Earlier in this chapter, we discussed how the director has encouraged GALs to request fees and provided additional policy guidance through a July 2007 email. Although fee collections have increased, there is much room for additional receipts, especially in district court cases initiated not by the state, but by private parties. We think a formal policy should be adopted directing GALs to request fees on all district court cases unless an inability to pay is documented. Such a policy would allow the court, rather than the GAL, to determine whether to assess fees.

Criteria for Determining Child's Best Interests Needs Clarification

We believe the director should establish in policy a systematic approach for GALs to use in determining what constitutes a child's best interests. The Utah Juvenile Court Act simply states that the GAL shall represent the child's best interests, but the law does not define how to evaluate best interests in an abuse or neglect case. By establishing objective criteria for GALs to use, the director could help ensure that a consistent standard is applied.

The Legislature could define best interest criteria in statute, or the GAL director could do so in policy.

Alternatively, the Legislature could define best interest criteria for GALs to use in statute rather than relying on the director to do so in policy. Currently, *Utah Code* has best interests criteria for judges to apply to child custody considerations in a divorce case. Since the custody-related criteria may not fully apply to abuse and neglect cases, the Legislature could establish additional criteria for GALs to use.

Vague Best Interests Standard Causes Inconsistency. Without a clearly defined best interests standard, the GALs we spoke with described a variety of approaches. These different approaches have led to concerns from lawmakers and the public about GAL practices.

GALs told us that their determination of best interests was based on factors such as: considering the totality of the circumstances, talking to as many people as possible to learn about the child, visiting the child and attending child and family team meetings, talking with therapists and schools, asking what the parent's capability is, and questioning if the parent-child relationship is intact. One GAL gave us a list of guidelines she uses in determining a child's best interests. Included on her list is visiting with the child at the beginning of the case with continued contact thereafter, understanding deficits the child may have (physical, emotional, educational, etc.), attending Child and Family Team meetings, and reviewing services the parents are receiving.

With the different approaches, there has long been criticism on how the best interests standard is applied by GALs both in Utah and nationally. For example, the letter requesting this audit stated:

Numerous high-profile cases have demonstrated that an unlimited caseload and the vague standard of "best interests of the child" coupled with an unclear and incomplete understanding of the duties and limiting conditions of a GAL appointment in relation to parental rights make further study and potential legislative action critically necessary at this time.

Similarly, a recent review by the Uniform Law Commission (ULC) stated, "The role of best interest attorneys has been criticized because of the discretionary and subjective nature of the determination of best interests and the lawyer's lack of expertise to make such a determination." The ULC is made up of judges, practicing lawyers, law professors, legislators, and legislative staff from throughout the country.

In response to these concerns, the ULC has recommended that best interests in abuse and neglect cases be based on objective criteria. Their suggested legislation states, "A best interests attorney shall

Determination of best interests should be based on criteria established by law, taking into account a child's particular situation.

Utah's child custody proceedings are guided by law to help determine best interests, but cases involving child abuse or neglect are not.

advocate for the best interest of the child according to criteria established by law and based on the circumstances and needs of the child and other facts relevant to the proceeding.” The ULC stated, “This ‘criteria established by law’ will include standards imposed by federal and state law for child protection in abuse or neglect proceedings, such as the federal mandate that state agencies make reasonable efforts to preserve or reunify families.”

Best Interests Criteria Is More Clearly Defined for Child Custody Proceedings. Utah has established criteria for determining the child’s best interests in child custody proceedings but not in child abuse and neglect proceedings. *Utah Code* 30-3-10 and 10.2 lists factors to be considered in determining the best interests of a child in a custody proceeding. Those factors include:

- Past conduct and demonstrated moral standards of the parents
- The extent of bonding and nature of the relationship between the child and parent
- Whether physical, psychological, and emotional needs of the child will benefit from joint custody
- The ability of the parents to give priority to the welfare of the child
- Whether each parent is capable of encouraging and accepting the relationship between the child and the other parent
- The geographical proximity of the home of the parents, history or potential for child abuse, and many other factors

Utah Code of Judicial Administration, Rule 4-903, Uniform Custody Evaluations, also adds factors to be considered, including the benefit of keeping siblings together, religious compatibility with the child, and financial condition. However, the best interests standard for custody evaluations may not apply to situations of abuse or neglect.

Two Other States Have Best Interests Guidelines. We spoke with representatives from Arkansas’ and Michigan’s GAL programs about how they determine a child’s best interests. Both states have standards to help the GALs determine best interests. In Arkansas, the GALs use the *Arkansas Administrative Order* Number 15. This order states:

An attorney ad litem shall determine the best interest of a child by considering such factors as the child's age and sense of time, level of maturity, culture and ethnicity, degree of attachment to family members including siblings; as well as continuity, consistency, and the child's sense of belonging and identity.

In Michigan, the guardian ad litem office's policy manual contains a discussion about how best interests should be determined. The policy manual states that the juvenile code does not define best interests of the child but that the state's child custody act and adoption code could provide some guidance. The manual explains the adoption code's guidelines and instructs that a GAL "may refer to those factors to guide his or her determination of a child's best interests in child protective proceedings." We are not sure that the Arkansas or Michigan policy guidance is adequate, but it is more than Utah's GALs receive.

The GAL director could use some of the language used in the *Utah Code* and administrative rules to assist in the development of best interests criteria. The director could also require the GALs to document what factors played a role in making the determination of best interests. Doing this would help GALs make appropriate decisions about the child's best interests and build a stronger case for why a GAL's particular course of action was taken.

In conclusion, the new director appears to be moving in the right direction for providing structure to the program. We encourage him to continue in his efforts to improve the case management system, increase fee collections, examine the allocation of resources attributable to non-attorney staff, and improve policy guidance.

Recommendations

1. We recommend that the GAL director work with the Administrative Office of the Courts to develop CARE reports that are more useful for managing GAL workload.
2. We recommend that the GAL director develop a case management system for district court cases.

Once a best interest decision has been made on a child's case, the GAL should document the factors that support the decision.

3. We recommend that the Guardian ad Litem Office request attorney fees in all district court cases unless the court has already determined a client's inability to pay.
4. We recommend that the GAL director institute the practice of submitting unpaid claims to the Office of Debt Collection after a specified period of time.
5. We recommend that the Guardian ad Litem Office establish a reliable method for tracking accounts receivable to ensure the appropriate levels of control are in place.
6. We recommend that the GAL director evaluate ways to improve the staff support that attorneys receive. The director's evaluation should include a review of the use and productivity of existing support staff and CASA coordinators.
7. We recommend that the GAL director continue to improve best practices by
 - establishing a formal policy on filing motions for fee requests and collection, and
 - providing objective criteria for GALs to use when determining the best interests of the child.

Chapter IV

Clearer Limits Needed for Use Of State GALs in District Court

We believe clearer limits are needed on the use of state attorney guardians ad litem (GALs) in district court. The use of GALs in district court pulls resources away from the intent and design of the program, which is to represent victims of child abuse and neglect in juvenile court. The drain of resources from the juvenile court reduces the office's effectiveness in child welfare proceedings. We believe the Legislature should limit the use of the GAL Office in district court and provide more guidance for using state-paid GALs.

The juvenile court and district court settings are different. When the Office of the Guardian ad Litem was created in 1994, it was defined and authorized under juvenile court statute, where it remains today. GAL cases in juvenile court are initiated by the state either removing a child from a home or filing a petition alleging child abuse, neglect, or dependency.

In contrast, GAL cases in district court are civil cases initiated by a private party, frequently seeking child custody in a divorce case. Using state-funded GALs in district court—even if in response to an allegation of child abuse—drains resources from juvenile court child welfare proceedings, which are the office's primary responsibility. The remainder of this chapter is organized into three main sections:

- The GAL program was designed for juvenile court.
- The GAL program is frequently used in district court.
- The Legislature should provide more guidance for using GALs in district court.

GAL cases in district court are initiated by private parties in a civil action; GAL cases in juvenile court are initiated by the state.

Guardian ad Litem Program Was Designed for Juvenile Court

The Guardian ad Litem program was designed to provide legal representation to abused and neglected children who have been removed from their homes by the State of Utah, through the Division of Child and Family Services (DCFS). Allegations of abuse or neglect are directed to DCFS, which conducts an investigation to determine if an allegation has merit. According to DCFS' website, "Utah law requires any person who has reason to believe that a child has been subjected to abuse, neglect, or dependency to immediately notify the nearest office of Child and Family Services, a peace officer, or a law enforcement agency. Abuse, neglect, or dependency of a child can be physical, emotional, or sexual."

GAL appointments in juvenile court are supported by a DCFS investigation of the alleged abuse or neglect.

Depending on the results of a DCFS investigation, the state may initiate a case in juvenile court that has "exclusive original jurisdiction in proceedings concerning . . . a child who is an abused child, neglected child, or dependent child" (*Utah Code* 78A-6-103). If a juvenile court case is initiated, a state GAL is automatically appointed when a child becomes "the subject of a petition alleging abuse, neglect, or dependency, from the earlier of the day that: (a) the child is removed from the child's home by the division; or (b) the petition is filed" (*Utah Code* 78A-6-902).

Upon appointment in juvenile court, the GAL is responsible to represent the best interests of the child before the court. Generally, the case must be resolved within 12 months in order to bring permanency to the life of the child as quickly as possible. DCFS may provide services to the child and his or her family in order to keep the family together. If deemed necessary, DCFS may seek termination of parental rights and seek an alternative permanent living arrangement for the child. Throughout the court case, the Attorney General represents DCFS, and a private or public-appointed attorney may represent the child's parents. The GAL's responsibility is to serve as the child's attorney and advocate for the best interests of the child before the court. In doing so, the GAL should complete certain statutory duties that are tailored to a juvenile court case, as shown in Figure 4.1.

Figure 4.1 Statutory Duties of Guardians ad Litem Are Tailored to Juvenile Court. Some duties do not apply to district court cases.

Utah Code 78A-6-902 Requires the Guardian ad Litem to:*	
1.	Attend foster care citizen review board hearings.
2.	Become familiar with local experts regarding the reasonableness and appropriateness of efforts made by DCFS to perform certain duties.
3.	Assess the appropriateness and safety of the child's environment at each placement.
4.	Review proposed orders for services, treatment and evaluation, assessment, and protection of the minor and the minor's family.
5.	Monitor implementation of a minor's treatment plan.

* This is not a comprehensive list of all the statutory duties under **Utah Code 78A-6-902**.

The duties shown in Figure 4.1 apply to a state-initiated child welfare proceeding where DCFS has intervened to protect a child. In such cases, DCFS may establish treatment plans, place a child in foster care, and seek court-ordered treatments. These duties generally do not apply in district court cases where DCFS is not involved.

In *State v. Harrison*, the Utah Supreme Court reached a similar conclusion. In reviewing the statutory scheme by which a GAL was appointed in a criminal case, the court found, "These two sections were promulgated with juvenile procedures and issues in mind and were meant to apply to the juvenile context." However, the court found the use of GALs outside of juvenile court was permitted under existing law.

Guardian ad Litem Program Is Frequently Used in District Court

Although designed for handling abuse and neglect cases in juvenile court, the Guardian ad Litem program is also used in district court. While GALs provide useful services to children in a district court cases, resources are drained from the juvenile court. Currently, GALs may be appointed in a variety of types of district court cases. However, some appointments may involve very little evidence of abuse or neglect. In addition, different court districts vary considerably in their use of the program just as they do in their frequency of ordering that the private parties pay fees for the service.

The statutory duties required of GALs are designed for juvenile, not district, court.

GALs Serve on Many District Court Cases Where Child Abuse or Neglect Is Alleged

District court cases represent a significant part of the office's workload. As discussed earlier, the office does not have a good tracking system for district court cases, but GALs reported they represent about 2,123 children in district court. This is about one-fourth of the total office caseload, but the office does not maintain information about the types of district court cases.

The primary code section that guides the appointment of the Guardian ad Litem Office in district court cases is *Utah Code* 78A-2-227, which states:

An attorney guardian ad litem may be appointed in accordance with Title 78A, Chapter 6, Part 9, Guardian Ad Litem, if: (a) child abuse, child sexual abuse, or neglect is alleged in any proceeding; or (b) the court considers it appropriate in any proceedings involving alleged abuse, child sexual abuse, or neglect.

Chapter 6 of Title 78A is Utah's Juvenile Court Act, and Part 9 establishes specific requirements that the GAL must fulfill, including the statutory duties discussed in the previous section. Because DCFS is not involved in most district court cases, many of the statutorily required duties are not applicable.

GALs Serve on Many Types of District Court Cases. Although the office does not track district court workload by type of case, some GALs do so for their own information. Attorneys who represented almost half of the children included in the office's district court caseload provided us information about their case types. According to the records of these GALs, 62.7 percent of the children represented involved divorce or custody cases, and 30.6 percent involved protective order cases. The remaining 7 percent comes from criminal, paternity, guardianship, and other types of cases.

- **Divorce or Custody Cases.** GALs are appointed to divorce or custody cases for a myriad of reasons, such as: deciding custody when a divorce is granted, modifying divorce decrees, or dealing with custody and visitation for parents who have never

The statute allowing the appointment of a GAL in district court relies on the Juvenile Court Act.

Most district court GAL appointments are for divorce or custody and protective order cases.

been married. The issues might include determining who gets custody and what visitation might be. According to the director, the issues that underlie all the appointments are whatever allegations of abuse and neglect are made.

- **Protective Order Cases.** GALs are appointed in protective order cases primarily to determine whether the grounds for the protection sought are well founded by investigating the allegations made and determining what would be in the best interests of the child (such as granting the order). A GAL has a limited time to investigate. If the order is not granted, the case is closed and the GAL is released. If the order is granted, the GAL may stay on the case to monitor for violations and seek enforcement. Protective orders last up to 150 days, so the GAL's appointment is time limited.
- **Other District Court Cases.** Other GAL cases should involve credible child abuse or neglect allegations. In criminal cases, the GAL plays a victim's advocate role; the GAL may provide information or recommendations to the court but does not assume the role of prosecutor. In paternity cases, GALs deal with custody and visitation issues. Additional types of cases or issues could involve guardianship or conflicting parenting plans.

While there are a variety of different types of district court GAL cases, all should at least be based on credible evidence of abuse or neglect. Otherwise, we think the attorney's time is better spent protecting victims of abuse or neglect in juvenile court.

Credible Evidence of Abuse and Neglect May Be Lacking in District Court Cases

As discussed above, GAL appointments in district court must conform to the juvenile code requirements. One of those requirements is that "in all cases where an attorney guardian ad litem is appointed, the court shall make a finding that establishes the necessity of the appointment" (*Utah Code* 78A-6-902). We believe that necessity should be based on credible evidence of abuse or neglect. But, unless the allegation is referred to DCFS, the only investigation is the GAL's, with no formal DCFS investigation.

A district court appointment of a GAL for allegations of abuse or neglect does not require factual support.

Utah law gives district courts the power to order a DCFS investigation when child abuse or child sexual abuse is alleged.

Without a DCFS investigation, some district court GAL cases may not be appropriate.

The appointment of a GAL in district court may result from a simple allegation in court by one of the parties. In fact, one judge told us that he believes the statute does not allow discretion and that he always appoints a GAL when there is an allegation of abuse or neglect. One GAL said that the finding appointing them may simply be the judge or commissioner stating there is a need for a GAL on the case. Thus, the “finding” required by statute may not include any rationale. In the well-known *State v. Harrison* case mentioned earlier, the Utah Supreme Court noted that although a GAL was appointed, “there is no indication in the record as to what concern motivated the court to do so.” As discussed later in this chapter, we believe the wise use of GAL resources can be enhanced by requiring that GAL appointments in the district court be supported in the court record by a statement that explains the reason for the appointment.

Although district court GAL appointments do not generally involve DCFS, there is statutory support for doing so. According to *Utah Code* 30-3-5.2:

When, in any divorce proceeding or upon a request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court after making an inquiry, may order that an investigation be conducted by the Division of Child and Family Services.

If the court does order an investigation, DCFS must conduct it within 30 days. In its review of the DCFS investigation report, the court shall comply with *Utah Code* 78A-2-227 which deals with the possible appointment of a GAL in district court, as referred to earlier.

Since the necessity for the GAL appointment may not be clearly stated and since there has not been a DCFS investigation, some appointments may not be warranted. When we asked, some GALs told us they question some of the cases they have been appointed to. Some of the examples they gave include:

- An appointment “to evaluate the situation with the speech therapy and the child’s schooling so she can report to the Court

whether the child’s developmental issues are being addressed.” The GAL said this was not a case of abuse or neglect.

- An appointment “to act as the mediator.”
- An appointment on a case where one parent alleged domestic violence against the other parent when the children were not present. Therefore, the child was not exposed to the abuse in that situation.
- An appointment that is being continued to help a child who is almost 18 years old find resources to help pay for college. The GAL said he was originally appointed because it was a high-conflict divorce case but questions his continuing involvement.
- An appointment because there was a question if the parents were adequately protecting the child from being involved in a sexual relationship with an adult. The GAL said this is a questionable appointment.

We did not assess these examples ourselves. They were provided by GALs who observed that different courts may have different interpretations about the conditions for a district court GAL appointment.

Use of GALs in District Court Varies Widely

Both the GALs and the director told us the district court judges and commissioners vary on their appointment of the GALs. Some are more likely to appoint GALs than others. To assess that, we compared the types of cases that GALs are most commonly appointed to with the number of children that GALs reported they represented in each district. Figure 4.2 indicates that district courts are disproportionate in their use of GALs.

GALs presented us with district court cases where they question their continued appointment on the case.

Figure 4.2 A Comparison by District of the Case Types GALs Are Most Frequently Appointed to with the Number of Children Reported by GALs. District courts are disproportionate in their use of GALs; for example, the Third District is much more likely to appoint a GAL than the Second District.

Divorce, Paternity, Custody & Support, Protective Order Cases			Children Reported by GALs in District Court	
District	Number*	Percent	Number	Percent
1	1,085	5.5%	96	4.5%
2	4,189	21.2	181	8.5
3	7,959	40.2	1,381	65.0
4	3,470	17.5	259	12.2
5	1,493	7.5	174	8.2
6	522	2.6	6	0.3
7	537	2.7	8	0.4
8	578	2.9	18	0.8
Total	19,803	100.0%	2,123	100.0%

**Total cases in calendar year 2007 whether or not a GAL was appointed*

If all courts behaved similarly, one would expect the two percentage columns in Figure 4.2 to be similar, but they are not. For example, in 2007, the Third District heard 40 percent of the cases that most often lead to GAL appointments. However, GALs in that district reported 65 percent of the children represented in state district courts. In other words, the Third District appears more likely to appoint GALs than other jurisdictions.

In contrast, the Second District heard 21 percent of the 2007 cases that most often led to GAL appointments. However, GALs in that district reported only 8.5 percent of the total children represented in district courts. Thus, the courts in the Second District seem less likely to appoint GALs than those in the Third District. Similarly, judges in Districts Six, Seven, and Eight also appear to be much less likely to appoint GALs than judges and commissioners in the Third District. While this analysis does not account for each judge or commissioner's particular caseload, the figure shows a disproportionate use of GALs among the districts.

Some districts appear to assign GALs with more frequency than others.

Ordering of Fees by District Courts Varies Widely. As shown earlier in Figure 3.3 on page 27 of this report, districts vary tremendously in ordering fees from private parties to pay GAL costs. Although we attribute the differences among districts to the fact that only one GAL seems to routinely request fees, the different courts' willingness to assess fees may also play a role. Fees are more likely to be ordered in district court cases between private parties than in a juvenile court case brought by the state. By being more diligent in assessing and collecting fees on district court cases, the courts can help reduce the drain on GAL resources from child welfare proceedings in juvenile court.

Legislature Should Provide More Guidance on Using GALs in District Court

We think the Legislature should consider providing additional guidance on the use of GALs in district court in two broad areas. First, guidance is needed on the conditions that trigger the appointment, including the credibility of abuse and neglect allegations or the level of evidence required. Options include:

- Requiring a DCFS investigation whenever a GAL is appointed
- Requiring a written order explaining the specific reasons motivating the court to appoint a GAL on district court cases

Second, once a GAL is appointed in district court, additional guidance on the terms of the appointment would be helpful. Options include:

- Specifying the duties of GALs on district court cases or requiring the court to do so on each appointment
- Limiting the length of appointment on district court cases or requiring the court to do so on each appointment
- Requiring the court to order fees on district court cases unless an inability to pay is documented

By providing this type of additional guidance, the Legislature can help ensure GALs are fulfilling their intended role and limit the drain of resources from child welfare proceedings in juvenile court.

Guidance is needed on what triggers a GAL appointment in district court and the terms for that appointment.

Limits on Use of GALs in District Court Are Possible

Before we discuss these legislative options at the end of the chapter, we present some supporting information about national model legislation, other states, and other resources available in district court.

Uniform Law Commission Act Supports the Need for Guidance. A national organization's model legislation provides guidance similar to our suggestions. The Uniform Law Commission (ULC) is made up of judges, practicing lawyers, law professors, legislators, and legislative staff from throughout the country. In recognizing the wide variation in state laws and practices for appointing child representatives, the ULC has proposed model legislation titled *Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings*.

The ULC's uniform act is broader than we will discuss here. Besides the best interests attorney model of Utah's GAL program, the uniform act provides guidance for non-attorney representatives and for attorneys who are directed by the child (rather than by best interests). The ULC advocates that attorneys be appointed in all child welfare proceedings as is already done in Utah. Of particular interest here are the conditions guiding the discretionary appointment of child advocates in custody cases.

For the type of district court cases that Utah's GALs are appointed to, the Uniform Law Commission (ULC) recommends that:

In determining whether an appointment . . . is appropriate, the court shall consider the circumstances and needs of the child, the court's need for information and assistance, the financial burden on the parties and the cost of available alternatives for resolving the issues in the proceedings, and any factors indicating a particularized need for representation.

The suggested language of the ULC act then lists items to consider. The reason that the financial burden on the parties is mentioned is that it is presumed that the parties in these private cases will be assessed fees. The ULC also cautions that appointing a GAL may increase the acrimony among parties to the child's detriment.

If a GAL is to be appointed, the ULC recommends that the terms of the appointment be clear. The appointment

Must be in writing and identify the role of the appointed representative in plain language understandable to non-lawyers. The order should explain the reasons for the appointment and the scope of the representative's responsibilities. In custody proceedings, the order should state how long the appointment will last.

Other States Limit the Use of the GALs. We asked representatives from 12 states' guardian ad litem programs to describe the nature of the cases to which they are appointed. Ten of the 12 states said they were either "entirely" or "almost exclusively" appointed only to abuse or neglect cases that have been initiated by a state entity (such as the state's child protective services program).

In fact, Alaska's *Rule of Civil Procedure* has recently been amended to clarify that GAL appointments in domestic relations cases should not be the norm. It states, "Courts should not routinely appoint guardians ad litem in custody, support, and visitation proceedings. . . . In most contested proceedings in which professional input is warranted, a child custody investigator . . . should be appointed instead of a guardian ad litem."

Colorado's guardians ad litem are restricted to juvenile court use only. In Colorado, the family court system appoints child family investigators (CFIs) to assist the court "to investigate, report, and make independent and informed recommendations to the court." Utah does not have CFIs. Colorado's Chief Justice Directive concerning the appointment of child and family investigators states, "A child and family investigator can be any individual whom the court believes able to fill this role." This includes attorneys, mental health professionals, CASAs, nurses, or other trained members of the community.

Other Resources Are Available for District Court. Child abuse is never formally substantiated in many district court cases. Even so, some GALs told us they believe an important role is filled as they protect children who may be manipulated or overlooked during the

The ULC recommends that the terms of the appointment be in writing, identifying the roles of the GAL on the case.

Of the 12 states we contacted, 10 of them completely, or almost exclusively, limit the use of GALs to state-initiated child protective cases.

court proceedings. However, if the use of state-paid attorney GALs in district court cases were more limited, other resources would still be available if a judge deemed it necessary to appoint an advocate for a child. Among those other resources currently available to judges are private GALs and custody evaluators. These alternative resources are generally paid for by the parties in the dispute rather than taxpayers.

GALs told us that they are often appointed in high-conflict divorce cases. One GAL explained that sometimes “parties involved in a divorce case escalate their dispute in court at all costs . . . including damaging their relationship with their children.” Another GAL said the line gets hazy if there is actual abuse or neglect going on because it is such a highly volatile case. The GAL went on to say that it is hard to remove yourself from that type of case because you may be the only one looking out for the child.

The Private GAL Program (authorized by *Utah Code* 78A-2-228) provides another avenue for legal representation of children in high-conflict divorce cases. Private GALs are attorneys who are not employed by the state but are contracted to provide services for high-conflict divorce cases with custody or visitation disputes. Private GALs are not trained in abuse and neglect cases. The parents must pay the attorney’s fees. Currently, there are about 65 private GALs in Utah with about 320 cases reported as being open. The program is administered by the Guardian ad Litem Office. The statute currently provides that if child abuse or neglect is discovered after the appointment of a private GAL, the private GAL may be replaced with a state GAL.

Private GALs provide legal representation to children involved in high-conflict divorce cases.

Custody evaluators are also available to district courts. According to the GAL director, custody evaluators are primarily used in divorce or post-divorce modification cases when parents cannot agree on custody. A custody evaluator is typically a psychologist or clinical social worker who has expertise in conducting these evaluations. Custody evaluators answer to the court, but the parties to the case must pay the cost, which can range from \$4,000 to \$10,000 depending on the complexity of the case. Some judges may be reluctant to appoint custody evaluators because the cost is too high for the parents. The high cost of a custody evaluation should not be a reason for a state GAL to be appointed.

Custody evaluators advise the court but are paid for by the parents rather than by taxpayers.

The remainder of this chapter focuses on some options for limiting the use of GALs in district court by providing guidance on either the conditions that trigger an appointment or the terms of an appointment.

Guidance Is Needed on the Conditions That Trigger a District Court Appointment

The Legislature could provide more limits on the appointment of state GALs who are taxpayer-funded attorneys. Additional limits can bring more consistency to the use of GALs by different district courts and help reduce the drain of resources from the juvenile court. As noted previously, other resources, such as private GALs and custody evaluators, are available to the district court. Two possible ways to limit or clarify GAL use in district court are to require a DCFS investigation or require that the order of appointment include the court's written rationale.

DCFS Referrals Could Be Required. Although child abuse or neglect allegations are supposed to underlie all Office of the Guardian ad Litem appointments, DCFS investigations do not generally occur in district court cases. At least for custody cases, if the alleged child abuse is egregious enough to have a state GAL appointed, the Legislature may want to require a DCFS investigation. We found GALs are sometimes appointed on custody cases that lack credible evidence of abuse or neglect. *Utah Code* 30-3-5.2, as discussed on page 46 of this report, gives the courts authority to request such an investigation.

Requiring DCFS referrals may be more efficient and effective than current practices. DCFS specializes in investigating child abuse allegations, and DCFS investigators are a less expensive resource than GALs. State-employed GALs are attorneys who are trained to advocate for the best interests of victims on child abuse or neglect in court. Furthermore, DCFS can provide services when allegations are substantiated.

One concern with requiring DCFS investigations is cost. While the prospect of a DCFS investigation may discourage unwarranted allegations, we do not know how many unnecessary GAL appointments would be avoided. As noted earlier, the GAL Office does not have reliable data on the frequency or types of new district

Guidance to district court judges should provide more consistency statewide on when a GAL should be appointed.

The prospect of a DCFS investigation may discourage unwarranted allegations and unnecessary GAL appointments.

Documenting the judge's reasons for appointing a GAL can help ensure the appointment is justified.

The Utah Code could be amended to require district court judges to articulate, in writing, the specific facts that justify a GAL appointment.

court appointments. Nor is it clear what the court would do when DCFS found that an allegation was not supported; it might continue the GAL appointment anyway. Thus, we cannot estimate the fiscal impact of requiring DCFS investigations. An alternative strategy discussed next is to require that the court clearly articulate why each appointment made is needed.

Written Justification Could Be Required. Another way to help control the appointment of GALs in district court is to require that justification be clearly articulated in writing. As noted earlier, the ULC's model legislation requires that a written order explain the reasons for the appointment. Requiring the court to make a written statement of its motivation for appointing a state GAL would help ensure that credible evidence of abuse or neglect exists.

Currently, *Utah Code* 78A-6-902 states, "In all cases where an attorney guardian ad litem is appointed, the court shall make a finding that establishes the necessity of the appointment." The Legislature could strengthen the statutory language by requiring that the finding be in writing and contain the specific facts and reasons that establish the necessity of the appointment.

Guidance Is Needed on the Terms Of District Court Appointments

In addition to guidance on making appointments, we also think guidance on the terms of district court appointments is needed. As discussed earlier, the statute that establishes the Guardian ad Litem Office is part of the Juvenile Code and was meant to apply to the juvenile context. Additional statutory guidance outlining the expectations for GALs in district court would be helpful. In particular, specific guidance about GAL duties, length of appointment, and fees could be provided in statute. Alternatively, the court could be required to include this type of specific guidance in each order of appointment.

Duties of GALs in District Court Could Be Specified. As was shown in Figure 4.1, many of the statutory duties of GALs are intended for juvenile court cases and do not make sense in district court cases. Other duties, such as meeting with the child, are important in either setting. In practice, we believe GALs complete the duties that apply to the particular case, but they may not complete every required duty.

The Legislature could specify GAL duties in district court cases or require the court to do so on each appointment. As noted earlier, the ULC's model legislation requires that a written order explain not only the reasons for the appointment but also the scope of the GALs' responsibilities.

Length of District Court Appointments Could Be Limited. The Legislature could limit the length of an initial district court appointment in statute or require the court to do so as each appointment is made. Although juvenile court has statutory timelines to provide a child with permanency within a year, district court does not.

In Utah, a GAL may have long-term district court appointments. Since no case management system was available to us for determining how long cases have been open, we asked GALs to provide us with that information. One GAL pointed out a case that has been open for 13 years. The GAL said the case involves some emotional maltreatment of the child. One reason the case has been open so long is that the father has been unwilling to comply with the directives recommended by the child's therapist. In examining another district court GAL's caseload, we found that 59 percent of his active cases have been open for over a year. Cases that last a long time may cause a lack of stability that is unsettling for a child.

The ULC states, "In a custody case . . . the child's need for representation in that context will often be short-term and issue-specific." Their model legislation requires that "in custody proceedings, the order should state how long the appointment will last." Such a time limit would help control the GAL resources used in district court.

The length of time of a GAL's appointment on a district court case could be limited.

Limiting the time a GAL is appointed to a district court case helps preserve GAL resources.

Requiring private parties to pay the costs associated with GAL appointments in district court cases will help control program costs.

Presumption for Fee Orders Could Be Established. Another way to control the taxpayer cost of GALs in district court is for the Legislature to require the court to order fees on district court cases unless an inability to pay is documented. In Chapter III, we noted that fees are seldom requested or ordered and recommended that the GAL Office, as a matter of policy, direct GALs to routinely request fee orders on district court cases.

The Legislature could strengthen the statutory direction for ordering fees. Currently, *Utah Code* 78A-2-227 provides that “if the court appoints the Office of the Guardian Ad Litem in a civil case pursuant to this section, the court may assess all or part of those attorney fees” and other court costs against the parent or guardian unless they cannot afford to pay. Simply changing the word “may” to “shall” would help create a presumption that fees will be ordered from the private parties involved in the case.

In conclusion, the Legislature could provide additional guidance on when and how GALs should be used in district court. Such guidance would help guard against the unintended drain of resources from juvenile court child welfare proceedings. Statutory guidelines will help to create uniformity throughout the state on how the GALs are used and will safeguard against the inappropriate use of GALs.

Recommendations

1. We recommend that the Legislature provide additional statutory guidance on the conditions for the appointment of the Office of the Guardian ad Litem in district court. Options include:
 - Requiring a DCFS investigation when a GAL is appointed on custody cases
 - Requiring a written order explaining the specific reasons motivating the court to appoint a GAL
2. We recommend that the Legislature provide additional statutory guidance on the terms of GAL appointment in district court cases. Options include:
 - Specifying the duties of GALs on district court cases or requiring the court to do so on each appointment
 - Limiting the length of appointment on district court cases or requiring the court to do so on each appointment
 - Requiring the court to order fees on district court cases unless an inability to pay is documented

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Appendices

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Appendix A

Assessment of Guardian Fulfillment of Statutory Duties

- During the 2005 audit, 35 closed juvenile court cases were reviewed.
- During the 2008 audit, 20 closed juvenile court cases were reviewed.

Did the reviewed file contain evidence that the attorney fulfilled the statutorily required?										
Statutory Duty (UCA 78A-6-902)	Number of Cases in Each Category						Percentage of Cases in Each Category			
	2008			2005			2008		2005	
	Y	N	NA*	Y	N	NA*	Y	N	Y	N
1. Conducted or supervised an independent investigation?	20	0	0	29	6	0	100%	0%	83%	17%
2. Personally met with the minor.	19	1	0	11	24	0	95	5	31	69
3. Personally interviewed the minor if the minor was old enough to communicate; determine minor's goals and concerns.	10	3	7	6	19	10	77	23	24	76
4. Personally assessed or supervised an assessment of the appropriateness and safety of the minor's environment in each placement.	16	4	0	9	26	0	80	20	26	74
5. Personally attended [or delegated attendance to] all administrative and foster care citizen review board hearings.	1	4	15	1	4	30	20	80	20	80
6. Personally, or through a trained volunteer, paralegal or other trained staff, kept the minor advised of the minor's case.	7	4	9	3	22	10	64	36	12	88
7. Reviewed proposed orders for services, treatment and evaluation, assessment, and protection of the minor and the minor's family.	18	1	1	30	5	0	95	5	86	14
8. Personally, or through a trained volunteer, paralegal or other trained staff, monitored implementation of a minor's treatment plan...	18	1	1	27	8	0	95	5	77	23

* NA, or not applicable to a particular child's case.

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Appendix B

Red Sheet

Case Name(s):

Duty Checklist

Summarize here the documentation in the file (electronic and paper) regarding completion of GAL statutory duties. An explanation must be provided for each "n/a" box checked.

	DO NE		Explanation
Personal Contact with Client	<input type="checkbox"/>	1 <input type="checkbox"/> 3 <input type="checkbox"/> 5 <input type="checkbox"/> 7 <input type="checkbox"/> 9 <input type="checkbox"/> 2 <input type="checkbox"/> 4 <input type="checkbox"/> 6 <input type="checkbox"/> 8 <input type="checkbox"/> 10 <input type="checkbox"/>	
Determine client's goals/concerns regarding placement	<input type="checkbox"/> <input type="checkbox"/> N/A		
Advise client of case status	<input type="checkbox"/> <input type="checkbox"/> N/A	1 <input type="checkbox"/> 3 <input type="checkbox"/> 5 <input type="checkbox"/> 7 <input type="checkbox"/> 9 <input type="checkbox"/> 2 <input type="checkbox"/> 4 <input type="checkbox"/> 6 <input type="checkbox"/> 8 <input type="checkbox"/> 10 <input type="checkbox"/>	
Advise court of client's wishes	<input type="checkbox"/>	1 <input type="checkbox"/> 3 <input type="checkbox"/> 5 <input type="checkbox"/> 7 <input type="checkbox"/> 9 <input type="checkbox"/> 2 <input type="checkbox"/> 4 <input type="checkbox"/> 6 <input type="checkbox"/> 8 <input type="checkbox"/> 10 <input type="checkbox"/>	
Performed an independent investigation <i>Check the items included in this investigation.</i> <i>Individual items are not mandatory.</i>	<input type="checkbox"/>	<input type="checkbox"/> SAFE <input type="checkbox"/> BCI <input type="checkbox"/> Police Report <input type="checkbox"/> Parent Info. <input type="checkbox"/> 24 hr multi-disc. mtg. <input type="checkbox"/> School <input type="checkbox"/> CW Consult <input type="checkbox"/> Medical/dental <input type="checkbox"/> Therapeutic <input type="checkbox"/> Probation/delinquency <input type="checkbox"/> Other (explain)	
Assessed appropriateness of placement(s)	<input type="checkbox"/> <input type="checkbox"/> N/A	<input type="checkbox"/> Placement 2 <input type="checkbox"/> Placement 3	
Determine if services: provided; timely; accomplishing intended goals	<input type="checkbox"/>		
Monitor plan implementation	<input type="checkbox"/>		
Attended FCCRB	<input type="checkbox"/> <input type="checkbox"/> N/A	<input type="checkbox"/> via report	

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**Office of Guardian ad Litem and CASA
Response to**

**An In-Depth Follow-Up Audit
Of the
Office of the Guardian ad Litem
Dated October 8, 2008**



"Standing in the Shoes of the Child"

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November 5, 2008

To Members of the Legislative Audit Subcommittee:

The Office of Guardian ad Litem welcomes this in-depth audit review. Incorporated into the Office mission statement is the declaration that “we are accountable, ethical and professional as individuals and as a system.” A performance audit provides the opportunity to demonstrate accountability and to further refine and direct efforts at increasing the level of professionalism and improving outcomes for our clients.

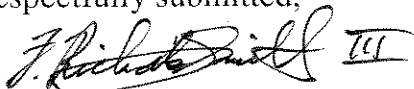
Of the 13 numbered recommendations in the audit report, the Office agrees with 10 and partially agrees with one. The Office respectfully disagrees with only two recommendations. Three of the recommendations have already been fully implemented, and five are in process. Three recommendations are directed to the legislature, and the Office stands ready to assist should the legislature determine to follow those recommendations.

The practice of child welfare law has become increasingly specialized and requires lawyers to not only understand complex federal and state substantive law and procedure, but also detailed institutional information regarding child welfare funding streams, treatment, and placement options. In addition to the usual challenges of trial practice, children’s lawyers have the added challenges of working with young clients, most of whom have experienced trauma, poverty, abuse, discrimination, or some combination of these things. Child welfare attorneys must possess expertise in community resources and services, child maltreatment and development, family dynamics, mental health, and medicine. They must be skilled litigators and excellent negotiators. They must be especially attuned to the social and emotional dimensions of their cases, and possess the ability to quickly establish rapport and effectively communicate with children of all ages and backgrounds, many of whom are overwhelmed and even numbed by the vast system of strangers which has taken control of their lives and the destinies of their families.

It is challenging for anyone not engaged in this area of work to understand the complexities and vagaries of child welfare law practice. The GAL Office commends the auditors for their efforts to understand the work we are engaged in. It does not lend itself well to traditional auditing approaches. Each of the cases in the GAL Office is as unique as the people involved. The path that each case must take is fact-specific and must be tailored to needs of individuals and families. The Office appreciates the professional approach of the auditors. They have always been respectful, courteous, and sensitive to the activities of the Office.

The attached Reply follows the format of the audit report. Where applicable it outlines steps that have been taken and plans that have been put in place to implement audit recommendations. Where there is disagreement with recommendations a detailed explanation and analysis, together with supporting research and information, is provided. An Executive Summary of the main points contained in the Reply is set forth below, followed by the full Reply.

Respectfully submitted,

A handwritten signature in cursive script, reading "F. Richards Smith III".

F. Richards Smith III, Director
Office of Guardian ad Litem and CASA



Standing in the Shoes of the Child

EXECUTIVE SUMMARY

- **Salary parity is critical for cost-effective legal representation to ensure our children who have been abused and neglected have the best chance for safe and healthy lives.** Although not examined by the audit, the lack of parity in salaries between GAL attorneys and other state attorneys negatively impacts performance in the GAL Office. If GAL attorneys were paid using the pay scale in place in the Attorney General's office, they would be paid an average of 34% more. Salary disparity results in an average annual turnover rate for GAL attorneys of nearly 25%. Consequently, 57% of current GAL attorneys have worked in the office two years or less, and 24% have practiced law two years or less. It is essential for the success of the Office that qualified and experienced attorneys be recruited and retained. To do this requires pay scales that are fair and commensurate with other state attorneys.
- **The GAL Office has improved significantly since the 2005 audit, and increased funding has contributed to program improvements.** The GAL program budget (other than COLA) has increased by 27% since 2006. This has allowed a reduction in case load size, but those case loads remain, to some extent, unmanageable.
- **The accuracy of GAL data has improved since the 2005 audit, and is currently even better than that reported in the 2008 audit report.** Improvements in data accuracy are due, in part, to implementation of a comprehensive new records control system, including: a uniform records management system and archiving process; a file retention policy; a case closure policy; and uniform procedures for opening, closing, and maintaining physical case files. The project included processing over 2,600 boxes full of closed case files.
- **A national standard of 100 clients per GAL attorney has been set by the United States Government and by the National Association of Counsel for Children (NACC).** The Federal/NACC standard allows a GAL attorney to devote a modest 20 hours per year to each child client. The standard has been validated by recent empirical research conducted in the states of Georgia and California. Courtroom coverage is not an appropriate standard for measuring attorney workload. The 1995 Judicial Council study cited in the audit report did not examine attorney workloads; it looked at the model court concept of courtroom teaming. This approach reduces scheduling conflicts for attorneys appearing in child welfare proceedings, but it does not address attorney workload. Utah GAL attorney workloads remain more than double the national standard, and ongoing attention to this issue is needed.

- **The audit definitively documents the progress of the Office in the performance of statutory duties.** The Office agrees that statutory duties should be examined and addressed legislatively. The Office and GAL Oversight Committee have already made recommendations for statutory revision to the legislature, and look forward to working with legislators to address these concerns in the upcoming session.
- **The GAL Oversight Committee provides effective guidance and resolves ethical concerns.** The Committee was formed to resolve the ethical concern regarding judges supervising attorneys who appear in their courts. In 2001 Justice Russon (retired) reached beyond the issues of a case before the Utah Supreme Court and raised a question in a concurring opinion in the State v. Harrison case. Justice Russon's concern regarding placement of the GAL Office in the judicial branch of government was not the opinion of the Utah Supreme Court. The question was answered by the Utah Judicial Council the following year when it issued its third report studying the question of placement of the GAL Office. This study examined child attorney programs in all 50 states and found that of those states which had statewide GAL programs, the large majority, 23 of 29, administered their program through the Judicial branch. The study examined case law and ethical considerations, and analyzed potential placements of the GAL Office in various locations. The report reached the same conclusion that the previous two studies had: that placement of the GAL Office should not be changed. A revision of the statutory language which provides that the Judicial Council has direct supervision over the GAL Director may be the final step in addressing placement of the GAL Office.
- **The Office is developing an improved and comprehensive case management system.** The current GAL case management system was developed in response to the 2005 GAL audit, and has provided valuable information and experience as the Office moves to the next phase. The Administrative Office of the Courts has once again committed significant resources to assist the GAL Office in developing a new automated case management system which will better meet the needs of the Office. The design of the new system is nearing completion. It will be fully integrated with both the district and juvenile court case management systems, thereby allowing the GAL Office to track all of its cases. It will provide increased efficiency and accuracy, and will include enhanced reporting capabilities for case management, attorney supervision, and office administration. It will also have the capability to generate documents and electronically file court documents, and will include aspects of the CASA program and tracking of attorney fee awards.
- **Attorney fee awards have increased, and more is being done to maximize awards while exercising professional discretion to avoid placing unnecessary burdens on families.** The ability of the GAL Office to effectively pursue attorney

fee collection in the past was compromised due to a lack of administrative resources. An additional administrative position created with new funding provided by the Legislature for FY2008, combined with emphasis from the new GAL director, has resulted in a five-fold increase in attorney fee collection, but more work must be done. A new fee collection policy is being developed and will be in place by the end of the year, and improved tracking methods have been developed and approved by the finance department of the Administrative Office of the Courts. These steps will effectively address concerns raised in the audit. Requiring GAL attorneys to request attorney fees in every case where impecuniosity of the parent or guardian has not already been established, as suggested in the audit report, goes too far and would be a waste of judicial resources, as well as the resources of the GAL Office and the parties. GAL attorneys must maintain professional discretion in whether to request attorney fee awards. Many families may not technically qualify as impecunious, but lack the resources to pay thousands of dollars in fees. Such a fee award could plunge these families back into crisis, similar to that which brought them to the court system in the first place. Making such a fee request could violate the GAL attorneys' ethical obligation to work in the best interests of their clients. Professional discretion of licensed attorneys, under the guidance of policies which will be in place by the end of the year, will resolve these issues. A final point on this topic is that the Office takes exception to the claim in the audit report that if all GAL district offices recovered fee awards at the same rate as the fourth district office, potential attorney fee collection would exceed \$1 million annually. The figures in the audit report itself contradict this assertion and show that an actual annual fee award figure that might be expected is approximately \$373,000. After collectability is considered and deductions by the State Office of Debt Collection are factored in, the GAL Office might expect to recover fees in the range of \$250,000 to \$275,000. The Office is committed to doing all it can to realize this expectation.

- **GAL attorneys have a critical need for more administrative support than they currently receive.** Support staff levels in the GAL Office are about half that provided in the Child Protection Division of the Attorney General's Office. Consequently, GAL attorneys have to spend time performing secretarial and clerical duties. Administrative support is more evenly distributed throughout the statewide GAL Office than reflected in the audit report, due to the hiring of some additional positions with new money appropriated for FY2009. Program resources have been examined, and some reallocation has occurred. Still, the level of administrative support is woefully inadequate and needs to be addressed.
- **Utah's CASA program benefits the GAL Office, families, and the community.** An analysis of Utah's CASA program shows that it provides a net cost benefit to the GAL Office of more than \$40,000 annually. Beyond the cost benefit are the intangible benefits of community involvement in the child welfare system and

more complete information in the hands of the courts, not to mention the benefits to individual children and families in the most difficult of cases.

- **The policy work which has occurred with the involvement of the GAL Oversight Committee is significant.** The office agrees that continued work in this area is needed. Perhaps the most important development in policy improvement is the creation of best practice standards, currently underway and nearly complete. It is anticipated that best practice standards will be in place prior to the end of the year, and those standards will include factors to be considered in making best interests determinations.
- **Placing parameters on the appointment of GAL attorneys in district court cases could reduce the impact of those cases on the Office while still providing this important service.** Often the GAL Office is the only, or the best, alternative to provide a more objective and reasonable voice in the midst of warring parents, and a GAL attorney can be an effective aid to the court in getting at the truth and serving the best interests of children involved. Requiring DCFS to conduct an investigation prior to the appointment of a GAL in any district court case would come with a cost of at least \$262,000 (preliminary DCFS estimate). This could indeed result in the ferreting out of cases where allegations of abuse or neglect lack substance, but the cost would have to be considered. An effective way to conserve the valuable resource of GAL attorney appointments in district court while reducing the impact of the cases on the operations of the office might be to enact legislation setting parameters on those appointments. The GAL Office has already studied this issue, and forwarded some suggestions to consider for legislative changes that would accomplish this. The office looks forward to working with all interested parties on this project.

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CHAPTER I

INTRODUCTION

There are three threads which are interwoven throughout all of the work of the Office of Guardian ad Litem. The audit report and this reply should both be read with these overriding issues in mind. They are:

- Disparity between GAL attorney salaries and those of other State attorneys negatively impacts performance. This is discussed below.
- GAL Attorney case loads have improved, but remain too high, more than double the national standard. This is discussed in Chapter II.
- Current levels of support staff for GAL attorneys are inadequate. This is discussed in Chapter III

GAL Attorneys Are Paid Significantly Less Than Other State Attorneys.

In the last few years the legislature has recognized the detrimental effect on the Utah Attorney General's Office of disparity in pay between Assistant Attorneys General and other State attorneys. The money necessary to give parity to the Attorney General's office was appropriated.

The Attorney General's office policy manual sets out the new parity compensation plan for attorneys in that office at section 2.1. A recent attorney-by-attorney comparison with the Attorney General's parity plan revealed that if the same plan were used in the GAL Office, GAL attorneys would be paid an average of 34% more.

In the last three years the turnover rate for GAL attorneys averaged 24.7% per year. Nearly all departing attorneys report low compensation as a primary factor in their decision to leave. These are good, experienced lawyers. Since 2002 five attorneys in the GAL Office have become judges and court commissioners, which reflects the quality of GAL attorneys. Nor are these attorneys out to gain the high salaries which might be available to them in the private sector. Sixty-six percent of the attorneys who have left the GAL Office since 2001 accepted positions still in public service, and an additional 26% went to work as sole practitioners or at small law firms, neither of which are traditionally high paying positions.

The result of the high attorney turnover due to low compensation is that at present 57% of GAL attorneys have worked in the GAL Office two years

GAL attorneys would be paid 34% more if given parity with other State attorneys.

Nearly all departing attorneys report low compensation as a primary factor in their decision to leave.

or less, and 24% have practiced law two years or less. Recently an attorney with nine years of experience in the GAL Office accepted a job in the Child Protection Division of the Attorney General's office where her beginning salary was \$18,500 higher. This is an all too familiar scenario, and regularly depletes the well of experience in the GAL Office.

It is axiomatic that disparate compensation has a negative effect on the overall ability of the GAL Office to provide the best possible service to its clients and their families. Salary parity is critical for cost-effective legal representation to ensure our children who have been abused and neglected have the best chance for safe and healthy lives.

Salary parity is critical for cost-effective legal representation to ensure our children who have been abused and neglected have the best chance for safe and healthy lives.

CHAPTER II

GUARDIAN AD LITEM PROGRAM HAS IMPROVED SINCE 2005 AUDIT

The GAL Office agrees that the Office has improved significantly since the 2005 audit, and that increased funding has contributed to program improvements. While the statement in the report that funding for the Office has increased by 44% is technically correct, it is also somewhat misleading in that more than one-third of that increase is due to COLA and merit increases afforded to all state employees. New money appropriated by the legislature to address critical case load and staffing concerns resulted in an increase in the base budget of 27%. Figure 2.1 shows the funding increases and the apportionment between statewide COLA allowances and new money for the program.

Figure 2.1 Funding for the Guardian ad Litem Office Has Increased Significantly Since 2006. The program funding has grown 27 percent in the past three years (not including COLA increases).

	Fiscal Year			
	2006	2007	2008	2009
Appropriated*	\$4.1	\$4.4	\$5.5	\$5.9
COLA increase From previous year*		.27	.23	.19
Program increase from previous year*		.02	.87	.21
Percent program increase from previous year		1%	20%	4%

**In millions*

Data Accuracy Has Improved, and Major Steps Have Been Taken to Increase Accuracy.

The current in-depth audit review began just six months after the hiring of a new Director in the GAL Office. During that time various initiatives and programmatic changes were introduced, but not enough time had elapsed to bring those items to full fruition. One of the major initiatives was the Records Archiving and Management Systems (RAMS) project. This project was aimed at the bedrock of data collection and accuracy in the Office.

A major initiative was the Records Archiving and Management Systems (RAMS) project.

The RAMS project included implementation of a uniform records management system and archiving process in every GAL office across the State. A case closure policy was adopted, and uniform procedures for opening, closing, and maintaining physical case files has been implemented. A file retention policy was developed, adopted, and approved by the State Division of Archives and Records Service. Over 2600 boxes full of closed case files have been processed, and the State Records Center has been accessed for archival storage.

Over 2600 boxes full of closed case files have been processed.

The RAMS project was completed at the end of August of this year. The net effects of the hundreds of hours committed to the project by GAL employees across the State are varied, and include the elimination of expenses related to storage of physical files; uniformity of practice across the State; increased efficiency and productivity; and, perhaps most importantly, more accurate data.

While the 2008 audit report again questions the accuracy of GAL data, that data is more accurate than existed at the time of the 2005 audit. With the completion of the RAMS project the data currently available is more accurate than that reflected in the 2008 report. Enhancements to the automated case management system, discussed in Chapter III, will further resolve this concern. In the meantime, the Director has committed to not include data in the GAL Annual Report unless it meets reasonable expectations for accuracy and verifiability.

Increased efficiency and productivity, and more accurate data will result.

A National Child Attorney Case Load Standard Has Been Set and Is Supported by Empirical Evidence.

We respectfully disagree with the audit reports findings that an appropriate case load standard is uncertain; that the GAL office should count cases rather than clients; that the focus should be courtroom coverage rather than case loads; and that the GAL office has an adequate number of attorneys.

The Standard of 100 Clients Per Attorney Has Been Set by the NACC and U.S. Government.

The National Association of Counsel for Children (NACC) is a non-profit child advocacy and professional membership association which was established in 1977. It is a multi-disciplinary organization with approximately 2,500 members representing all 50 States and several

foreign countries. NACC membership is comprised primarily of attorneys and judges, although the fields of medicine, social work, mental health, education, and law enforcement are also represented. NACC is the premier professional organization for attorneys engaged in the legal representation of children and has been authorized by the American Bar Association as the only organization which may certify lawyers as Child Welfare Law Specialists, a designation which equates to Board certification for physicians.

The case load standard for attorneys who represent children such as the Utah Office of Guardian ad Litem has been established by the NACC as follows: “The NACC recommends that a full time attorney represent no more than 100 individual clients at a time, assuming a case load that includes clients at various stages of cases, and recognizing that some clients may be part of the same sibling group.”¹

Two years prior to the promulgation by the NACC of its case load standard and Recommendations for Representation of Children in Abuse and Neglect Cases, the United States Government conducted a thorough study of child welfare systems and released its report.² In specifically analyzing standards for the legal representation of children, parents and the child welfare agency the report found: “Primary causes of inadequate legal representation of the parties in child welfare cases are low compensation and excessive case loads.”³ The report recommends that State law set case load standards for child attorneys, noting that “no standards or training or professional devotion to duty will produce optimal results if case loads are too high.”⁴ The Federal report concludes that “the case load cap for a staff attorney should be set at 100 children.”⁵

The Federal Government and the NACC have set the national standard for child attorney case loads. An NACC publication also indicates in a footnote that the American Bar Association has adopted the same standard. In a letter dated October 10, 2008 (attached as Appendix) the NACC clarified that “to the extent that the 100 case cap is specifically recommended by the American Bar Association it is overstated. It would be more accurate to specify that while the ABA supports the recommendation in principle, the ABA has not *formally* adopted a 100 case load limit.” (Underline added.) The entire contents of the NACC letter should be read for further clarification.

The Federal/NACC standard of 100 child clients per attorney was developed after years of experience and study of the issue. It takes into account that some children may be siblings, and establishes that counting

“The NACC recommends that a full time attorney represent no more than 100 individual clients at a time. . .”

“Primary causes of inadequate legal representation of the parties in child welfare cases are low compensation and excessive case loads.”

“No standards or training or professional devotion to duty will produce optimal results if case loads are too high.

“The case load cap for a staff attorney should be set at 100 children.”

child clients, not cases, is the appropriate method of representing workload. For a GAL attorney to represent 100 clients means that the attorney can devote an average of 20 hours per year to each child (assuming 2080 work hours per year). Considering court appearances, investigatory work, client contacts, and all other work necessary in each case, 20 hours per year is not generous.

Jurisdictions across the Country are Examining Their Case Loads in Light of The National Case Load Standard.

A Federal Court class action lawsuit was filed in 2002 against the State of Georgia and various named defendants alleging, among other things, that children were not receiving adequate attorney representation due, in part, to the high case loads carried by child attorneys. As part of the resolution of that lawsuit the Carl Vinson Institute of Government at the University of Georgia conducted a comprehensive workload study of child attorneys. The 153 page study report, together with appendices, was provided to the auditors at the beginning of this audit.

The Georgia study concluded that if no reforms of the child attorney offices in Georgia were adopted, those attorneys should represent no more than 75 children at any given time. If specified reforms were adopted by the office, the study concluded that those attorneys could handle a case load of no more than 100 children per attorney, the same as the Federal/NACC standard. The study further concluded that if specified reforms were adopted throughout the child welfare system in the State of Georgia (including reforms in the court system, the Georgia equivalent of the Division of Child and Family Services, etc.), then a maximum case load for child attorneys would be 120 child clients.

In 2000 California adopted legislation requiring that its Judicial Council promulgate rules establishing case load standards for child attorneys. Pursuant to the legislative mandate, a comprehensive case load study was conducted in 2002. That case load study concluded that for an optimal or best practice standard of performance for child attorneys a maximum case load of 77 children was required. California determined it could not adopt the recommended case load standard because of the enormous cost that would be involved. Consequently, the State Courts began a pilot program in certain locations across the state. In those locations a case load cap of 188 children per attorney was adopted together with a requirement of a 0.5 FTE social worker/investigator for every one of those attorneys.

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The California study concluded that for an optimal or best practice standard of performance for child attorneys a maximum case load of 77 children was required.

In April of this year a report was released outlining the results of the four year pilot program. The report reveals that reducing case loads and adding social worker/investigators in the pilot program has proven to be a “cost effective way of improving permanency and well-being outcomes for families’.” At the same time the report acknowledges that the case load standard of 188 children per attorney with a complement of 0.5 FTE social worker/investigator per attorney is “not optimal”, and establishes only base line performance, but reflects a pragmatic fiscal realism. The cost of implementing even this base standard approach in the State of California is estimated to be \$57.14 million, a 58% increase over the current State appropriation for court-appointed child counsel services.

The exhaustive empirical studies conducted in both Georgia and California confirm the Federal/NACC national case load standard of 100 child clients per attorney. The average case load in Utah of 218 children per attorney far exceeds the case load recommendations of the two studies. While the cost saving measure in California of adopting a case load standard of 188 children with a complement of social worker/investigators in order to achieve a base line (not optimal) standard for representation of children reflects a real world pragmatic approach to the problem, Utah does not even meet that lower base line standard. (The GAL office does not have any social worker/investigators. There is one investigator who works 15 hours per week assisting in district court cases in the Logan and Brigham City areas.)

The average case load in Utah of 218 children per attorney far exceeds the national standard and the research.

The Proper Method of Measuring Workload is Counting Clients, Not Court Coverage.

The audit report mistakenly relies on a 1995 court improvement program study for the proposition that the focus should be on courtroom coverage rather than attorney case loads. The aim of the 1995 study was not on attorney workloads, but rather examining the model court approach of “courtroom teaming.” This approach assigns Assistant Attorneys General representing the State, GAL attorneys representing the child, and public defense attorneys representing the parents, to specific juvenile courtrooms, rather than having individual attorneys appear in multiple courtrooms. By adopting a teaming approach the labyrinth of problems in scheduling court calendars that comes with attorneys having to appear in multiple courtrooms is alleviated.

More than a decade has passed since the 1995 look into the courtroom teaming concept. During that time much has been gained in the way of empirical data and experience regarding attorney case load standards. The

modern approach, and the national standard, should be looked to for guidance in this area.

The children served by the GAL Office and their families have benefited from the increased funding which has resulted in reduced case loads for GAL attorneys. The case loads remain high, and far exceed the national standards set by the Federal Government and NACC, the standards identified in the Georgia and California empirical studies, and even the base line pilot program adopted in the State of California. Attorney case loads need ongoing attention.

GAL Performance in Juvenile Court Cases Has Improved

It is gratifying that the auditors' test of juvenile court files reveals a significant improvement in documentation of performance of statutory duties. The one area which showed no improvement ("personally attended all administrative and Foster Care Citizen Review Board hearings") has been rendered moot by recent legislative action which did away with the Foster Care Citizen Review Board.

The GAL Office agrees with the audit concerns regarding some of the statutory duties themselves. Recommended changes to the statute have already been developed, with the assistance and approval of the GAL Oversight Committee, and forwarded to the legislature for consideration.

Guardian ad Litem Oversight Committee Effectively Addressed Ethical Concerns.

One of the most meaningful changes that have occurred in the GAL Office as a direct result of the 2005 audit is the formation of the GAL Oversight Committee. The Committee has functioned for more than three years now, and has actively and effectively provided oversight to the GAL Office. While there has been some turnover of members of the committee, three members are now in their second three-year term of office. The formation of this active Oversight Committee has addressed the ethical concern noted in the 2005 audit.

The 2008 audit report cites to a concurring opinion in the Harrison case. It is important to note that the cited language is *not* the opinion of the Utah Supreme Court. The concurring opinion written by Justice Russon (who has since retired from the Supreme Court) is categorized in the legal

The children served by the GAL Office and their families have benefited from reduced case loads for GAL attorneys, but case loads remain high and need ongoing attention.

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profession as “dicta.” This means that Justice Russon reached beyond the issues of the case and expressed an opinion on matters which were not before the court at the time.

Perhaps the most important aspect of Justice Russon’s concurring opinion in State v. Harrison is that it raised a question, and in the following year, 2002, the Utah Judicial Council provided the answer. Prompted by Justice Russon’s concern, the Utah Judicial Council studied the question of whether the placement of the GAL office was proper in the judicial branch, or would be more properly placed in the executive branch. This was the third time the Judicial Council studied the issue.

In 1992 Chief Justice Hall convened the Ancillary Court Services Task Force, which was comprised of individuals from both the Executive and Judicial branches and private community agencies. This task force studied the placement of the GAL program and recommended that it remain under the administration of the Administrative Office of the Courts under the direction of the Judicial Council in order to be less vulnerable politically, and to provide funding as part of the courts’ budget.

In 1996 the Policy and Planning Committee submitted a report on the GAL program to the Judicial Council. This report considered restructuring the GAL program either as a public corporation or as an independent state agency. Analyzing the costs and benefits of these two possible structures, the Committee concluded that the proposed alternatives did not meet the established objectives, such as full time, professional representation of child victims, or elimination of the adverse impact of competition for appropriations. The Committee recommended retention of the existing GAL program.

The 2002 report, in response to Justice Russon’s concurring opinion in the Harrison case, included a survey of child attorney programs in all 50 states. Of those States that could be characterized as administering a Statewide GAL program through either the Judicial or Executive branch, the majority, 23 of 29, administered their program through the Judicial branch.

The report goes on to note a large body of case law that establishes the GAL as an arm of the court, cloaked with quasi-judicial immunity in the context of civil rights actions or malpractice suits. The report includes a lengthy discussion of ethical considerations for judges in the placement of the GAL Office in the Judicial branch. The conclusion is that it “does not appear to raise ethical issues for individual judges.” Finally, the report

This task force recommended that the GAL Office remain under the Administrative Office of the Courts.

The Committee recommended retention of the existing GAL program.

23 of 29 State GAL programs are in the judicial branch.

analyzed the potential placement of the GAL office in various locations other than the Judicial branch. The conclusion of the report is that placement of the GAL Office should not be changed.

In the 2005 audit report a recommendation was made that the Legislature study the issue of placement of the GAL office in the Judicial versus Executive branch of Government. The Legislature chose not to undertake a study, but the 2008 audit report again makes that suggestion. If the Legislature determines to study the issue, the research conducted by the Judicial Council in its three reports would provide a basis in which to begin. Additional issues now exist regarding placement of the GAL office which would also have to be investigated. For example, ten GAL Offices are currently located in court facilities, and the cost of providing alternate space would have to be considered. The GAL case management system is part of the juvenile court case management system, and the cost and feasibility of losing that system and creating an entirely new system would also have to be considered.

The 2008 audit report suggests that an option would be for the Legislature to move the GAL office to the Administrative Services Department of the Executive branch. In its 2002 report, however, the Judicial Council found that a DAS Human Resources Analyst indicated DAS would be reluctant to absorb the GAL program because of its size. At that time DAS would have difficulty providing personnel services to any program containing in excess of 30 employees. The GAL office currently has 70 employees. Moreover, placement in DAS would create problems of actual or perceived conflict of interest. The office of Parental defense is housed in DAS. GAL placement in the same office could compromise independence and at the very least create the impression that the GAL office is unable to act objectively due to its alliance with the Parental Defense office.

Each time the Judicial Council has studied the issue, it has come to the same conclusion: that the GAL office should be retained in the Judicial branch, just as it is in the large majority of other States with similar programs. If the Legislature determines to study this issue, the matters presented are complex and far reaching, and a commitment of sufficient resources to adequately analyze the subject would be required.

The conclusion of the report is that placement of the GAL Office should not be changed.

Each time the Judicial Council has studied the issue, it has come to the same conclusion: that the GAL office should be retained in the Judicial branch.

Reply to Numbered Recommendations of the Audit Report

1. “We recommend the Guardian ad Litem Office report workload in number of cases as well as number of children.”

GAL Reply: The GAL Office respectfully disagrees. The prevailing modern standard across the country is to report workload in number of child clients per attorney. This is the standard used by the U.S. Government and the NACC.

2. “We recommend the Guardian ad Litem Office, in conjunction with its Oversight Committee, study whether any statutory duties should be changed (such as eliminating the requirement to attend Foster Care Citizen Review Board meetings). The results of that study, and any suggested changes should be proposed to the appropriate legislative committees along with the rationale for the suggested changes.

GAL Reply: The GAL Office agrees with this recommendation. The referenced study has already been completed, and recommendations forwarded to the Legislature. We look forward to working with the Legislature to craft appropriate legislation for the upcoming session.

3. “We recommend the Guardian ad Litem Oversight Committee consider alternative strategies to address caseload concerns.”

GAL Reply: The GAL Office agrees with this recommendation. The Oversight Committee has already considered alternative strategies, and viable strategies have been forwarded to the Legislature for consideration.

4. “We recommend the Legislature decide if action should be taken to change the Judicial Council’s statutory responsibility of directly supervising the GAL Office.”

GAL Reply: The suggested statutory revision may be an appropriate final step in resolving the question of a possible ethical conflict in the placement of the GAL Office in the Judicial branch. The GAL Office would be pleased to work with the Legislature in analyzing this issue.

CHAPTER III

MANAGEMENT OF GUARDIAN AD LITEM PROGRAM NEEDS TO CONTINUE IMPROVEMENTS

The GAL Office agrees in principle with the four areas addressed in Chapter III of the audit report:

- The case management system is inadequate;
- Fee collection efforts need improvement;
- Director should review administrative support provided to attorneys; and
- Continued policy improvement is needed.

In this chapter we will outline the efforts currently underway to improve the automated case management system, to establish policy and improve efforts at fee collection, to address administrative support provided to attorneys, and to continue efforts to improve policy. As outlined in the audit report, the GAL Office is much improved since 2005. Several initiatives are currently underway to continue those improvements.

Case Management System is Inadequate, and Major Improvements Are In the Design Phase of Development

The auditors' assessment of the need for adequate and accurate automated case management systems in both district and juvenile court cases is accurate. Following the 2005 audit recommendations for the implementation of automated case management systems, the previous GAL director searched the commercial market for a product which might meet the office needs for automation. No commercial products available come even close to meeting those needs. The only option was to create a new system. With no money available to undertake this task, the Administrative Office of the Courts stepped in and committed significant resources to the development of an automated case tracking and management system.

The system that was developed is an application within the juvenile court's case management system, known as CARE. The system that was developed was entirely new territory, and was a first phase in development of automated case management. Its most severe limitation is that as part of the juvenile court system it is not able to track any district court case activity.

With no money available to the GAL Office, the Administrative Office of the Courts stepped in.

Over time much has been learned with the use of the GAL application in CARE. The CARE system itself was brand new to the courts at the time the GAL application was developed. Some of the GAL reports that were originally created have proven useful, but others have shown to not provide a benefit to the Office. Based upon time, experience, and with new ideas about what the case management system can do, it is time to move to the next phase of automated case management within the GAL Office.

A New, Expanded, and Comprehensive Case Management System is Under Development

As was the case in 2005, the GAL Office does not have funding available to develop the next phase of automated case management. But once again, the Administrative Office of the Courts has stepped forward and has committed significant resources to develop this system. Programming staff within the Information Technology department of the Administrative Office of the Courts are engaged with the GAL Office in the design process. A committee has been formed, comprised of GAL attorneys, staff, CASA Coordinator, and Administration. This committee has already met several times and is nearing completion of the design of a new automated case management system.

Perhaps the most significant feature of the new case management system is that it will no longer be an application with the juvenile court's CARE system, but will be a free standing system that is integrated with both the juvenile court CARE system and the district court automated system, known as CORIS. This integration will allow the GAL system (which is yet to be named) to retrieve data from both the district and juvenile court systems, which will greatly reduce the workload for GAL data input, while at the same time increasing data reliability. This also means that all cases within the GAL office, both juvenile and district, will be tracked and managed using the new system.

All GAL attorneys have laptop computers for their use. The courts are in the process of installing wireless internet in every courthouse in the State. The new GAL case management system is web-based, which means GAL attorneys will be able to use the system while in court, thus increasing efficiency.

Another important feature of the new system is greatly enhanced reporting capability. Reports available in the new case management system fall into three categories: case management; supervision; and administration. Case management reports will allow GAL attorneys to monitor the status of their

The new case management system will integrate with both District and Juvenile court systems.

individual cases, including fulfillment of statutory duties. For example, the “Red Sheet” which is discussed in the audit report, will be incorporated as an automated report in the new system. Attorneys will also be able to look at statutory duties in terms of their entire case load and quickly determine where additional effort might need to be expended.

Reports are also being created to assist managing attorneys in the supervision of attorneys within their offices. Supervisors will be able to utilize these reports in annual performance evaluations and in the creation of attorney performance plans.

Finally, reports never before available are being created to assist in overall program administration. These reports will track demographic data, provide helpful statistical information, identify and track trends, etc. For an office of the relatively small size of the GAL Office, this will be an extraordinary tool available for the first time.

Additional enhancements being designed in the new case management system include the ability to generate a number of documents with the touch of a button; the ability to digitally sign and electronically file court documents; and the ability to upload and electronically store documents and photographs of each child client. Further, the system is designed to be integrated with the CASA volunteer program. The regular reports from the CASA volunteers will either be submitted electronically or scanned and uploaded into the system and available to attorneys while they are in court. Contact information for the CASA volunteers will also be in the system making it much easier for attorneys to complete their daily work.

The GAL Office is extremely pleased with the design concept of the new system and grateful that the Administrative Office of the Courts is willing to dedicate so much in the way of resources to the development of this system. We look forward to the tremendous benefit this will be for the Office and appreciate having had a few years of experience with the current CARE application in order to move on to the next phase.

Fee Collection Efforts Need Improvement

The audit report is correct in its assessment of the deficits in current efforts to collect attorney fees in the GAL Office. For the first 7 years of the existence of the GAL Office there was no authority to collect attorney fees. Legislation was passed in 2001 giving this statutory authority. The intent of the legislation was to find an additional way to provide badly needed resources for the GAL Office. It was not envisioned nor intended to be a

significant source of revenue, but it can be better utilized than it currently is.

The primary difficulty that the GAL Office has had in pursuing the recovery of attorney fees in the past is a dearth of administrative resources. Prior to additional funding being provided by the legislature for FY2008 there was only one administrative level support position in the GAL Office. This individual was terribly overworked and the collection of attorney fees simply had to take a lower priority than other, more pressing issues. A second administrative level support position was established with new money appropriate by the legislature for FY2008. Since the creation of that position a great deal of work has gone into the division of responsibilities and refining administrative functions. For example, accounts payable in the past had a significant lag time are now routinely processed within 48 to 72 hours. This new position also allows for more effective attorney fee collection work.

The GAL Office accepts and agrees with the audit recommendation of the need for written policy regarding requesting attorney fee awards. We anticipate that policy will be developed and put in place by the end of the calendar year. Additionally, the design of our new automated case management system includes the ability to generate the Motion, Notice and Order necessary for initial fee requests, and will be able to track fee awards.

Policy regarding fee awards will be in place by the end of the year.

GAL Attorneys Should Have Professional Discretion in Requesting Attorney Fee Awards

The statutory authority for the GAL office to request attorney fee awards provides that the court may not order those fees to be paid by a party who is impecunious. In the juvenile court arena this means the large majority of cases would not qualify for an award of attorney fees. Most of the parents in juvenile court child welfare cases have court appointed attorneys, and those appointments are made only when the parents are found to be impecunious.

The large majority of potential attorney fee awards available to the GAL Office are in the district court arena, in cases where the parties have sufficient income to hire their own attorneys, and therefore should contribute to the cost of GAL services. To require that a fee request be prepared and submitted in every case, as recommended in the audit report, would constitute an unnecessary drain on the resources of both the GAL Office and the courts, as well as the parties. The filing of a fee request

includes preparation by the GAL Office of a Motion, Affidavit, and Memorandum at least, and may also include additional documents such as a Notice and Order. It requires calculation of time spent on the case, and filing the documents with the court. The court and parties must examine the request, and the parties must then determine whether to respond and object to the request in whole, or in part. If the request is objected to, appropriate documents must be prepared and a hearing must be held. Whether an objection is filed or not, the court must review the various documents and enter an order. Resources are conserved and the GAL Office and the courts are able to work more efficiently when discretion is left with licensed attorneys as to whether a request should be filed. That discretion will be tempered by the policy which is currently being developed and which will be implemented by the end of the calendar year.

Over the course of a case, a GAL attorney becomes very familiar with the circumstances of individual child clients and their families. The process of investigation often reveals family information, including financial status. This is especially true in district court proceedings involving divorce and custody where financial information of the parties is routinely exchanged for purposes of determining child support and alimony payments, division of property, etc. GAL attorneys typically know a great deal of information regarding the families' ability to pay. It would be a waste of GAL and Judicial resources to go through the process of requesting a fee award when it is clear the request will only be denied.

Perhaps more important to this analysis is the fact that families that GAL attorneys work with are in crisis. The aim of the court system is to assist those families through whatever crisis they are dealing with. There are occasions when a parent or guardian might technically be just above the court's standard of impecuniosity, but for whom the imposition of a court order to pay thousands of dollars in attorney fees to the GAL Office might be both financially burdensome and the emotional straw-that-breaks-the-camel's-back, plummeting the family back into crisis. This poses an ethical dilemma for the GAL attorney. It is clearly not in the best interests of children who have been through a crisis situation with their families for the family to be plunged back into another crisis. There are, therefore, situations where an attorney may be ethically bound to not request an award of attorney fees, even though it might technically be appropriate.

Finally, the GAL Office must address the assertion on page 26 of the audit report that if fees were requested and granted to all GAL attorneys at a rate similar to that currently granted in the fourth district, fee orders from district court cases alone could exceed \$1 million annually. We believe

Requesting fees in every case would be an unnecessary drain on resources.

this is a gross overstatement, as borne out by the figures presented in the audit report itself.

Figure 3.3 of the audit report (p. 27) shows that from October 2002 to the time of the report the fourth district GAL office had been awarded \$285,521 in attorney fees. Over the five and a half year period, this equates to an average annual amount of \$51,912.90. If you include in the fourth district amount the total of \$63,000 which was not attributed to any particular district (although it seems most likely those fees were awarded to other districts inasmuch as the fourth district appears to be circumspect in identifying that awards come from that district), the average annual award comes to \$63,367.45. The fourth district represents 17% of the statewide total of children represented by the GAL Office. Applying this ratio to the \$63,367.45 figure, which includes all the fee awards, both district and juvenile, and attributes the entire \$63,000 unattributed orders to the fourth district, and the total fee award for the Office which might be expected if all GALs recovered fee awards at the rate of the fourth district is \$372,749.72.

This amount represents anticipated fee orders, but it does not mean that all of those orders are capable of collection. Moreover, when fee awards are turned over to the State Office of Debt Collection for purposes of collection, ODC retains 26% of all amounts collected, which reduces the potential recovery to the GAL Office to approximately \$250,000 to \$275,000.

A maximum potential recovery of approximately \$250,000 to \$275,000 would benefit the office, and underscores the necessity of establishing a policy and increasing our efforts, but it is significantly less than the figure cited in the audit report. Steps have already been taken in the Office to adopt system safeguards, which have been approved by the finance department of the Administrative Office of the Courts, and to refine and clarify our internal process. A policy is under development which will establish parameters for requesting fee awards and for tracking those awards when received and turning them over to the State Office of Debt Collection. This policy will be in accordance with Utah Administrative Rule 21. Plans have already been put into place in the Salt Lake and St. George GAL offices to increase their efforts at recovering attorney fees. We look forward to the culmination of all of these efforts.

If fees were collected statewide at the same rate as the 4th district, potential recovery could be \$250,000 to \$275,000.

GAL Office Needs Additional Support Staff

The audit report is correct in pointing out that GAL attorneys are in need of more administrative support than they currently receive. The report correctly notes that support staff levels in the GAL Office are approximately half that enjoyed in the Child Protection Division of the Attorney General's office. While the GAL Office provides only one staff person to support two attorneys, the Attorney General's office provides an average of one support staff per attorney. The result is that GAL attorneys, whose caseloads are already more than double the national standard, take on the added burden of having to perform secretarial and other administrative duties in addition to their obligations as attorneys.

The GAL Office has support staff levels that are one-half those in the Attorney General's office.

Administrative Support is More Evenly Distributed Than the Audit Report Reflects.

The data reflected in figure 3.4 and the surrounding text of the audit report was compiled prior to the beginning of FY09. The 2008 legislature appropriated additional money to the GAL Office for the purpose of hiring two FTE attorneys and two FTE support staff, and the support staff positions have been placed in areas of greatest need. For example, the West Jordan office which previously had four attorneys and only one support staff now has four attorneys and two support staff, consistent with the two attorneys to one support staff ratio throughout the GAL office. A .5 FTE support staff was hired for the Tooele office, so the attorney in that office now has secretarial support.

CASA Program Provides Cost and Other Benefits to the GAL Office.

The audit report suggests examining the productivity of CASA Coordinators and even considering reassigning some CASA Coordinator positions as support staff. We respectfully disagree with these recommendations.

The audit report indicates that there are 7.75 CASA Coordinators. In reality, as pointed out in the audit report, in some of the small GAL offices, there is one GAL attorney and one staff person whose time is to be divided half as administrative support and half as coordinator of the local CASA program. In each of those offices the demands of administrative support are overwhelming, and consequently actual division of time is more along the lines of 10-15% of the time in CASA. Additionally, the 7.75 figure includes a .5 FTE CASA Coordinator hired in April 2008 using money

obtained by a grant from the Court Improvement Program. In any cost benefit analysis the .5 FTE position should not be included because the position had just been created and there was not enough time for that coordinator to have recruited and trained volunteers, and the GAL Office expended no funds to pay for that position until October 1, 2008.

At the audit exit interview the GAL Office presented information which is more complete and accurate than that which is found on page 34 of the audit report relating to the CASA program. For the sake of this analysis, it will be assumed that the half time CASA Coordinator positions actually contribute 20 hours per week to the CASA program, when in reality they only contribute 4-5 hours. But with that assumption, 7.25 CASA Coordinators would be paid for 15,080 work hours per year, assuming a 2080 hour work year. Factored into this equation must be the revenue which is actually generated by the CASA program. Last year the Utah CASA program received a federal grant of \$49,000. (The Office receives a National CASA grant of approximately \$50,000 each year.)

Additionally, in 2001 legislation sponsored by the late Senator Pete Suazo was passed which authorized the "Invest in Children" license plate. Proceeds from that license plate are divided between the CASA program and the Utah Children's Museum. Last year the license plate revenue to CASA was \$40,103. Additionally, CASA receives donations from various businesses. For example, the CASA programs in Utah and Colorado have been designated as the corporate giving beneficiaries of Town and Country Foods, a grocery wholesale supplier. Last year the donations received by CASA totaled \$7,320. This means that last year Utah's CASA program generated \$96,423 in revenue.

Of the 15,080 hours paid for CASA Coordinator time, only 10,755 hours were paid by State appropriated GAL program funds; the rest were paid by the revenue generated by the CASA program. Last year CASA volunteers donated 12,623 hours of service to the GAL Office and the children it serves. This resulted in a net benefit to the office of 1,868 volunteer hours, valued at over \$40,000.

The Federal Government strongly recommends the use of CASA volunteers in child welfare cases. "The volunteer's role is distinct from, yet complementary to, that of lawyers who represent children."⁶ Recognizing that there are various models for CASA programs, as noted in the audit report, the Federal report states that "one of the strongest [models] is the use of attorney/volunteer teams."⁷ This is the model used in Utah. In addition to the cost benefit of the CASA program is the less tangible

Last year CASA generated more than \$96,000 in revenue.

CASA provides a cost benefit of over \$40,000.

benefit to the entire child welfare system of community involvement. As CASA volunteers work with individual children and their families, and become familiar with the child welfare system, they become advocates for the Office, for families, and for the system. They dispel myth and rumor in the community by explaining the actual process to friends and neighbors. They raise the voice of awareness of child abuse and neglect. The value to the communities of these volunteers and to the entire State cannot be measured in dollars, and cannot be calculated.

“The involvement of a trained volunteer can provide an important additional source of detailed information about the child for attorneys, caseworkers, and, ultimately, for the court. Independent volunteer advocacy, in combination with competent legal counsel, provides an opportunity for meaningful community involvement on behalf of abused and neglected children in the courts.”⁸

Utah is a State which prides itself in volunteerism. If there were adequate support staff in the GAL office, all CASA coordinators would be able to devote their full attention to the CASA program. In addition, more CASA Coordinators are needed. There is only one CASA Coordinator in the entire third judicial district, comprising Summit, Salt Lake, and Tooele counties, the largest population area of the state. Even one additional CASA Coordinator, housed in the West Jordan GAL office, would greatly increase the ability to recruit and train CASA volunteers.

Children and families are not created equal. CASA volunteers are assigned to the most difficult cases. The work they do, and the information they provide, makes a difference to the GAL Office and to the system as a whole, not to mention the benefit to children and their families. The CASA program should be enhanced.

Program Resources Have Been Examined and Reallocated.

As indicated earlier in this section, new money provided by the Legislature for FY2009 has allowed the addition of a few additional support staff personnel, which have been placed in areas of greatest need. The attorney to staff ratio in the GAL Office remains at about 2 attorneys for each support staff position. The audit report recommends examining a .18 FTE licensed clinical social worker position in the Salt Lake Office, and a .375 investigator position in the Logan Office. The .18 FTE social worker position has been eliminated, and, depending on current economics and possible additional budget cuts, those resources will be allocated towards support staff, but this is minimal. The investigator position in the Logan

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should be
enhanced.**

office is an individual who works 15 hours per week. That position was created several years ago in an attempt to address the critical level of work in the district courts in that area. The position is still badly needed in Box Elder, Cache, and Rich counties, and will not be reallocated.

Staffing levels within the GAL Office are inadequate, and need to be addressed. An appropriate funding request has been approved by the GAL Oversight Committee and will be presented to the Legislature.

Staffing levels are inadequate and need to be addressed.

Continued Policy Improvement is Needed

It is gratifying that the policy work which has been accomplished in the GAL Office is recognized as a program improvement in the audit report. The Office agrees with the auditors that continued work in this area is needed. The most significant initiative in the area of policy improvement is the development of best practice standards. This initiative began several months ago. It has been a very involved process which has included input from many of the GAL attorneys throughout the state. The basis of the best practice standards are the statutory duties of GAL attorneys. Significant guidance is obtained from the NACC Recommendations for Representation of Children in Abuse and Neglect Cases, and the ABA Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases. The best practice standards are nearing their final form, and it is anticipated that they will be implemented before the end of this calendar year.

Best practice standards will be implemented before the end of the year.

Formal Fee Guidance Policy is Being Implemented

In this section of the audit report the auditors again recommend the development of a specific policy guiding the recovery of attorney fees. As stated earlier in this reply, the GAL Office agrees with this recommendation and anticipates having this policy in place by the end of the year.

Best Interest Guidelines Will Be Adopted

As indicated at the beginning of this reply, the practice of child welfare law is complex and requires a multi-disciplinary approach and expertise. GAL attorneys are charged with representing the best interests of child clients. Multiple training opportunities are provided throughout the year to enhance the knowledge and skill of GAL attorneys in this area. As the audit report alludes, the determination of best interests is fact specific and based on each child and their circumstances. While this is a continual topic of

training in the GAL Office, we understand the auditors' suggestion to establish a more systematic approach to the determination of best interests.

The best practice standards which are being developed did not originally contain a section of factors to consider in making a determination of best interests. Following the audit recommendation, the release of the best practice standards has been delayed to develop and incorporate best interest factors into those standards. As indicated above, the best practice standards, including best interests factors, are anticipated to be completed and implemented prior to the end of this year.

Reply to Numbered Recommendations of the Audit Report

1. "We recommend the GAL Director work with the Administrative Office of the Courts to structure the CARE program to provide the desired reports to assist in managing GAL workload."
2. "We recommend the GAL Director develop a case management system for district court cases."

GAL Reply: The GAL Office agrees with these recommendations, and believes that even more extensive work needs to be done on an automated case management system. The Administrative Office of the Courts has committed significant resources to assist in the process, and the design phase of a new case management system, to include both district and juvenile court cases, is well underway and nearing completion.

3. "We recommend the GAL office request attorney fees in all district court cases unless the court has already determined a client's inability to pay."

GAL Reply: The GAL Office respectfully disagrees with this recommendation, and believes it would result in a waste of resources for the GAL Office, the courts, and the parties. GAL attorneys should retain professional discretion, in compliance with their ethical duties, to avoid placing undue hardships on families. At the same time, fee collection policy will be developed and introduced, the new case management system will facilitate fee requests, and additional effort will be expended to increase attorney fee recovery.

4. “We recommend the GAL Director institute the practice of submitting unpaid claims to the Office of Debt Collection after a specified period of time.”

GAL Reply: The GAL Office agrees with this recommendation. Recently over \$90,000 in fee awards was turned over to the Office of Debt Collection. The new fee policy being developed will include direction on when receivables are to be sent to ODC, in accordance with Administrative Rule 21.

5. “We recommend the Guardian ad Litem Office establish a reliable method for tracking accounts receivable to ensure the appropriate levels of control are in place.”

GAL Reply: The GAL Office agrees with this recommendation. Steps have already been taken and approved by the finance department of the Administrative Office of the Courts to resolve these concerns. The new automated case management system is anticipated to include features that will further track these receivables.

6. “We recommend the GAL Director evaluate ways to improve the staff support that attorneys receive. The director’s evaluation should include a review of the use and the productivity of existing staff and CASA Coordinators.”

GAL Reply: Evaluation of staff support has been conducted. Additional support staff is badly needed, and a funding request has been approved by the GAL Oversight Committee and will be presented to the Legislature.

7. “We recommend the GAL Director continue to improve best practices by
 - Establishing a formal policy on filing motions for fee request and collections; and
 - Providing objective criteria for GALs to use when determining the best interest of the child.”

GAL Reply: The GAL Office agrees with these recommendations. The suggested policies are currently under development and it is anticipated that they will be implemented prior to the end of the calendar year.

CHAPTER IV

CLEARER LIMITS NEEDED FOR USE OF STATE GUARDIANS AD LITEM IN DISTRICT COURT

The GAL Office agrees with the auditors that placing certain parameters on the appointment of GAL attorneys in district court cases could reduce the impact of those cases on the Office, while still being able to provide the important service. At present, GAL attorneys are appointed in district court cases, pursuant to statute, across the state. The audit report correctly points out that the rate of appointment of GAL attorneys in district court varies from judicial district to judicial district. Part of the reason for this difference is that judges in rural areas of the state have agreed to appoint the GAL attorneys in district court cases far less frequently than they would like. In many parts of the state a single GAL attorney covers a vast area, and the ability of the office to absorb additional cases is limited. Many judges in these areas have expressed a desire to appoint the GAL in more district court cases than they do, but have agreed to appoint a GAL in only the most severe cases due to the limitation of resources.

The audit report correctly points out that custody evaluators can and frequently are appointed in district court cases. The cost of these evaluators is prohibitive to many families, and the role of a custody evaluator is significantly different than that of a GAL attorney. A custody evaluator is court appointed to perform an objective evaluation of the issue of custody only. Evaluators do not advocate, but provide information and a recommendation regarding custody and visitation. GAL attorneys, on the other hand, actively advocate for the best interests of their child clients, and ensure that the child's voice is heard in these proceedings.

The audit report also correctly points out that courts currently have the option of ordering a DCFS investigation into the allegations of abuse or neglect in a district court case, and that is sometimes done. The audit recommendation to require such an investigation before a GAL attorney is ever appointed may indeed ferret out some cases where the allegations of abuse or neglect lack foundation. In response to a query from the GAL office, the Utah Division of Child and Family Services provided a preliminary estimate of the cost of investigating additional district court cases prior to appointment of a GAL attorney at over \$262,000.

While a DCFS investigation of all district court cases before a GAL may be appointed might indeed reduce the number of cases in which the GAL

Many district court judges perceive a need to appoint a GAL more frequently.

The estimated cost of DCFS investigations prior to GAL appointment in district court cases is over \$262,000 per year.

office is appointed, one can only speculate as to the actual impact on the number of case appointments. In those cases where a GAL attorney would in fact be appointed, the GAL office would not be relieved of its statutory duty to conduct an independent investigation. These cases would look more like a typical juvenile court case where both DCFS and the GAL office conduct separate and independent investigations.

The Utah district courts do not have the advantage of having a child and family investigator, such as the State of Colorado has, to assist in district court cases. Often, the GAL Office is the only, or the best, choice to provide a more objective and reasonable voice in the midst of warring parents. A GAL attorney can be an effective aid to the court in getting at the truth and serving the best interests of the children involved.

Legislature Should Consider Parameters in the Appointment of GALs in District Court

As the audit report suggests, an effective way to continue the important resource of GAL attorney appointments in district court, while reducing the impact of those cases on the operations of the GAL Office, might be to enact legislation setting parameters for those appointments. It is in this vein that the Office and Oversight Committee have studied this issue over a period of many months. Recommendations for possible legislation have been forwarded to the Legislature. Some of the recommendations include:

- Consider restricting GAL appointments to represent child victims in adult criminal prosecutions in line with those set forth in the State v. Harrison decision, or consider eliminating these appointments altogether.
- Require that court orders appointing GAL attorneys in district court cases specify the issues the GAL is to be involved in, bifurcate those issues from the other issues of the case (for example, separate custody and visitation issues from division of assets and other financial issues), and require that a final order be entered on the issues the GAL is appointed for within 12 months of the date of appointment. This would impose a timeline similar to those which already exist in child welfare cases, and would help to bring permanence and finality to children in a more timely fashion.
- Consider a statutory requirement that GAL attorneys be released from district court appointments when the allegations of abuse or neglect are determined to be unfounded; the court determines, after receiving recommendations from the GAL attorney, that the children

Often, the GAL Office is the only, or the best, alternative to provide a more objective and reasonable voice in the midst of warring parents.

The GAL Office and Oversight Committee have made recommendations for statutory changes regarding district court appointments.

are no longer at risk of abuse or neglect; or when there has been no activity in the case for a specified period of time, perhaps six months.

The GAL Office looks forward to working with the Legislature, the courts, and other interested parties in crafting reasonable guidelines for the appointment of GAL attorneys in district court cases.

Reply to Numbered Recommendations of the Audit Report

1. “We recommend the Legislature provide additional statutory guidance on the conditions for the appointment of the Office of the Guardian ad Litem in district court. Options include:
 - Requiring a DCFS investigation when a GAL is appointed on custody cases
 - Requiring a written order explaining the specific reasons motivating the court to appoint a GAL”
2. “We recommend the Legislature provide additional statutory guidance on the on the terms of GAL appointment on district court cases. Options include:
 - Specifying the duties of GALs on district court cases or requiring the court to do so on each appointment.
 - Limiting the length of appointment on district court cases or requiring court to do so on each appointment
 - Requiring the court to order fees on district court cases unless an inability to pay is documented”

GAL Reply: The Office agrees with the audit recommendations that statutory guidance on both the conditions of appointment and the terms of appointment in district court could ensure that this important service continues while limiting the impact of the workload on the Office. The Office respectfully disagrees that the court should be required to order fees on all district court cases unless an ability to pay is documented, and believe that while fees should be requested where appropriate, professional discretion should be maintained to avoid ethical conflicts and plunging families with limited financial resources into new states of crisis.

¹ *National Association of Counsel for Children Recommendations for Representation of Children in Abuse and Neglect Cases*, III. A.2, comment A, 2001.

² *Adoption 2002: The President's Initiative on Adoption and Foster Care. Guidelines for Public Policy and State Legislation Governing Permanence for Children*. U.S. Dept. of HHS ACF ACYF Children's Bureau, 1999

³ Id. at VII-4

⁴ Id.

⁵ Id. at VII-5.

⁶ Id. at VII-22

⁷ Id.

⁸ Id.

Appendix



NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

Vice President and Acting Executive Director
Peter M. Koelling, JD

Chair, Board of Directors
John Stuenkel, MD

October 10, 2008

Mr. Rick Smith, Director
Office of Guardian ad Litem
450 S. State N31
P.O. Box 140241
Salt Lake City, UT 84114-0241

Dear Mr. Smith:

The purpose of this letter is to clarify the *NACC Recommendations for Representation of Children in Abuse and Neglect Cases*, Part III (A)(2), Comment A as cited in *Child Welfare Law and Practice*, Appendix-A, page 653 and its supporting footnote 2. The NACC recommends that a full time attorney represent no more than 100 individual clients at a time, assuming a caseload that includes clients at various stages of cases, and recognizing that some clients may be part of the same sibling group. To the extent that the comment states that the 100 case cap is specifically recommended by the American Bar Association it is overstated. It would be more accurate to specify that while the ABA supports the recommendation in principle, the ABA has not *formally* adopted a 100 caseload limit.

The cited provisions, *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, §§L-1, L-2 address "Controlling Lawyer Caseloads" and recognize the importance of manageable caseloads and encourages the courts to take action to control the size of court-appointed caseloads of lawyers. While it does not make reference to a specific caseload number, other ABA publications and standards have made references to specific caseload limits. In one of the first studies completed on this subject, *Evaluating and Improving Child Welfare Agency Legal Representation: Self Assessment Instrument and Commentary*, by Ellen Segal published by the ABA National Legal Resource Center for Child Advocacy and Protection in 1990, the findings were that caseloads above 60 are "unmanageable" for those representing child welfare agencies.

In addition the ABA has recommended specific caseloads for other attorneys involved in the same cases as those who represent children. The American Bar Association Standards of Practice for Lawyers Representing Child Welfare Agencies (August 2004) drafting committee recommended a caseload of no more than 60. In its commentary it states, "High caseload is considered one of the major barriers to quality representation and a source of high attorney turnover... The standards drafting committee recommended a caseload of no more than 60." Likewise, the American Bar Association Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases standards drafting committee recommended a caseload of no more than 50-100 cases depending on what the attorney can handle competently. It repeats the finding that high caseload is "a major barrier to quality representation."

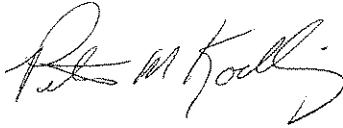
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Federal Tax ID 84-0743810

Certainly the ABA supports the proposition that high caseloads interfere with quality representation and that caseload levels should be reasonable. The ABA standards recommend the attorney or guardian ad litem should “not have such a large open number of cases that they are unable to abide by Part I of these Standards.” In light of the studies published by the ABA and the recommendations for caseload levels in the standards for Agency Attorneys and Respondent Parent’s Counsel, the other attorneys involved in the same cases, and the time requirements needed to meet the other recommended practice standards, a caseload of more than 100 for guardians ad litem would be unreasonable and would create a barrier to quality representation.

If you need any further clarification or additional information please do not hesitate to contact us.

Best regards,

A handwritten signature in black ink, appearing to read "Peter M. Koelling". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Peter M. Koelling

Guardian ad Litem Oversight Committee

450 S. State St., 3rd Floor
Salt Lake City, Utah 84114-0241

*Created pursuant to Rule 4-906, Utah Rules of Judicial Administration
Ensuring independent and professional representation of abused and neglected children
by the Office of Guardian ad Litem*

Committee Members:
Keith A. Kelly, J.D., Chair
Lisa Watts Baskin, J.D.
Tani Downing, J.D.
Hon. Reginal Garff
Kevin Gully, Ph.D.
Carol Page
Robert Steele, J.D.

November 7, 2008

To: Legislative Audit Subcommittee, Utah State Legislature
Re: Response to 2008 In-Depth Follow-up Audit of the Office of Guardian ad Litem
by the Legislative Auditor's Office, Report No. 2008-10

The Guardian ad Litem ("GAL") Oversight Committee¹ welcomes the Legislative Auditor's 2008 In-Depth Follow-up Audit of the Office of Guardian ad Litem ("Audit Report"). It provides significant guidance for the Committee. In part A, this response outlines issues raised in the Audit Report on which the Committee is working. In parts B through F, this response discusses specific concerns regarding placement of the GAL Office, salary parity, support staff, and GAL attorney workloads.

A. The Oversight Committee Is Working on the Specific Recommendations Made in the Audit Report.

The Oversight Committee is working with the Director of the GAL Office to address the recommendations of the Audit Report as listed below. The Committee will continue to carry out the following tasks:

1. Continue to monitor and follow up on the work of the GAL Office and the Administrative Office of the Courts in (i) providing desired reports to assist in managing the GAL workload, and (ii) developing a case management system for district court cases. (Audit Report, Chapter 3, Recommendations 1 & 2.)
2. Continue to work with the Director of the GAL Office in his ongoing process of developing and overseeing implementation of a fee collection policy that takes into account the need to receive compensation in district court cases, balanced against

¹ In 2005, the Oversight Committee was created pursuant to Rule 4-906 of the Utah Rules of Judicial Administration. Under Rule 4-906(1)(A)(i), the Committee is charged to "develop and monitor policies of the Office of Guardian ad Litem" ("GAL Office") in order to "ensure the independent and professional representation of a child-client and the child's best interest." Since 2005, the Oversight Committee has been performing these duties.

the ethical obligations of attorneys not to harm their child-clients by placing undue burdens on low-income families. (Audit Report, Chapter 3, Recommendation 3.)

3. Continue to work with the Director of the GAL Office in his ongoing process of developing and overseeing implementation of a policy of submitting unpaid claims to the Office of Debt Collection after a specified time. (Audit Report, Chapter 3, Recommendation 4.)
4. Continue to work with the Director of the GAL Office in his ongoing process of improving best practices by (i) establishing a formal policy on filing motions for fee requests and collections; and (ii) providing objective criteria for GALs to use when determining the best interest of the child. (Audit Report, Chapter 3, Recommendation 7.)
5. Continue to study the appropriate and effective use of GALs in district court and recommend to the Legislature any additional changes. (Audit Report, Chapter 4, Recommendations 1 & 2.)

Further, the Oversight Committee will address the following additional item raised by the Audit Report:

6. Work with the legislature to provide input on statutory provisions related to the Committee's supervision of the GAL Office. (Audit Report, Chapter 2, Recommendation 4.)

In addition, working with the Oversight Committee, the Director of the GAL Office has already taken action as to the following recommendations of the Audit Report. The Oversight Committee will consider what further steps may be appropriate:

- i. Study whether any GAL statutory duties should be changed, and offer proposed changes to the appropriate legislative committees, along with the rationale for suggested changes. (Audit Report, Chapter 2, Recommendation 2.)
- ii. Consider alternative strategies to address caseload concerns. (Audit Report, Chapter 2, Recommendation 3.)
- iii. Develop and oversee implementation of a policy of tracking accounts receivable to ensure the appropriate levels of control are in place. (Audit Report, Chapter 3, Recommendation 5.)
- iv. Evaluation of the effective use of staff. (Audit Report, Chapter 3, Recommendation 6.)

B. The Committee Sees No Practical Conflict by Placement of the GAL Office within the Administrative Office of the Courts, while Placement in the Executive Branch Could Raise Issues about GAL Independence.

The Audit Report again raises the issue of where the GAL Office should be located in state government. The Report refers to ethical concerns "of judges supervising advocates who appear before them in Court proceedings." (Audit Report at p. 15.)

This ethical concern appears to be more theoretical than practical. Since 2005, the Oversight Committee has neither observed nor been informed of any attempt by judges or the Administrative Office of the Courts ("Administrative Office") to supervise the actions of GAL attorneys. The courts have been permitting GAL attorneys to exercise independent professional judgment in representing their child-clients, as required by Utah Code Ann. § 78A-6-902(3).

Further, the Administrative Office has permitted the Oversight Committee to exercise its independent professional judgment in overseeing the GAL Office pursuant to Rule 4-906, Utah R. Jud. Admin. The Oversight Committee has independently assessed the functioning of the GAL Office, set the Committee's own agenda, and focused on issues that the Committee has considered to be important.

Conversely, the Oversight Committee has concerns about independence of the GAL Office if it were located in the Executive Branch. For example, the Attorney General's Office or Division of Child and Family Services may decide that certain services for abused or neglected children do not fit within their budget priorities. If the GAL Office were located in the Executive Branch, the GAL attorney may feel pressured to refrain from advocating for such services, even though the GAL attorney independently may consider those services to be vital for a particular child. At the same time, placement of the GAL Office within Administrative Services Department of the Executive Branch would raise concerns because that Department houses the Office of Parental Defense.

Wherever the GAL Office may be located in state government, it is important to have an Oversight Committee in place to perform the duties described in Rule 4-906, Utah R. Jud. Admin. An Oversight Committee helps assure that the GAL Office will perform its duties under Section 78A-6-902 as independent advocates for abused and neglected children.

C. Placement of the GAL Office within the Administrative Office of the Courts Offers Significant Practical Benefits.

The Audit Report highlights the benefit of placing the GAL Office within the Administrative Office of the Courts. The Administrative Office, for example, has performed a critical service for the GAL Office in implementing the CARE case management system. The Administrative Office will continue to be vital in improving and refining the GAL Office's case tracking system – especially in establishing computerized case tracking for district court cases as called for by the Audit Report. (See Audit Report at pp. 19-24.) At the same time, the Administrative Office provides office space for GAL attorneys in courthouses throughout the state, while providing payroll and other administrative support. Having courthouse office space allows for the more efficient use of scarce resources due to the reduction of travel time and reduced use of State vehicles.

These vital services support the GAL Office without compromising the independent representation of children under Section 78A-6-902. Moving the GAL Office to the Executive Branch could potentially be disruptive, costly, and cause the GAL Office to lose vital office space and support services.

D. Salary Parity Is an Effectiveness Issue.

GAL attorneys must be effective. Section 78A-6-902(3) requires them to carry out difficult and complex duties for the benefit of abused and neglected children. Thus, experience is vital for GAL attorneys.

The Oversight Committee is concerned about a significant drain of experienced attorneys from the GAL Office caused by the lack of salary parity with other state-employed attorneys. A GAL Office study shows that GAL attorneys are, on average, paid 34% less than their counterparts with similar experience who work for the Attorney General's Office. For example, a nine-year veteran GAL attorney recently left the GAL Office to receive an \$18,500 annual salary increase to handle child welfare cases for the Attorney General's Child Protection Division. GAL attorneys who have left their positions report that low salary is a major factor for leaving.

High GAL attorney turnover results from these salary disparities. In the last three years, the GAL Office has experienced an average 24.7% annual turnover of attorneys. Right now, 57% of the GAL attorneys have worked in their positions for two years or less, and 24% of GAL attorneys have practiced law for two years or less.

Salary parity is both an attorney-effectiveness issue and cost-effectiveness issue. With turnover of attorneys, time is lost to training, while time is wasted when cases are transferred and new attorneys need to learn about the cases. As a result of attorney turnover, children may become distressed and less successful with the increased chaos. Opportunities to reach optimal settlements are lost when good relationships with families, attorneys, and other professionals are undermined. At the same time, less experienced attorneys may lack the abilities of their more experienced counterparts in knowing how best to work within the legal system to assist their child-clients. With experience, an attorney learns how to prepare legal papers more quickly and effectively.

Because of these concerns, the Oversight Committee recommends that the Legislature set GAL attorney salaries to be on par to salaries paid to attorneys working for the Attorney General's Office and other state agencies.

E. Appropriate Levels of Support Staff Are Critical.

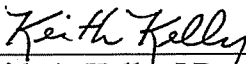
The Oversight Committee agrees with the Audit Report that GAL attorneys need adequate support staff to be effective. The Committee recommends that the Legislature appropriate additional funds to provide adequate support staff, as that staffing need is highlighted in the Audit Report. (See Audit Report at pp. 30-33.)

F. Caseload Issues Are an Ongoing Concern.

The Oversight Committee is also concerned about ongoing high caseloads for GAL attorneys. The Committee appreciates the Legislature's willingness to fund additional attorney positions. Although the Committee is concerned that the most critical issues now facing the GAL Office are salary parity and staff support as discussed above, the Committee is concerned that GAL caseloads continue to be high.

G. Conclusion.

The Audit Report provides an important input for the Oversight Committee as it performs its duty to ensure the independent and professional representation of abused and neglected children by the GAL Office. The Committee will continue to implement suggestions made by the Audit.



Keith A. Kelly, J.D.
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Oversight Committee
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