

REPORT TO THE
UTAH LEGISLATURE

Number 2005-01

A Performance Audit
of the
Office of the Guardian ad Litem

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Digest of A Performance Audit of the Office of the Guardian ad Litem

The Utah Legislature established the Office of the Guardian ad Litem (GAL) so that minors could receive qualified legal representation in abuse, neglect, dependency and other proceedings before the Utah courts. The GAL has offices in each of the eight judicial districts in Utah, with a staff of 60, including 31 attorney guardians ad litem and 29 support staff. In some of the cases, the GAL office uses volunteers called “CASAs” (Court Appointed Special Advocates) to assist in performing some of their statutory duties.

We were asked to review whether the GAL is performing statutory duties and otherwise functioning as directed by Utah law. We were also asked to identify possible improvements in the GAL program for the Legislature to consider.

Office of the Guardian ad Litem Established in 1994. In Chapter I we introduce the GAL and provide a highlighted history. The mission of the GAL is as follows:

The Office of the Guardian ad Litem is a state office within the Judicial Branch of government which advocates for the best interest of abused and neglected children within the court system. The Guardian ad Litem attorney and [Court Appointed Special Advocate] CASA volunteers work in collaboration with key agencies and community resources to serve as the child’s advocate and represent what is in the best interest of the child in the court....

GALs are assigned to advocate for children in both Juvenile and District Court cases. The bulk of GAL case assignments are through the Juvenile Courts when there are allegations of abuse or neglect, or when dependency of a minor is an issue. However, GALs are often assigned to District Court cases when the judge believes there may be a question of abuse or neglect of a child involved in divorce or custody disputes, and sometimes in criminal cases when the child is a victim. District Court judges also may appoint a GAL for protective orders and other cases that involve guardianship and best interest issues. For more detail on GAL

appointments, please refer to the statutory provisions cited throughout Chapter I.

Chapter II: Guardian ad Litem Not Completing Some Statutory Duties

Review of GAL Files Confirmed Some Statutory Duties Not Completed. In Chapter II we respond to the audit request to determine whether the GAL is performing all statutory duties in representing minors who are alleged victims in abuse, neglect or dependency cases. While we limited our reviewed to Juvenile Court cases of the GALs, we recognize the importance of the District Court cases. Our review of 35 GAL Juvenile Court case files indicated that the GALs are not documenting or completing some of their statutory duties.

GAL Policies or Practice Guidelines Are Needed. Determining the extent to which some duties were not completed, however, was difficult because policy standards are lacking. State law requires the GAL director to establish policies for the management of the GAL program. State law also requires GALs to maintain records regarding their representation of a child’s best interest. However, interviews with GALs and our file review indicate GALs have an inconsistent understanding of statutory duties and do not maintain adequate documentation.

Chapter II Recommendation

1. We recommend the Office of the Guardian ad Litem director implement formal program policies and/or practice guidelines which would address:
 - standards for file documentation, and
 - guidance on performing statutory duties and other GAL job functions.

Chapter III: High Guardian ad Litem Case Loads Need to be Addressed

Case Loads Appear to be Outpacing GAL Resources. While we generally concur that GAL case loads are high and rising, we question the internal data of the GAL. We believe the GAL director must accurately track cases and implement management review to determine GAL productivity, case flow, case trends, case lengths and so forth.

Legislative Involvement is Needed. While not a major part of our audit review, we believe the Legislature need to address the concern of high case loads and whether increased funding is needed for the GAL office. The Legislature should also consider a change in the statutory duties of GALs in Juvenile Court cases. In light of our findings in Chapter II that some of these duties are not being performed, and also since some statutory duties may be outdated or unnecessary, it may be

time for the Legislature to examine whether or not it is reasonable for GALs to perform such a list of duties in every Juvenile Court case. The Legislature could respond to the suggested list of questions posed in Chapter III, Recommendation 3 which follows. Finally, the Legislature could review the reasons for appointing the GALs in light of the GAL office's expanding use in the District Courts. The Legislature could respond to the suggested list of questions posed in Chapter III, Recommendation 4 which also follows.

**Chapter III
Recommendations**

1. We recommend the Office of the Guardian ad Litem director implement a reliable case management system to track case loads and provide case statistics, such as case lengths and opened and closed cases, in order to determine individual GAL productivity and accurate case trends.
2. We recommend the Legislature consider whether to provide additional funding to the Office of the Guardian ad Litem for reducing case loads.
3. We recommend the Legislature review, as an interim study item, the statutory duties of the Guardian ad Litem in Juvenile Court cases listed in Utah Code 78-3a-912. Specifically, these questions could be reviewed:
 - Should GALs perform every statutory duty in every Juvenile Court case? If not, which duties should be mandated and which should be discretionary?
 - Are some of the current GAL statutory duties considered outdated, unnecessary, or too redundant to DCFS social-work duties?
 - Should the list of statutory duties be eliminated and in its place have the GALs simply represent the best interests of their clients in accordance with their ethical and professional responsibilities as an attorney?
4. We recommend the Legislature review, as an interim study item, the GAL role in District Court cases. Specifically, these questions could be reviewed:
 - Should the extent of GAL involvement in District Court cases be limited?
 - Should GALs be expected in District Court cases to perform all of the same duties that are expected to perform in Juvenile Court cases?

**Chapter IV: Office of
the Guardian ad
Litem Needs
Improved Oversight**

Legislature Should Study Alternative Oversight Structure. In Chapter IV we conclude that the oversight structure of the GAL should be reexamined by the Legislature. Although the Judicial Council is the statutorily-defined governing body of the GAL, it deliberately provides

only limited supervision of the GAL program because there is an ethical problem of judges supervising advocates who appear before them in court proceedings. In the past several years, organizational placement of the GAL program has been studied several times by the judiciary. However, each time it was before them, the Judicial Council voted to retain the GAL program under the judiciary and not recommend changes to the Legislature. This decision was reached to help ensure the status of the GAL would not diminish and thereby negatively affect children.

We believe the GAL program needs an oversight body to provide policy direction and assure that the program is operating in a manner consistent with legislative intent. With the Judicial Council unable to provide adequate oversight for the GAL program, the Legislature should consider options that will provide oversight. Options (which are detailed more closely in Chapter IV) include:

- Move the Office of the Guardian ad Litem to the executive branch, and place it in an existing department.
- Move the Office of the Guardian ad Litem to the executive branch, and make it an independent executive branch agency that reports to an appointed oversight board.
- Move the Office of the Guardian ad Litem to the executive branch, and make it part of the Attorney General's Office.
- Leave the Office of the Guardian ad Litem in the judicial branch, but have it report to a board appointed by the Judicial Council. Oversight by this new board could at least partially resolve the ethical conflict of having the Judicial Council supervise the GAL.

**Chapter IV
Recommendations**

1. We recommend the Legislature review, as an interim study item, the oversight structure of the Office of the Guardian ad Litem. This review is necessary because ethical concerns prevent the Judicial Council from providing adequate oversight.
2. Pending legislative action, we recommend the Judicial Council consider ways to improve oversight of the Office of the Guardian ad Litem. One such improvement could be for the Judicial Council to appoint a board of non-judges to oversee the GAL.

Chapter I

Introduction

Guardians ad litem are charged with representing the best interest of Utah children in both Juvenile and District Court cases.

The Utah Legislature established the Office of the Guardian ad Litem (GAL) so that minors could receive qualified legal representation in abuse, neglect, dependency and other proceedings before the Utah courts. Under the supervision of the GAL director, each attorney GAL is expected to represent the “best interest” of a minor. The Legislature provided policy direction by developing a list of statutory duties for the GAL to perform, as set forth in *Utah Code* 78-3a-912. The extent to which the GAL is performing these duties in Juvenile Court is the primary subject of this audit report. Although we focused our compliance review on Juvenile Court cases, we recognize that managing the increasing number of District Court cases is also important. This report identifies possible improvements to the Office of the Guardian ad Litem, which could be implemented by the GAL director and the Legislature.

Utah’s Guardian ad Litem

Utah’s Guardian ad Litem has 60 staff members and a FY 2005 budget of \$3.9 million.

The Office of the Guardian ad Litem has offices in each of the eight judicial districts in Utah. Collectively throughout the state, the GAL has a staff of 60, which equates to about 54 full-time equivalent employees (FTEs). The staff of 60 includes 31 attorney GALs and 29 support staff. The GAL office also administers the private guardian ad litem program mostly for cases in District Court that do not involve abuse or neglect.

Support staff consists of staff for the director’s office, Court Appointed Special Advocate (CASA) volunteer coordinators, administrative assistants, legal secretaries and other secretaries. The GAL office’s total budget for fiscal year 2005 is \$3,867,100.

GALs are Appointed to Court Cases. Guardians ad litem are assigned to cases in both Juvenile Courts and District Courts. The bulk of cases are through the Juvenile Courts when there are allegations of abuse or neglect, or when dependency of a minor is an issue, as set forth in *Utah Code* 78-3a-912(1) and (2):

The court may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court

GALs can be appointed in both Juvenile and District Courts cases.

and shall consider only the best interest of a minor in determining whether to appoint a guardian ad item.

An attorney guardian ad litem shall represent the best interest of each minor who may become the subject of a petition alleging abuse, neglect, or dependency, from the date the minor is removed from the minor's home by the [D]ivision [of Child and Family Services], or the date the petition is filed, whichever occurs earlier.

GALs appointed to Juvenile Court cases continue to represent minors until the court releases them which is generally when the court has ended its jurisdiction. Jurisdiction ends if a minor is adopted (after parental rights are terminated), if the minor reaches the age of 18, if a family is reunited but does not have on-going court-ordered services, or if another adult is given permanent custody and guardianship.

Upon the motion of any party or upon the motion of the court, GALs can be appointed to represent the best interest of a child in District Court cases involving alleged abuse, child sexual abuse, or neglect. This type of appointment is primarily used in divorce or custody disputes and protective orders, but is also used in criminal cases. The appointment is governed under *Utah Code* 78-7-9(1) and (2):

If child abuse, child sexual abuse, or neglect is alleged in any proceeding in any state court, the court may upon its own motion or shall upon the motion of any party to the proceeding appoint an attorney guardian ad litem to represent the best interest of the child, in accordance with Sections 78-3a-911 and 78-3a-912.

The court may appoint an attorney guardian ad litem, when it considers it necessary and appropriate, to represent the best interest of the child in all related proceedings conducted in any state court involving the alleged abuse, child sexual abuse, or neglect.

District Court judges may also appoint a GAL in other cases such as the following:

- **Protective orders.** *Utah Code* 78-3h-102(4) states "The court may appoint an attorney guardian ad litem for the child who is the subject of the petition."

- **When inconsistent parenting plans under a divorce are filed.** *Utah Code* 30-3-10.8(7) allows the court to “appoint a guardian ad litem to represent the best interests of the child, who may, if necessary, file a separate parenting plan reflecting the best interests of the child.”

We acknowledge this is not an exhaustive list of when a GAL may be appointed in a court proceeding, but it serves to illustrate the use of guardians ad litem in several proceedings which involve the need for representation of children.

Utah also uses some private GALs which supplement the attorneys in the GAL office.

Private GALs are Used in Some District Court Cases. In addition to the Office of the Guardian ad Litem attorneys, the state also uses some private GALs for District Court cases where there are no allegations of abuse and neglect. Services of these private GALs are generally paid for by a parent or are offered pro bono. Private GALs may be appointed under *Utah Code* 78-7-45(1):

The court may appoint a private attorney as guardian ad litem to represent the best interests of the minor in any district court action in which the custody of or visitation with a minor is at issue. . . . If, after appointment of the attorney guardian ad item, an allegation of abuse, neglect, or dependency of the minor is made the court shall: (i) determine whether it is in the best interests of the minor to continue the appointment; or (ii) order the withdrawal of the private attorney guardian ad litem and appoint the Office of the Guardian Ad Litem.

Currently, the GAL office reports there are 84 private GALs carrying cases. These 84 private GALs carry a combined caseload of 261, or 3.1 cases per private GAL. According to the private GAL coordinator, “Some attorneys have taken on as little as one case at a time; some more than 15 cases at a time—it varies with their willingness and availability.” Eligible private GALs are private attorneys who have been trained and certified by the GAL office to represent the best interest of a minor “in any District Court action which the custody or visitation” is at issue.

A “guardian ad litem” is a guardian, usually a lawyer, appointed by the court to appear on behalf of a minor.

Purpose of the Guardian ad Litem

Black’s Law Dictionary defines “guardian ad litem” as “A guardian, usually a lawyer, appointed by the court to appear on behalf of . . . [a]

minor.” According to the [Law.com](#) dictionary, the term *ad litem* is a legal Latin term meaning “for the purposes of the legal action only.”

The current mission of the Office of the Guardian ad Litem is as follows:

The Office of the Guardian ad Litem is a state office within the Judicial Branch of government which advocates for the best interest of abused and neglected children within the court system. The Guardian ad Litem attorney and [Court Appointed Special Advocate] CASA volunteers work in collaboration with key agencies and community resources to serve as the child’s advocate and represent what is in the best interest of the child in the court. The Office of the Guardian ad Litem promotes the policies of the Child Welfare Reform Act: that children in foster care not remain in limbo more than 12 months without a permanency decision. The Office of the Guardian ad Litem and CASA also strive to assure adequate representation for each child for whom the office is appointed whether or not that child is in foster care.

Put more succinctly, “It is the Guardian ad Litem’s duty to stand in the shoes of the child and to weigh the factors as the child would weigh them if his judgement were mature and he was not of tender years” (*J.W.F. v. Schoolcraft*, Utah App. 1988).

History of the Guardian ad Litem

Guardian ad Litem programs around the country began to be established around 1974, largely in conjunction with the introduction of federal legislation regarding the adequacy of legal representation of abused or neglected children. In 1974, the Child Abuse Prevention and Treatment Act (CAPTA) was signed into law. Under CAPTA, those states that comply with certain GAL requirements receive federal funding.

In 1978, Utah law was passed to have a guardian ad litem appointed for cases involving allegations of abused or neglected children resulting in a judicial proceeding. However, this legislation did not specify who should serve as a GAL, or what their qualifications and responsibilities should be. Subsequent legislation and the National Court Appointed Special Advocate (CASA) Association’s standards have since clarified the role of the GAL.

“It is the Guardian ad Litem’s duty to stand in the shoes of a child and to weigh the factors as the child would weigh them if his judgement were mature....”

The following list contains a time line of some statutory highlights which impacted the GAL program in Utah:

Year Legislative Action

1987 Utah Courts are authorized, but not required, to appoint a guardian ad litem (GAL) to represent the best interests of a child involved in cases before the Juvenile Court.

1992 Utah courts are required to *consider* appointing a GAL in any court proceeding involving child abuse, child sexual abuse or neglect.

1993 In Juvenile Court cases that result in a judicial proceeding, the court *shall* appoint a [GAL] to represent *any* child named in a petition that alleges abuse, child sexual abuse, neglect, or dependency.

For cases involving protective orders, the court was authorized to appoint a GAL if it considered the appointment necessary for the welfare of the child.

1994 Office of the Guardian Ad Litem Director is established. The Judicial Council is to supervise this office and assure compliance of the GAL program with state and federal law, regulation, and policy, and court rules. GAL must be an “attorney guardian ad litem.”

Specific statutory duties of the GAL director are defined, which include establishing policy and training standards, and assuring that in proceedings minors receive qualified services in accordance with state and federal law and policy. (Note: duties of the GAL director are listed in **Appendix A**.)

Specific statutory duties of a GAL are defined. (Note: the current duties, as of 2004, are listed in **Appendix B**).

The Office of the Legislative Auditor General is granted access to all GAL records for review.

2001 The director of the GAL office is required to hire, train, and supervise investigators, and to administer the private GAL program. Court may appoint a private GAL in a District Court case when custody or visitation is an issue.

The Office of the Guardian ad Litem was established in 1994. Specific duties of the GAL were listed in statute in 1994.

Private GALs were authorized in 2001.

2002 Significant GAL duties were removed from the statute. Some removed duties included: formulating an independent position after reviewing evidence and researching alternatives to removal.

Utah’s CASA Volunteer Program

Nationally, to assist the GAL in accomplishing the duties outlined by the CASA standards and federal legislation, many states use Court Appointed Special Advocates (called “CASA volunteers,” or “CASAs.”) Using CASAs to assist the GAL began in 1977 in the state of Washington. Volunteers were trained by, and worked under the direction of, a social worker and an attorney. The success of this program led to the development of volunteer programs in other states.

In Utah, the CASA program is made up of citizen volunteers, who work with individual guardians ad litem on a single case. The GAL program has paid CASA coordinators who oversee the recruitment, assignment, and training of CASA volunteers in each judicial district. According to a pamphlet for potential volunteers issued by the Office of the Guardian ad Litem:

A CASA Volunteer serves as the eyes and ears of the Office of Guardian ad Litem and the court by gathering relevant information about the child and the family, and, most importantly, getting to know the child—the one about whom all these decisions will be made. . . . The CASA volunteer is asked to handle only one case at a time so that intense time may be spent with the child to obtain factual information to assist the GAL to represent the child’s best interest.

CASAs spend about 10 to 15 hours each month volunteering. Before working on any cases, the CASAs must pass a criminal background check and receive 32 hours of training. Additionally, CASAs meet each month for ongoing training.

Utah’s GAL program incorporates CASA (Court Appointed Special Advocate) volunteers to assist GALs. The CASAs gather information about the child and family.

Audit Scope and Objectives

The auditor general did not have access to GAL files in the 1994 audit (which was prior to the creation of the GAL office). Full access was granted later in 1994 and is reflected in this 2005 audit.

This is the second legislative audit of the Office of the Guardian ad Litem since it was created ten years ago. In 1994, the Office of the Legislative Auditor General was asked to audit the GAL program but this request was before the GAL program was created as an “Office” of the Guardian ad Litem. At that time, the auditor general was denied access to GAL records when the courts quashed a legislative subpoena. Still, at that time, our office reported concerns with the GAL program regarding policies, performance of GAL duties and other issues. Some of these same concerns remain and some are addressed in this current audit. Furthermore, because legislation effective later in 1994 gave the auditor general access to all GAL records, this audit report is better able to address legislative concerns.

Per the audit request, we limited our review of GAL files to cases in the Juvenile Court. Although we did not review the GAL District Court case files, we do have some limited discussion on the role of the GAL in District Court cases.

The specific audit requests were to:

1. Review whether the Guardian ad Litem is performing statutory duties and otherwise functioning as directed by Utah law.
2. Identify possible improvements in the Guardian ad Litem program for the Legislature to consider.

Chapter II is our discussion of GAL statutory duties; Chapter III and Chapter IV address changes that can help the Office of the Guardian ad Litem improve.

As requested by the Legislature, we reviewed guardian ad litem statutory duties and identified other improvements.

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Chapter II

Guardian ad Litem Not Completing Some Statutory Duties

We were asked to determine whether the Guardian ad Litem (GAL) is performing all statutory duties in representing minors who are alleged victims in abuse, neglect or dependency cases. We determined the GAL is not completing some of the statutory duties, but determining the extent was difficult because policy standards are lacking. Because the GALs have an inconsistent understanding of their duties, we believe the GAL director should develop policies or practice guidelines to aid the GALs in fulfilling their statutory duties.

Guardians ad litem are required to perform specific statutory duties. Refer to Appendix B for the statutory list.

As mentioned in Chapter I, in 1994 the GAL program has a statutory list of duties to complete on each case. Over the years, the duties have been altered, and some duties have even been removed. (Refer to **Appendix B** for a current list of the GAL statutory duties, which is *Utah Code 78-3a-912*.) The specific duties included in statute provide a means for the GAL to obtain the essential information needed to determine the best interest of the children they represent.

Our review evaluated the extent to which GALs were able to complete the statutory duties. Our work included stakeholder interviews and a review of GAL case files. The file review was challenging because there was a lack of policy regarding the statutory duties and a lack of documentation standards. Still, our sample of 35 files showed what the GAL director already acknowledges: that GALs do not always complete statutory duties.

Main Role of GAL is Legal Advocacy

We believe it is also important to recognize that the Office of the Guardian ad Litem performs an essential function by protecting the best interests of children in legal proceedings. In fact, the GAL director seeks to operate the program like a law office because the main role of the GAL is legal advocacy. Thus, the GAL director relies on each GAL to represent the best interests of their clients in accordance with their ethical and

The GALs perform an essential function by representing children in legal proceedings. They have an admirable passion for their work.

The consensus opinion of stakeholders in child welfare is that GALs are not able to perform some statutory duties.

The GAL director expects her GALs to decide the most important duties in a case and do them.

professional responsibilities as an attorney. Fulfilling the statutory duties is regarded as secondary to each attorney’s professional responsibilities.

Although GALs may not complete some statutory duties, we observed that the GALs make it a priority to attend all court hearings. Thus, GALs are present at court to participate when critical decisions about children’s lives are made. Despite the concerns addressed herein, our opinion is that the GAL director cares deeply and is sincere in her efforts to represent children; her staff appears to share the same passion.

While performing the statutory duties may not show all of the work involved in legal advocacy, we believe the duties are important. Besides being required by statute, completing duties provides information that may help the GAL determine the best interests of the child. Nonetheless, as discussed in Chapter III, we think that the Legislature should review the role of the GAL and consider making changes to the list of statutory duties. However, this chapter is a compliance review of the GAL’s completion of statutory duties as currently required.

Stakeholders Recognize Guardians ad Litem Not Performing Some Duties

In order to gain various perspectives on the Office of the Guardian ad Litem and its duties, we interviewed several GALs as well as other stakeholders within the child welfare system. Interviews with Division of Child and Family Services (DCFS) caseworkers, the assistant attorney general over the AG’s Child Protection Division, parent attorneys, Juvenile Court judges, and the GALs themselves provided a consensus opinion that the GALs were not able to perform some statutory duties. Stakeholders acknowledged this lack was partially due to very high caseloads.

GALs Acknowledge Duties Often Not Completed

The director of the Office of the Guardian ad Litem acknowledges that the attorney GALs do not always complete statutory duties. The director says that high case loads make it impossible to perform all duties. The director told us she expects her GALs to decide the most important duties in a case and do them. However, the statute states that the duties “shall”

be performed which means it is not a discretionary list. Thus, our opinion is that the Legislature intended all duties to be performed.

We also spoke with several GALs from several districts. The general sentiment is that they do not always complete statutory duties in every case. One GAL told us, “We just do as much as we can as fast as we can.” They say their caseloads are extremely high and view this fact as the cause of their inability to consistently fulfill their statutory duties. Regarding his case work, one GAL said he is mostly just putting out whatever is on fire on his desk each day.

GALs revealed some inconsistencies about the means used to fulfill their statutory duties. The inconsistencies were evident in the file review.

Our discussions with GALs also revealed inconsistency about the tasks required for performing specific duties. For example, GALs gave us varying answers when we asked about processes for independent investigations or visits with minors. These variations were also apparent in our file review, which led to several unanswered procedural questions:

- What constitutes an “independent investigation”?
- What constitutes an adequate GAL meeting with a minor?
- Is there a standard number of times a GAL should communicate with a minor and/or update the minor on the case?
- What constitutes an “assessment” of the minor’s environment in each placement?
- What are the standards for reviewing proposed treatment orders and for monitoring the implementation?

Some Stakeholders Have Concerns

Stakeholders we interviewed also commented on GAL duties. The following concerns were identified by DCFS caseworkers, an assistant attorney general, parent attorneys, and Juvenile Court judges:

Some stakeholders recognize that GALs are not performing all statutory duties.

- DCFS caseworkers questioned how GALs arrived at some of their conclusions regarding a child’s “best interest.” They felt some GAL conclusions were made after either no visits or only a few visits with the children whom they represent and/or with little observation of the children’s respective environments. They also wondered why the GALs are not held to the same performance and documentation standards as they are.

- Attorneys who represent parents felt that GALs did not sufficiently fulfill some of their statutory duties because of high caseloads.
- The assistant attorney general over the AG’s Child Protection Division also expressed concern over the high GAL case loads and the GAL’s inability to complete some statutory duties.
- Juvenile Court judges we interviewed acknowledged that high case loads challenge GALs to fulfill some of the statutory duties and felt some duties were unrealistic. However, one judge felt that none of the duties should be deleted from the statute and another said he liked that the statutes were specific. Judges also said they greatly depend on GALs to provide credible information.

These stakeholder perceptions helped us to frame the challenge the GAL has in completing some statutory duties. However, we recognize the interviews are not adequate evidence in formulating a conclusion. Our documentary evidence came in a file review discussed in the next section.

Review of Guardian ad Litem Files Confirmed Some Statutory Duties Not Completed

The Guardian ad Litem has been given a substantial list of statutory duties to complete when representing abused and/or neglected children. We reviewed GAL case files from the Juvenile Court in an effort to identify documentation which would show the extent to which these duties were being performed. Based on file documentation, five of eight duties we reviewed were frequently not performed. In follow-up discussions, GALs indicated that they had sometimes completed tasks but did not document them as required by statute. More often, however, GALs said they were unable to complete duties due to high caseloads.

We limited our review to duties that are task oriented. It was beyond the scope of our work to evaluate or question the legal judgement of the attorney GALs. Thus, our audit is not a review of the appropriateness of the legal outcomes of the GAL cases, rather it is a review of GAL processes. For example, statute requires that GALs “file written motions, responses, or objections at all stages of a proceeding when necessary to protect the best interests of a minor” (*Utah Code* 78-3a-912(3)(e)). We

Our review of case files confirmed that some GAL statutory duties are frequently not performed.

We did not review three statutory duties because one would constitute a legal review; two others were not case specific duties.

did not evaluate performance of that duty because it requires the GAL to exercise legal judgement about the court actions needed to protect a child's best interests. Instead, our review was limited to required tasks that provide a basis for GALs to determine best interests.

There were two other GAL duties we did not include in our file review because, in our judgement, they are not case specific. These duties deal with GAL initial training and familiarity with local child welfare experts (see *Utah Code* 78-3a-912(3)(b) and (h)). However, we discuss initial GAL training at the end of this chapter.

Figure 1 contains a list of the eight duties which were part of our case file review.

We included eight statutory duties in our case file review.

Figure 1. Our File Review Tested for Some of the Statutory Guardian ad Litem Duties Listed in Utah Code 78-3a-912.

GAL Statutory Duties (Key Phrases in Bold) ¹	Utah Code 78-3a-912 Sub-paragraphs
1. Shall conduct or supervise an independent investigation in order to obtain first-hand, a clear understanding of the situation and needs of the child;	(3)(c)
2. Shall personally meet with the minor ;	(3)(d)(i)
3. Shall personally interview the minor if the minor is old enough to communicate; [shall] determine the minor’s goals and concerns regarding placement;	(3)(d)(ii) and (iii)
4. Shall personally assess or supervise an assessment of the appropriateness and safety of the minor’s environment in each placement;	(3)(d)(iv)
5. Shall . . . attend all administrative and foster care citizen review board hearings pertaining to the minor’s case;	(3)(f)
6. Shall . . . keep the minor advised of the status of the minor’s case , all court and administrative proceedings, discussions, proposals made by other parties, etc.	(3)(i)
7. Shall review proposed orders for , and as requested by the court, prepare proposed orders with clear and specific directions regarding services, treatment , and evaluation, assessment, and protection of the minor and the minor’s family;	(3)(j)
8. Shall . . . monitor implementation of a minor’s treatment plan . . . ;	(3)(k)

1. We numbered these statutory duties merely for the ease of the reader; the numbers do not correspond to the statute or the total number of duties listed.

In our review, we accepted any file evidence because the GAL director had not established any policy guidelines or documentation standards regarding the performance of duties.

Although statute requires that GALs document their casework, the GAL program has not established any documentation standards. As a result, we found wide differences in practices among regions and GALs. Overall, we believe documentary evidence was lacking. Given the available file documentation, we generally accepted any file information indicating that duties were completed. Later, in our discussion of specific duties found in the file review, we spell out the specific documents upon which we based our conclusions.

**Files Were Reviewed
in Several Judicial Districts**

The files we reviewed (27 of 35) were closed files so we could see the entire case process. We pulled these cases in a quasi-random manner from GAL file cabinets maintained by GAL legal secretaries. The files were organized in separate file drawers which listed the Juvenile Court judges to whom a specific GAL was assigned. We did not choose cases from a list because no list of these recently closed cases existed. However, we did pull files representing several GALs.

The remaining eight cases we reviewed were open cases so we could attend on-going DCFS-sponsored Child and Family Team meetings (CFTMs) regarding the cases.

Our review spanned five of the eight judicial districts and involved 17 of the 31 attorney GALs. A summary of the GAL case files pulled is shown in Figure 2.

The majority of our file review contained recently closed files with some open files as well. We reviewed files in 5 of 8 judicial districts.

Figure 2. We Reviewed 35 GAL Case Files in Five of the Eight Judicial Districts. We reviewed closed files in order to see the entire GAL process. However, we did include some open files which corresponded to DCFS' Child and Family Team meetings.

Sampled Judicial District (Counties)	Number of Cases
Second (Davis, Morgan and Weber)	5
Third (Tooele, Salt Lake and Summit)	20
Fourth (Millard, Juab, Utah and Wasatch)	3
Fifth (Beaver, Iron and Washington)	3
Sixth (Sanpete, Sevier, Piute, Wayne, Garfield and Kane)	4
TOTAL	35

Guardian ad Litem Files in Sample Did Not Contain Documentation of Some Duties

Our file review shows that GALs do not always complete statutory duties in all cases. Because we saw a varying degree of documentation in

the case files, we question why some files show adequate evidence and some do not. Our review of duties performed is summarized in Figure 3.

Figure 3. File Review Indicates Guardians ad Litem Not Documenting All Statutory Duties. Our review of 35 GAL files shows duties required in *Utah Code 78-3a-912* were not documented as having been completed all of the time.

Our review indicates that GALs do not always document the completion of all their statutory duties.

Statutory Duty (UCA 78-3a-912)	Documented Duty?			Percentage ¹	
	Y	N	NA	Y	N
1. Conducted or supervised an independent investigation.	29	6	0	83%	17%
2. Personally met with the minor.	11	24	0	31%	69%
3. Personally interviewed the minor if the minor was old enough to communicate; determined minor's goals and concerns. ²	6	19	10	24%	76%
4. Personally assessed or supervised an assessment of the appropriateness and safety of the minor's environment in each placement.	9	26	0	26%	74%
5. Personally attended [or delegated attendance to] all administrative and foster care citizen review board hearings. ³	1	4	30	20%	80%
6. Personally, or through trained volunteer, paralegal or other trained staff, kept the minor advised of the minor's case.	3	22	10	12%	88%
7. Reviewed proposed orders for services, treatment and evaluation, assessment, and protection of the minor and the minor's family.	30	5	0	86%	14%
8. Personally, or through trained volunteer, paralegal or other trained staff, monitored implementation of a minor's treatment plan . . .	27	8	0	77%	23%

1. Percentages for numbers 3, 5 and 6 were calculated after excluding the files where duties were "not applicable" (NA).
2. There were ten cases which we determined to be "not applicable" (NA) because the minors in the cases were not old enough for verbal communication.
3. "All administrative hearings" used to mean internal DCFS reviews. However, these hearings have been replaced by the court hearings. Therefore, we only looked at the foster care citizen review board hearings. There were 30 cases that did not involve a foster care citizen review board hearing.

The following sections detail our file review findings shown in Figure 3 for each of the statutory duties we reviewed. Each section gives information regarding assumptions we made that some of the documents we encountered provided evidence for a given duty. Because there are no file documentation standards, we are limited in our review conclusions. Included also are follow-up discussions with several GALs for a majority of the cases to determine how reflective the GAL files were of the actual duties performed. (Note: Because of time constraints, we did not speak to GALs on each file, but we did perform follow-up interviews on 20 of the 35 cases.)

Duty 1: Documentation Varied for Independent Investigations

We conclude that there was some level of evidence supporting an independent investigation in 29 of the 35 files (83 percent of the sample).

Despite the apparent high level of performance, there was not a consistent format of evidence for an independent investigation. This inconsistency stems from the fact that there currently is neither a written policy nor a consensus definition among the GALs of “performing an independent investigation.” Therefore, we erred on the side of giving credit in files where there were documents which appeared to provide evidence of investigative acts, such as a GAL having an outside report which was likely reviewed by the GAL. Such documentation included

- DCFS documents (investigations, activity logs, etc.),
- Emails or letters to DCFS requesting information,
- Psychological evaluations, therapy and counseling reports,
- Police reports, investigative photos, drug tests,
- GAL notes referencing meetings with parents and family, and
- GAL telephone calls and emails to involved parties.

Although many files contained only minimal evidence of an investigation, we gave credit for any evidence contained in the file. For example, we gave credit for an investigation if the only evidence in the file was a psychological evaluation or if the GAL’s notes mentioned visiting with a parent. In the 29 files, at least one document could be considered part of an investigation, but few files showed any analysis of the information to demonstrate the conclusions were developed independently. In our follow-up discussions with GALs, it was clear that

Most files contained some evidence about a GAL independent investigation. However, there is no policy or consensus on how to perform what amounts to an independent investigation.

the GALs relied on DCFS reports, but sometimes they supplemented their review with their own independent verifications.

Duty 2: GALs Did Not Meet With All Minors

We conclude that GALs did not meet with most of the minors in our sample. There was evidence of a GAL (or CASA volunteer) meeting with a minor in only 11 of the 35 files (31 percent of the sample).

Of the meetings with minors, some were made by GALs and some by CASA volunteers (although the statute does not say that the GAL can delegate “meeting with the minor” to the CASAs). Some files showed evidence that the meetings occurred in the home of the child, but some were inconclusive about the place of the meeting, or whether it was a face-to-face meeting or a telephone conversation.

In addition to these documented visits, GALs we interviewed reported they visited with the children in seven of the cases that did not include any documentation in the file. GALs also clarified the range of places where visits occurred. For example, GALs met with children at administrative hearings (shelter hearings or Child and Family Team meetings), at the children’s schools or daycare centers, at the GAL’s office and at the children’s homes. In a few cases, GALs met with children at the court house, just prior to a court proceeding, or in the judges’ chambers. Generally, GALs reported to us that these court house meetings are common practice, largely due to constraints on their time.

Some stakeholders we interviewed questioned whether this type of meeting at the court house (just prior to a hearing) is an adequate meeting. (Note: There were minors in ten cases that were infants, and, therefore incapable of verbal interaction with the GAL. However, the statute still requires a GAL meeting with *all* minors.)

Duty 3: GALs Did Not Communicate With All Minors

We only found evidence of a GAL’s specific communication regarding the minor’s goals and concerns in six of 25 files (24 percent of the sample excluding ten that were not applicable). For ten files, it appeared that the minor was too young for meaningful verbal communication.

There was evidence that GALs met with children in only about one-third of the cases.

GALs reported that some visits did actually take place, but they were not documented.

There was little evidence that GALs communicated with children about their goals and concerns.

Evidence does not show that GALs consistently assess child placements.

When there was evidence of GAL communication with the minor, it consisted of a task log or GAL note. Task logs seemed to provide the best evidence of the communication, but we only found task logs used in two of the five judicial districts where we reviewed files. The six files that included some evidence that the GAL had communicated only included very general communication and did not show that the GAL had determined the minor’s goals and concerns as required by law.

Duty 4: GAL Placement Assessments Shown in One-Fourth of Case Files

We found evidence that a GAL or CASA volunteer visited a minor in his/her “environment” in nine of the 35 files (26 percent of the sample). However, the GAL is supposed to do more than visit; the GAL is supposed to assess or supervise an assessment of the appropriateness of the minor’s environment in each placement. Of the evidence we found, little could be interpreted as an “assessment.” Also, there was not information about how many placements were involved that required assessments.

We expected there would likely be a standard home assessment form, but none exists in the GAL program. So, we counted other file evidence which included CASA weekly reports, GAL notes or emails mentioning a home visit, and task logs. While some evidence recorded a home visit (or a series of home visits), we could not always tell whether the visit also included an assessment of the home or environment. We could see this assessment on the CASA reports, but not other documents mentioned. However, because it seems only natural that one would “assess” an environment when it is visited, we counted visits even though there was no type of standard form as shown in these examples:

- In one file a GAL recorded going to a home where a child had been removed, and the GAL’s notes said the home environment “appeared much improved from the photos at the time of removal.”
- In another file there was a peer parent report the GAL relied upon which summarized the time that peer parent had spent in the home talking with a parent about home safety and pointing out potential hazards. Although the GAL did not supervise the peer parent, the

GALs say they rely mostly on DCFS reports for an assessment of the child placements. CASA volunteers also provide helpful information.

There were no Foster Care Citizen Review boards held for most cases. GALs attended only 1 of 5 cases where there was a review.

court ordered DCFS to provide peer parenting services as suggested by the CASA volunteer assigned to the case.

In our follow-up discussions, GALs told us that although it was not documented in three of the files, they had met with the parents or relatives and also reviewed some history which was not documented in the file. One GAL relied on a kinship study that provided a home assessment, but this assessment was not performed by the GAL's office. One GAL claimed that he, and other GALs, must rely on DCFS reports for the truest picture of the home environment because the GALs cannot make unannounced home visits. Other GALs, however, said they are able to make unannounced visits, and this discrepancy illustrates the lack of a clear policy.

Duty 5: Many GAL Cases Did Not Involve FCCRB Reviews

We only found evidence of GAL attendance at a Foster Care Citizen Review Board (FCCRB) meeting in one of five files (20 percent of the sample excluding 30 that were not applicable). In this case file, there was a GAL log which recorded notification for three FCCRB meetings and also recorded GAL attendance at each. Four of the five cases included evidence in the files that reviews were held, but the GAL did not attend. However, there were no reviews held for 30 of the cases in our sample for various reasons:

- cases did not involve a foster home placement because court-ordered services were offered in the home, or
- cases had parental rights terminated, or
- cases did not have a hearing because there were budgetary cuts which reduced the number of FCCRB reviews, or
- cases concluded prior to the scheduled time for a FCCRB review.

Utah law requires FCCRB reviews only if the court has not conducted a review within six months. However, both the courts and the FCCRB are required to conduct a review within 12 months from the date of the child's removal from his home (see *Utah Code 78-3g-103*). The FCCRB office noted that some of the annual reviews were not held because of budget cuts to their office.

Attendance records from the FCCRB show the GALs attend only about one-third of the time.

Additional attendance statistics we obtained from the FCCRB show that GALs have attended the FCCRB only about one-third of the time over the past several years. According to the FCCRB, the GAL is credited with “attendance” if he or she attends personally or sends a representative as allowed by statute. Credit is also given (which is reflected in the one-third percentage) if the GAL returns a fact sheet to the FCCRB in lieu of attendance.

In addition to attending FCCRB hearings, this statutory requirement also requires GALs to attend “all administrative hearings.” At the time the statute was written, the administrative hearings were internal reviews held by DCFS. Administrative hearings have been replaced by court hearings. Although the statute wording is outdated, we believe GALs attend the Juvenile Court hearings. However, we did not review GAL appearances in court.

Duty 6: Minors Were Not Always Kept Advised of Their Case Status

There was little evidence that GALs kept children advised of the status of their cases.

Our review only found evidence in three of 25 files (12 percent of the sample excluding 10 that were not applicable) that GALs had kept a minor advised of his or her case status.

Of the three files with evidence, one file contained CASA reports and email about on-going discussions with the minor. The second case file contained a note about the GAL speaking with the minor. The third case contained a log entry about a GAL discussion with the minor about the case. In the ten not applicable files, children were too young for meaningful verbal communication. Therefore, the GAL would not have feasibly been able to keep the minor advised of the case status, case proceedings and so forth.

Duty 7: Evidence Shows GALs Reviewed Proposed Services and Treatment Plans

Despite a lack of office standards, there was evidence that GALs reviewed proposed services and treatment in most cases.

We found evidence in 30 of 35 files (86 percent of the sample) that proposed services and treatment plans were being reviewed.

Our understanding is that there are no GAL practice guidelines which detail how a GAL should review treatment plans. Thus, our conclusions are based on the assumption that treatment documents found in the GAL

file have, on some level, been reviewed and/or approved by the GAL. In our sample, these documents consisted of DCFS service plans.

Duty 8: Evidence Shows GALs Monitored Implementation of Most Treatment Plans

We found evidence in 27 of 35 files (77 percent of the sample) that the GAL was monitoring the implementation of the actual treatment of the minor.

As with duty 7, there is not a policy directing how the GAL should monitor the implementation of the treatment plan. We concluded that GALs were monitoring implementation if there were DCFS progress reports given to the Court contained in the file.

File Review Summary: Duties Not Documented

To summarize our case file review, GALs did not provide clear documentation that they complete all of the duties that are statutorily required in some cases. Although the GALs may have completed some duties which we did not credit, no documentary evidence exists in the file. However, one GAL in our review provided clear evidence that all of the duties were completed by keeping a task log of all activities. Therefore, we know it is possible to maintain adequate documentation.

We reiterate that the GAL director and individual GALs acknowledge they do not always complete some statutory duties. The director said that the solution to completing statutory duties is for the GAL office to have more resources, a solution discussed further in Chapter III. We believe there are also leadership steps to be taken in the GAL program which can improve the GALs' abilities to complete statutory duties. In our opinion, these steps—which include policy guidance and documentation standards discussed in the next section—should be examined and implemented.

Guardian ad Litem Policies or Practice Guidelines Are Needed

We believe that file documentation standards are needed. Although guardian ad litem case loads have proliferated, this increase does not

GALs appear to be monitoring the implementation of treatment plans by reviewing DCFS progress reports to the Courts.

Steps should be taken to improve GAL policies regarding statutory duties.

Despite GAL case load growth, the GAL is not relieved of statutory duties.

relieve the GAL of statutory duties which includes file documentation. The current GAL statute enumerates duties at a high level which we believe can also be clarified through GAL office-wide policies.

Case File Documentation Standards Should Be Implemented

As shown in the file review, some GAL files contained better evidence of the performance of statutory duties than others. While follow-up interviews with GALs did show that some duties were sometimes performed despite a lack of file evidence, the GAL files were inconsistent and incomplete. Current documentation seems to be based on a GAL's individual work standards or on the level of on-the-job mentoring the GAL received instead of office-wide standards.

Clearly, case file documentation is required by *Utah Code* 78-3a-912(10):

an attorney Guardian ad Litem shall maintain current and accurate records regarding the number of times the attorney had contact with the minor and the actions the attorney has taken in representation of the minor's best interest.

For the most part, actions taken by the GAL should be able to be seen in a document review like the one our office performed. Well maintained files would certainly facilitate inner-office review, assist in smoother file transfers among GALs, and perhaps help GALs better manage their time.

But perhaps the most important reason for maintaining documentation is to verify steps the GAL has taken to determine the best interest of the child. We simply could not always determine how this best interest was reached in each case. To some, the perception is that without the GALs fulfilling statutory duties, the best interest of the child cannot be adequately determined.

Figure 4 contains a suggested list of documentation practice guidelines that the GAL director should consider for implementation.

GAL files we reviewed were inconsistent and incomplete.

The GAL director should implement case file standards in order to comply with statutory requirements to "maintain current and accurate records. . . ."

In Figure 4, we offer a number of documentation standards which the GAL director should consider.

There is a need for clarification of some GAL duties which could be addressed through GAL office policy and/or practice guidelines.

Figure 4. The Guardian ad Litem Director Could Implement Suggested File Documentation Practice Guidelines.

- ❑ **GAL Logs.** The GALs could maintain running logs that evidence all statutory duties. This log would be beneficial for file transfers, supervisory review and for general continuity. We found GAL logs used in two Judicial Districts which could be instituted as a practice guideline in all districts throughout the state.
- ❑ **Case Summaries and Checklists.** Similar to a log, the GALs could have a summary or checklist of each duty performed.
- ❑ **Regular File Reviews.** The GAL director and/or managing attorneys could randomly review files as part of their supervisory and managerial duties.
- ❑ **Duty Waiver.** In cases where there is quick closure and mutual agreement of all parties, a waiver of duties could be included in the GAL file to show that further work did not need to be performed.
- ❑ **Best Interest Summary Document.** This document is already required by the court in follow-up Termination of Parental Rights cases (as shown in *Utah Code* 78-3a-412) and could be implemented for all cases.

Statutory Duties Should Be Clarified Through Policy

Our audit file review not only shows the difficulty the GAL has completing and documenting some statutory duties, but it also shows the need for clarification of some of the GAL statutory duties. The position of the GAL director is that the statute acts as their policy. But, as mentioned earlier, the statute enumerates duties at a high level which we believe need to be clarified through policy. In fact, this policy clarification is required by *Utah Code* 78-3a-911(3) which states “The guardian ad litem director shall: (a) establish policy and procedure for the management of a statewide guardian ad litem program;”

Earlier in this chapter we presented a list of questions which we believe need policy clarification and would have aided us in our file review. These questions become the topic areas for suggested policy or practice guidelines for several of the statutory duties, as shown in Figure 5.

Practice guidelines listed in Figure 5 could help give policy direction on statutory duties.

Figure 5. The Guardian ad Litem Director Could Implement Practice Guidelines To Give Policy Direction On Statutory Duties. Each practice guideline could begin with a GAL program definition of the statutory duty and include other elements as suggested in this figure.

Develop Practice Guidelines for:

- Performing independent GAL investigations.
 - Identify what activities should be completed independently.
 - Identify when it may be appropriate to rely on DCFS.
 - Develop a checklist form of what an investigation may include.
- Acceptable meetings with minors.
 - Identify minimum expectations for the meetings.
 - Clarify whether a meeting with minor just prior to court is adequate.
- Communication with minors regarding goals and concerns.
 - Identify communication tools and strategies.
 - Develop a checklist form of what communication occurs.
- Minimum standards for contacting minors regarding a case.
 - Clarify how often a minor should be contacted (after key events?).
- Assessing a minor’s placement environment(s).
 - Identify elements for the assessment.
 - Clarify how often assessments need to be performed.
 - Determine whether (or when) DCFS home visits can be used.
 - Develop a checklist for of what an assessment may include.
- Reviewing proposed treatment orders.
 - Outline an acceptable review process for GALs to follow.
- Monitoring implementation of treatment orders.
 - Identify what activities must be completed in monitoring.
 - Define timeliness of implementation.
 - Develop standards for measuring whether treatment is successful.

We believe the existence of such practice guidelines improves an organization’s effectiveness. Having the GAL director formulate policy and/or practice guidelines listed in Figure 5 could bring greater effectiveness and uniformity to the GAL program. Further, it would provide direction to the GALs on whether a duty had been sufficiently performed.

Compliance With Initial Training Could be Improved. We reviewed one additional statutory duty which we believe could also use additional emphasis. GALs are statutorily required to have specific

According to the statute, new GALs should have the Department of Justice’s CASA training prior to taking any cases. This initial training does not appear to be occurring.

training before starting their case loads. This requirement is stated in *Utah Code* 78-3a-912(3)(b):

The Office of the Guardian ad Litem Director, through an attorney guardian ad litem shall: (b) be trained in applicable statutory, regulatory, and case law, and in accordance with the United States Department of Justice National Court Appointed Special Advocate Association guidelines, **prior to representing any minor before the court** (emphasis added).

Despite this requirement, some newly-hired GALs reported to us they have not received this CASA training, yet they are working their case loads. Some attended the CASA training at some point, but not before they began their cases. New GALs mentioned that instead of the CASA training, they greatly rely on existing GALs to come up to speed. We believe this initial training issue needs to be addressed.

Recommendation

- I. We recommend the Office of the Guardian ad Litem director implement formal program policies and/or practice guidelines which would address:
 - standards for file documentation, and
 - guidance on performing statutory duties and other GAL job functions.

Chapter III

High Guardian ad Litem

Case Loads Need to be Addressed

In Chapter II, we discussed the inability the Guardian ad Litem (GAL) has in performing some statutory duties, based on our sample of Juvenile Court cases. This inability is, in part, attributable to reported high case loads in both the Juvenile and District Courts. While not a major part of our audit review, we believe both the GAL and the Legislature need to address the concern of what appears to be high case loads. Specifically, the GAL needs to improve the reliability of case load data and provide analysis to justify any increased resources. Hence, the Legislature needs to consider whether budget increases are needed for the GAL. We believe the Legislature also needs to review the current statutory requirements of the GAL in Juvenile Court cases and the appointment of GALs in District Court cases in light of the expanding role of the GAL.

GALs Assigned to Different Types of Cases

As previously discussed in Chapter I, GALs are assigned to cases in both the Juvenile Courts and District Courts. The bulk of the GALs' cases are through the Juvenile Courts where there are allegations of abuse or neglect or, when dependency of a minor is an issue. However, GALs are also assigned to District Court cases when the judge believes there may be a question of abuse or neglect of a child involved in divorce or custody disputes, and sometimes in criminal cases when the child is the victim. District Court judges also may appoint a GAL for protective orders and other cases that involve guardianship and best interest issues.

Historically, the GAL focused on cases in Juvenile Court, but judges are increasingly assigning GALs in District Court cases. The increasing number of judicial appointments of the GALs in District Court affects the availability of the GAL to perform duties on Juvenile Court cases. Thus, the failure of GALs to complete some statutory duties on Juvenile Court cases may be caused, in part, by the demand for GAL resources in District Court cases.

Case Loads Are Outpacing Guardian ad Litem Resources

Based on data gathered by the GAL, case loads appear to have been increasing significantly in recent years. However, the number of attorney GALs have not increased to accommodate the rising case loads. While we generally concur with the rising case loads, we have some questions about the source data and believe that better case flow information is needed for making resource and other program management decisions.

Case Loads Have Increased Significantly

GAL case loads appear to be high and increasing even though we question the reliability of case load figures from the GAL office. While the GAL office has tracked case load information for the past several years, the data was not complete. In preparing data for this chapter, we had to piece together individual GAL reports to obtain an estimated case load figure for each year because not all GALs reported their cases loads on a consistent basis. While we intended to aggregate end-of-year (December) data from each GAL, this data was not always reported, particularly in earlier years. For example, the case load data for 2000 was estimated by combining each GALs most recently reported information. This figure included data from many different months because GALs did not consistently provide the information. In fact, some GALs did not provide any information for the entire year. While the case load data is not precise, we believe our estimates show the growth in the program.

We assumed case load data would be readily available for program management purposes and for annual reporting to the Judicial Council. However, after we collaborated with the GAL office to compile a preliminary version of the data, the GAL office used our data to report to the Judicial Council and Legislative Fiscal Analyst. In the future, we think the GAL office should maintain more accurate case load data which is more readily available.

In response, the GAL director reported to us that she is currently working with the Information Technology Department of the Administrative Office of the Courts on a new case management system. The new case management system, called CARE (Courts Agencies Record Exchange), aims to track case flow, monitor staff assignments,

We believe Guardian ad Litem case loads are high even though we question the reliability of case load data kept by the GAL office.

The GAL office needs a more accurate method of tracking case load information.

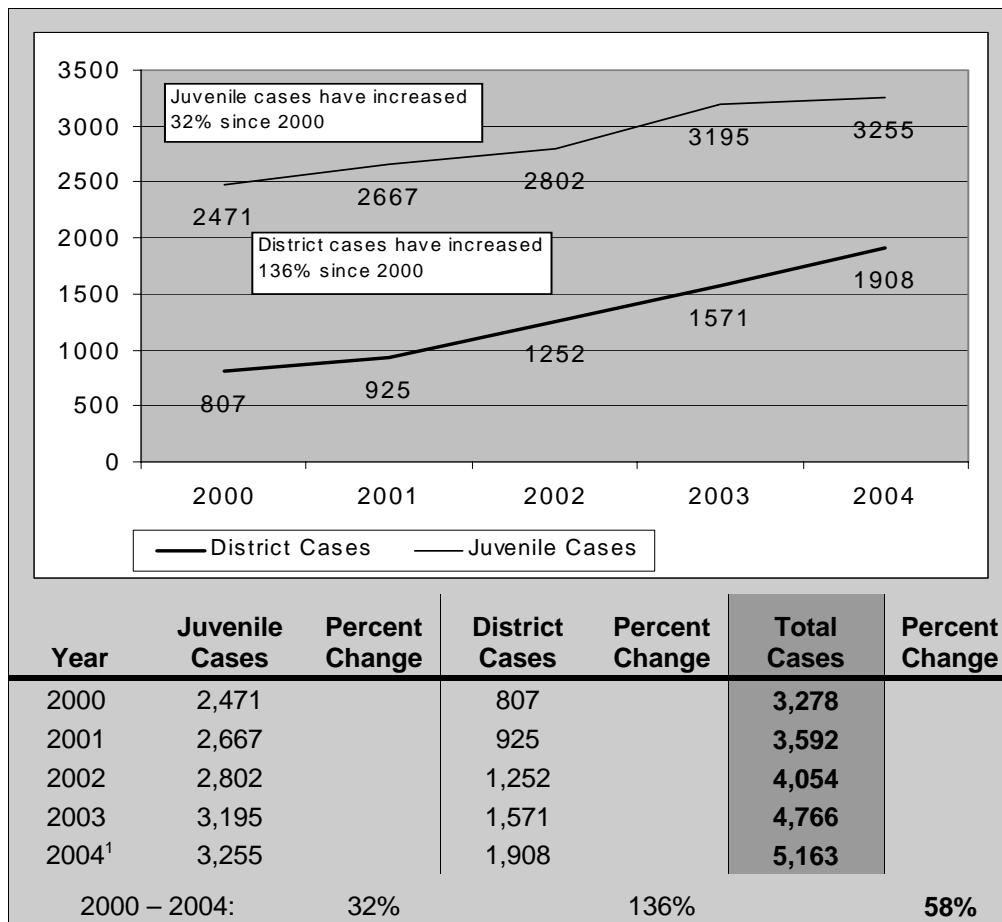
share information to eliminate duplicate data input, and generate numerous monthly activity reports, as well as provide other necessary case management functions.

These caveats being stated, our limited analysis indicates significantly increasing case loads. This increase is supported by upward trends reported by other organizations who carry child welfare case loads. The Division of Child and Family Services (DCFS) reported to us that substantiated child abuse cases have increased 43 percent since 2000. Additionally, the Foster Care Citizen Review Board (FCCRB) reports similar increases in foster care cases reviewed and children represented.

We estimate that GAL case loads from both the Juvenile and District Courts have increased by 58 percent since 2000, with the largest portion of growth coming from District Court cases. District Court cases have increased 136 percent compared to 32 percent for Juvenile Court cases. As a result, the District Court case load has grown from 25 percent of total cases in 2000 to 37 percent in 2004. Figure 6 details the case load growth between 2000 and 2004.

Overall, case loads have increased 58%. Juvenile Court cases increased 32%, and District Court cases increased 136% since 2000.

Figure 6. Total Case Loads for the GAL Have Increased 58 Percent Since 2000. As shown graphically, the 136 percent increase in District Court cases is steeper than the 32 percent increase in Juvenile Court cases from 2000 to 2004.



1. 2004 data is as of November 2004. Other years' data is as of December, when available.

Average GAL case loads are 174. With each case averaging 1.8 children, GALs are representing 319 children each.

Average Case Loads Have Increased. There are currently 31 GALs (29.75 full-time equivalents, or FTEs) assigned to the 5,163 cases shown in Figure 6. Therefore, average GAL case loads are 174 for each GAL. This average is compared to a desired average of 80–100 cases per GAL (discussed later in the chapter).

Average case loads have risen 47 percent since 2000 when GALs had an average of 118 cases each and are projected to continue increasing. Since the aim of the GAL is to protect and represent children, carrying average case loads of 174 cases per GAL makes this representation a significant challenge, particularly because many cases involve more than one child. As of December 2004, the 31 GALs (29.75 FTEs) represented

9,476 children in the 5,163 GAL cases, 319 children per GAL (or 1.8 children per case).

We question the reliability of case flow data. The data issues need to be addressed by the GAL director.

Better Case Flow Information Needed

As mentioned earlier, although we have some idea of the current case inventory of the GAL, there is no reliable data on case flow. Good case flow information is needed to help understand how and why different types of cases are contributing to workload growth. In order to evaluate resources, it is important to track how many cases each GAL handles including how many are new or closed cases. Internally, individual GALs report their monthly case loads together with new cases and closed cases. However, our review of these figures revealed that the case flow (**current cases + new cases – closed cases**) was not accurately carried forward from month-to-month in the individual GAL reports.

For example, in one month of 2004 one GAL reported 157 open cases at the beginning of the month. During the month this GAL reported receiving 21 new cases and closing seven cases. Therefore, the beginning open case number for the following month should have been 171. However, in the following month, the open cases were reported as 139, a discrepancy of 32 cases from our calculated total of 171. In addition to these types of errors, several months of data was not reported at all.

The GAL director believes that their new case management system, CARE, will provide the tools to better track case flow and remedy concerns with case load data.

In summary, we question how the GALs with such high case loads can adequately meet the needs of all these children. The GAL director agrees, stating in her fiscal year 2006 budget presentation to the Judicial Council that case loads are “unmanageable.” However, we also question the internal data of the GAL and believe the GAL director must accurately track cases and implement management review to determine GAL productivity, case trends, case lengths and so forth. The GAL director agrees and believes that their new case management system, CARE, will be able to satisfy the office’s case management needs. This system is scheduled to come on-line in 2005.

Legislative Involvement Needed

Based on apparent case load growth, it seems that the Office of the Guardian ad Litem is being asked to do more and more. For fiscal year 2006, the GAL director is seeking increased funding for two full-time GALs and three part-time GALS (3.5 FTEs) to deal with the case load increases. However, the GAL staffing would have to be increased significantly more than 3.5 FTEs in order for case loads to be at desired levels. To help meet the growing needs of the case load, budget increases are an option for the Legislature to consider. We also believe a better understanding of GAL workload, based on a thorough analysis of case loads, is needed. Finally, we believe the Legislature could examine the role of the GAL by reviewing the current statutory requirements of the GAL in Juvenile Court cases and the appointment of GALs in District Court cases.

Funding Could Be Increased

The Legislature could increase funding for the GAL. Currently, the GAL office does not comply with suggested case load standards. In “Standards for Legal Representation of Children, Parents, and The Child Welfare Agency,” the U.S. Department of Health and Human Services interprets the American Bar Association’s recommendation on case loads as “the caseload cap for a staff attorney [guardian ad litem] should be set at 100 children.” This standard would mean GAL case loads would have to average 55 cases each, which would require a huge budget increase. The federal government recommends that states set their own case load standards and then assure sufficient resources for GALs to meet these standards. While the GAL office does not have any published case load standards, the GAL director believes a case load of about 80 to 100 is manageable.

However, in order to reduce reported GAL caseloads to 100, the Legislature would have to increase the number of GALs by about 22 GAL positions, with corresponding support staff and office expenses. Any increase is somewhat dependent on the level of CASA volunteers the office could utilize to supplement casework. Unfortunately, it appears that the number of CASA volunteers has decreased slightly over the past few years, and some CASAs are not even being currently utilized in the program. If better utilized, GALs would theoretically be able to carry case loads greater than 100 because the CASAs could help with some statutory

The GAL director believes 80–100 cases per attorney GAL is manageable.

The Legislature would need to fund about 22 new GAL positions to bring case loads down to 100 per GAL.

duties in Juvenile Court cases. However, the GAL director points out if there were more CASAs, she would likely need to hire more CASA coordinators. Similarly, additional investigators or paralegal staff could help GALs handle high case loads. We believe an analysis of whether additional GALs may be needed should be done in conjunction with a detailed managerial review of workload.

GAL Statutory Duties in Juvenile Court Cases Could be Examined

The Legislature could change the statutory duties of GALs in Juvenile Court cases. As discussed in Chapter II, *Utah Code* 78-3a-912, provides a list of statutory duties an attorney GAL “shall” perform in representing each minor in Juvenile Court cases. For example, the GAL is required to conduct or supervise an independent investigation, meet with each minor, monitor the implementation of a minor’s treatment plan, and other duties (see **Appendix B**). In light of our findings in Chapter II that some of these duties are not being performed, it may be time for the Legislature to examine whether or not it is reasonable for GALs to perform such a list of duties in every Juvenile Court case.

Some statutory duties may be outdated or unnecessary. For example, the statutory requirement that GALs “attend all administrative and foster care citizen review board hearings” should be reconsidered. The requirement to attend administrative hearings is obsolete because such hearings are now held in the court rather than by DCFS. In addition, the GAL director reports that GALs generally do not attend foster care citizen review board hearings because they are not an effective use of time.

More generally, the list of statutory duties seems to have a heavy emphasis on tasks that are traditionally seen as social work and less emphasis on an attorney GAL’s legal role. For example, assessing the child’s environment and monitoring treatment plans are tasks already completed by DCFS caseworkers that may not also need to be completed by the GAL. As noted earlier, the GAL director regards completing statutory duties as secondary to representing each child’s best interests in court proceedings. At the same time, some statutory duties, such as meeting with the child, are regarded as essential in every case.

Rather than continue to allow GALs to choose which statutory provisions are most essential, we think the Legislature should review the

The Legislature could delineate which GAL duties are mandatory and which could be discretionary.

statutory requirements. If the Legislature does not find it necessary that all duties must be performed in each Juvenile Court case, the Legislature could delineate which duties are mandatory and which can be discretionary. Alternatively, the Legislature could eliminate the duties and rely on each GAL to represent the best interests of their clients in accordance with their ethical and professional responsibilities as an attorney.

GAL Appointment in District Court Cases Could be Reviewed

The Legislature could review the reasons for appointing the GALs in light of the GAL office's expanding use in the District Courts. In our opinion, this current condition makes it timely for the Legislature to review what it wants the GAL focus to be in District Court cases.

As discussed in the first part of this chapter, District Court cases assigned to GALs have increased 136 percent since 2000 and account for the largest portion of case load growth for the GAL. The increase in the number of District Court cases has clearly had an effect on GAL resources available for the Juvenile Court cases. In short, GAL resources for District Court cases are being syphoned from Juvenile Court cases. One judge, for example, even acknowledged the resource problem. He explained to us that expanding the GALs into District Court cases has created a difficult strain on cases of abuse and neglect in the Juvenile Courts because there are no accompanying increases of GAL resources.

The increase in District Court cases has clearly had an effect on GAL resources available for Juvenile Court cases. Thus, it is timely to review the role of the GAL.

For example, it appears that a significant amount of the GAL resources are being used for District Court custody dispute cases involving allegations of child abuse or neglect. According to the GAL director, these cases can require substantial time because even if DCFS substantiates an allegation, it often does not provide any other services. In custody disputes, allegations of abuse or neglect may be substantiated against a non-custodial parent who no longer lives with the child. DCFS explained to us that they evaluate these cases using a risk matrix, and if they determine the custodial parent is adequately protecting the child, they do not act further.

However, the GAL assigned to the case must continue to investigate the allegations and report to the court. These cases can be more time consuming since the GAL cannot rely on DCFS to complete some of the

investigative services as is done with Juvenile Court cases. Although DCFS has determined these cases to be of less risk, according to their matrix, the court has not determined this as far as the GAL appointment is concerned.

Another concern involves the activities that GALs should complete on District Court cases. By law, GALs appointed by District Court judges under *Utah Code* 78-7-9 “shall be appointed in accordance with and meet the requirements of Sections 78-3a-911 and 78-3a-912.” Thus, it seems the duties described earlier for Juvenile Court cases apply to District Court cases as well. While we did not review any GAL files from District Court cases, it may be unnecessary and unrealistic to expect GALs to perform all duties in every case.

Because District Court cases appear to be syphoning GALs resources from Juvenile Courts cases, we believe the Legislature may need to give further guidance on these GAL assignments in District Court. More specifically:

- Does the Legislature want to limit the extent of the GAL involvement in District Court? Under *Utah Code* 78-7-9, a GAL may be appointed in potentially any court case where abuse or neglect is alleged, including criminal cases, without substantiation of abuse by DCFS.
- Does the Legislature expect GALs in District Court cases to perform all of the same duties that are expected to perform in Juvenile Court cases?

In summary, legislative involvement is needed to address high GAL case loads. While additional resources may be needed, the Legislature should also review the role of the GAL. Currently, GALs are appointed under several statutory provisions in both Juvenile and District courts and must complete a number of statutory duties on each case. Our concern is that if too much is expected of GALs on too many different types and on too great a number of cases, the office’s effectiveness may be reduced. In fact, a comprehensive review of the consistency and appropriateness of all statutory provisions related to the GAL would be useful. Legislative involvement is made more important because, as described in the next chapter, the oversight structure of the GAL program does not provide adequate policy guidance or monitoring.

A comprehensive review of the consistency and appropriateness of all statutory provisions relating to the GAL would be useful.

Recommendations

1. We recommend the Office of the Guardian ad Litem director implement a reliable case management system to track case loads and provide case statistics, such as case lengths and opened and closed cases, in order to determine individual GAL productivity and accurate case trends.
2. We recommend the Legislature consider whether to provide additional funding to the Office of the Guardian ad Litem for reducing case loads.
3. We recommend the Legislature review, as an interim study item, the statutory duties of the Guardian ad Litem in Juvenile Court cases listed in *Utah Code* 78-3a-912. Specifically, these questions could be reviewed:
 - Should GALs perform every statutory duty in every Juvenile Court case? If not, which duties should be mandated and which should be discretionary?
 - Are some of the current GAL statutory duties considered outdated, unnecessary, or too redundant to DCFS social-work duties?
 - Should the list of statutory duties be eliminated and in its place have the GALs simply represent the best interests of their clients in accordance with their ethical and professional responsibilities as an attorney?
4. We recommend the Legislature review, as an interim study item, the GAL role in District Court cases. Specifically, these questions could be reviewed:
 - Should the extent of GAL involvement in District Court cases be limited?
 - Should GALs be expected in District Court cases to perform all of the same duties that are expected to perform in Juvenile Court cases?

Chapter IV

Office of the Guardian ad Litem Needs Improved Oversight

The Judicial Council is the statutorily-defined governing body of the guardian ad litem. However, because of an ethical conflict supervision is limited.

The oversight structure of the Office of the Guardian ad Litem (GAL) should be reexamined by the Legislature. Although the Judicial Council is the statutorily-defined governing body of the GAL, it deliberately provides only limited supervision of the GAL program because there is an ethical problem of judges supervising advocates who appear before them in court proceedings. In the past several years, organizational placement of the GAL program has been studied several times by the judiciary. However, each time it was before them, the Judicial Council voted to retain the GAL program under the judiciary and not recommend changes to the Legislature. This decision was reached to help ensure the status of the GAL would not diminish and thereby negatively affect children.

Because of the ethical problem of judges supervising advocates who appear before them in court, the Judicial Council has effectively isolated themselves from the GAL program. We are concerned that because of this isolation, the GAL acts largely independent of any oversight authority which is unique for any department or agency in state government. Because policy guidance and monitoring of the GAL is lacking, we believe the Legislature should study and consider adopting one of the alternative oversight structures of the GAL program discussed in this chapter.

Judicial Council Only Provides Administrative Support

The Legislature has placed oversight of the GAL program with the Judicial Council. However, our review found little evidence of oversight being provided. Members of the Judicial Council explained to us that they only provide administrative support for the GAL program. Providing direct supervision would be inappropriate because of an ethical conflict that could arise from judges supervising guardians who are advocates before them in court proceedings.

Judicial Council involvement with the GAL generally does not extend beyond approving the budget and administrative rules.

Our review showed that the Judicial Council’s involvement with the GAL program generally does not extend beyond approving its budget and administrative rules. We found:

- Judicial Council meeting minutes back through 1998 had few instances of substantive discussions involving the GAL.
- Despite being required annually, reports submitted to the Judicial Council by the GAL were not always submitted and contained only cursory information about the program. The 2004 annual report was not submitted by the August deadline.
- There has not been a performance evaluation of the GAL director completed since June 1999 when one was completed by the assistant state court administrator.

Utah Law Requires the Judicial Council to Supervise the GAL

Despite the deliberate separation with the GAL, the Judicial Council still has the statutory responsibility to supervise the GAL. *Utah Code* 78-3-21(13) states:

The Judicial Council shall establish and supervise the Office of Guardian Ad Litem Director, in accordance with the provisions of Sections 78-3a-911 and 78-3a-912, and assure compliance of the guardian ad litem program with state and federal law, regulation, and policy, and court rules.

Utah Code 78-3a-911(1) and (2)(a) further state:

(1) There is hereby created the Office of Guardian Ad Litem Director under the direct supervision of the Judicial Council in accordance with Subsection 78-3-21(13).

(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.

Initially, we interpreted these statutes as the Judicial Council providing program supervision and policy oversight, but we learned that the Judicial Council interprets the word “supervise” in the code as only requiring

The Legislature has placed oversight of the GAL with the Judicial Council.

The Judicial Council interprets the word “supervise” in the code as requiring only administrative support of the GAL program.

administrative support of the GAL program. To help ensure that Legislative intent is being adequately addressed, the Legislature should consider clarifying the word **supervise** in the *Utah Code*.

Judicial Council Cannot Provide Adequate Oversight of GAL

The Judicial Council deliberately isolates itself from the GAL program to avoid the ethical dilemma of judges directly supervising a program that is an advocate for a party in court proceedings. The Chief Justice of the Utah Supreme Court, who chairs the Judicial Council, told us that when the Legislature placed the GAL under the direct supervision of the Judicial Council, it was understood that the council would only provide administrative support to the GAL. Because all agencies need oversight and the ability of the Judicial Council to supervise the GAL is limited, we think the Legislature should consider changing the organizational structure.

Some members of the judiciary are concerned with the placement of the GAL program. For example, one judge on the Judicial Council stated that he would like to see the GAL housed somewhere else. He said it is “fraught with difficulties” for the Judicial Council to supervise the GAL because of the appearance of a conflict of interest; “the perception is real.” Some of the Juvenile Justices we interviewed were also concerned about the current oversight structure of the GAL.

Members of the Supreme Court have expressed concern that the placement of the GAL program in the judiciary endangers public confidence in the judicial system. According to a 2001 concurring opinion by two members of the Utah Supreme Court, the GAL program’s “placement within the judicial branch of government is directly contrary to the role of the judiciary in our society.” Figure 7 contains that opinion.

Figure 7. Placement of the Guardian ad Litem in the Judicial Branch Has Been Questioned By Members of the Utah Supreme Court. This concurring opinion is found in *State vs. Harrison* (2001).

**Written by Associate Chief Justice Russon
With Justice Durrant Concurring:**

. . . 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.”

Furthermore, the said Code requires:

A judge should require staff, court officials and others subject to judicial direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

The purpose of the above requirement is for the establishment and maintenance of public confidence in the judiciary. Every party appearing before a court has an absolute right to feel confident that the court will be impartial and free from bias or prejudice. If a trial judge in a criminal case is allowed to appoint an employee of the courts to act as guardian ad litem and allow such person to actively participate in the trial as an adversary of the defendant and/or cooperate with the prosecutor in prosecuting the defendant, the confidence of the defendant, and consequently the public, in our judicial system is endangered.

The Judicial Council expressed concerns in moving the GAL:

- they would have to compete for appropriations in the executive branch, and
- services provided by the GAL may diminish.

**Judicial Council Has Studied
GAL Placement But Concerns Remain**

Because of the concern within the judiciary about the organizational placement of the GAL, the Judicial Council, through the Administrative Office of the Courts (AOC), has studied the issue several times. AOC staff have presented reports addressing this topic to the Judicial Council in 1992, 1996 and in 2002. Each time the decision was made by the Judicial

Council to retain the GAL program in the judiciary rather than recommend statutory changes. The Judicial Council voted to retain the GAL program in the judiciary because it was concerned that if the GAL program was moved, it would be required to unnecessarily struggle for appropriations within the executive branch. The council was also concerned that independent and professional representation of child victims could be threatened.

Another significant consideration for the Judicial Council is that many states house their GAL programs in the judicial branch. In the 2002 study, the AOC completed a fifty state survey and found that of those states that can be characterized as being administered through the judicial or executive branch, most states (23 of 29) administer their GAL programs through the judicial branch. However, at least one state has recently moved the oversight of their GAL program to the executive branch.

Florida GAL Program Now Under Governor. In February of 2002, the Office of Program Policy Analysis and Government Accountability (OPPAGA) of the Florida Legislature studied the placement of their GAL program because of funding and professional ethics issues. They found that the organizational placement of the GAL in the judiciary creates actual and perceived conflicts of interests in Florida. So, in January of 2004, the Florida Legislature created a statewide GAL office with the director being appointed by and reporting to the governor.

Some Judges Remain Concerned with GAL Placement. Although the Judicial Council has always voted to retain the GAL program in the judiciary, significant concern remains. For example, in 2002 the council vote was six to three with one member abstaining and three voting members not present. One of the absent members of the Judicial Council wrote the 2002 study “failed to give appropriate consideration to the concurring opinion of Justice Russon and Justice Durrant in *State vs. Harrison* (2001).” The report went on to say:

If the question of the placement of the Guardian ad Litem program is presented to the Supreme Court in the future, it appears very possible that the Court will find the current program to be a violation of the separation of powers or simply a violation of the Code of Judicial Conduct. Such a ruling could have far-reaching consequences for the children who are intended to be the

The GAL program in Florida was recently moved out of the judiciary because of actual and perceived conflicts of interest.

One Judicial Council member said a 2002 study on GAL placement “failed to give appropriate consideration to the concurring opinion of Justice Russon and Justice Durrant in *State vs. Harrison* (2001).”

beneficiaries of this program. It would be far better, in this writer's opinion, for the Judicial Council to support legislation which would move the Guardian ad Litem in an orderly and well-timed process to the Department of Administrative Services. Such legislation would give all parties adequate advance notice, would not raise serious questions as to cases already in the system or recently completed, and would seem to comply with the guidance Justices Russon and Durrant have attempted to give.

Interested Parties Still Perceive a Conflict of Interest. Upon review of the AOC's 2002 study, the Utah Judicial Council voted unanimously to improve the physical separation between judges and all party representatives (including GAL attorneys) in order to avoid the appearance of impropriety. While the Judicial Council has taken steps to separate itself from the GAL program, there is still the perception of a conflict of interest. We interviewed interested parties including parental defense attorneys, DCFS employees, judges, and others who still perceive a conflict of interest and question the fairness of the current GAL reporting scheme. The next section contains our discussion of alternative options which the Legislature should consider in addressing current concerns.

Guardian ad Litem Oversight Structure Needs to be Reviewed

We believe the GAL program needs an oversight body to provide policy direction and assure that the program is operating in a manner consistent with legislative intent. With the Judicial Council unable to provide adequate oversight for the GAL program, the Legislature should consider options that will provide oversight.

GAL Oversight is Needed

In our view, proper "supervision" or "oversight" of the GAL program should entail adequate policy guidance and monitoring to assure compliance with laws, regulations, policies, and rules. Our review of statutes that direct state agencies that have oversight boards found similar requirements for the oversight authority of developing or approving policy direction and assuring compliance. We list four examples which

Some interested parties we spoke with still perceive a conflict of interest and question the fairness of the current GAL reporting scheme.

Proper oversight of the GAL program should entail adequate guidance and monitoring.

These areas further illustrate oversight duties for a GAL governing body:

- **develop or approve policy,**
 - **assure proper GAL program function,**
 - **evaluate the GAL office director,**
 - **provide an avenue for grievances against the office.**
-

further illustrate our vision of oversight by an appropriate external body for the GAL:

- **Develop or approve policy direction.** As shown in Chapter III, the GAL role continues to expand in District Court which increases the workload for GALs and diminishes their ability to complete statutory duties. Policy analysis should be the basis for responding to workload increases or resource shortages, but we did not see evidence that the existing oversight structure provides an adequate forum to discuss the program’s policy direction.
- **Assure the GAL program is functioning as designed.** As mentioned in Chapter II, the statutory duties of the GAL are not always being performed. Although GALs lack clear guidance on how to perform duties, they are also not being held accountable when statutory duties are not performed.
- **Evaluate the performance of the GAL director.** We reviewed the performance evaluations of the GAL director and found no evaluations by a member of the Judicial Council even though the director is to “serve at the pleasure of the Judicial Council.” We did find four annual performance evaluations from the former assistant state court administrator, but the last time the GAL director was evaluated was in June of 1999.
- **Address grievances about the GAL director or program.** We found that procedures are lacking for addressing complaints about the GAL director and/or the program as a whole. Rules do address how the GAL director should handle complaints against individual GALs and CASA volunteers, but no procedures exist for handling complaints against the GAL director or the program. Some stakeholders expressed concerns that there is no one to voice complaints to beyond the GAL director.

Improving the oversight structure of the GAL program can help improve the efficiency and effectiveness of the program as a whole; it can also help assure the program is in compliance with legal requirements, regulations, rules and policies. Most importantly, it is a crucial means of assuring that policy direction is in sync with legislative intent.

Legislature Should Study Alternative Oversight Structures

The Legislature should consider changing the statute which places the GAL program under the direct supervision of the Judicial Council. Unfortunately, the steps that the Judicial Council has taken to separate itself and the AOC from the GAL are not sufficient because there is still the perception of a conflict of interest. Further, the separation of the Judicial Council from the GAL leaves no one to adequately supervise the director of the program, assure statutory compliance or provide policy oversight.

While our audit identified problems with the existing oversight structure of the GAL program, it was beyond our scope to evaluate the impact of alternative structures. The most direct way to remedy the ethical problem of the Judicial Council supervising the GAL is to move the program to the executive branch of government, as recommended by Justices Russon and Durrant. However, AOC staff indicated that there are potential problems with all the possible executive branch placements that have been suggested. Since we could not fully evaluate alternative organizational structures, we think the Legislature should consider organizational placement of the GAL program as an interim study item. The alternatives that the Legislature should consider include:

- Move the Office of the Guardian ad Litem to the executive branch, and place it in an existing department. For example, the GAL could be put in the Department of Administrative Services, similar to the Legislature's placement of the Office of Child Welfare Parental Defense. Such a placement would remedy the ethical and conflict of interest problems listed throughout this chapter.
- Move the Office of the Guardian ad Litem to the executive branch, and make it an independent executive branch agency that reports to an appointed oversight board. An appointed board could help insulate the program from political pressure.
- Move the Office of the Guardian ad Litem to the executive branch, and make it part of the Attorney General's Office. The AOC studied this option and found that inclusion of the GAL in the Attorney General's Office could prevent Utah from receiving Child Abuse Protection Treatment Act (CAPTA) funding because the

The Legislature should consider moving the Office of the Guardian ad Litem to a number of possible locations in the executive branch.

The Legislature could consider leaving the Office of the Guardian ad Litem in the judicial branch, but strengthening its oversight.

GAL may not be the representative of the agency that filed the abuse or neglect petition. However, we have not verified the validity of CAPTA funds being denied if the GAL were in the Attorney General's office. The AOC also found that the placement of the GAL in the Attorney General's Office could be perceived as a conflict of interest.

- Leave the Office of the Guardian ad Litem in the judicial branch, but have it report to a board appointed by the Judicial Council. Oversight by this new board could at least partially resolve the ethical conflict of having the Judicial Council supervise the GAL. For example, the Office of the Child's Representative in Colorado (their GAL-equivalent) was created as an agency of the judicial branch with a board of directors (who are not judges) appointed to four year terms by the Colorado Supreme Court.

Recommendations

1. We recommend the Legislature review, as an interim study item, the oversight structure of the Office of the Guardian ad Litem. This review is necessary because ethical concerns prevent the Judicial Council from providing adequate oversight.
2. Pending legislative action, we recommend the Judicial Council consider ways to improve oversight of the Office of the Guardian ad Litem. One such improvement could be for the Judicial Council to appoint a board of non-judges to oversee the GAL.

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Appendices

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Appendix A

Office of Guardian ad Litem Director

78-3a-911 Office of Guardian Ad Litem Director - Appointment of director - Duties of director - Contracts in second, third, and fourth districts.

(1) There is hereby created the Office of Guardian Ad Litem Director under the direct supervision of the Judicial Council in accordance with Subsection 78-3-21 (13).

(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.

(b) The director shall be an attorney licensed to practice law in this state and selected on the basis of:

(i) professional ability;

(ii) experience in abuse, neglect, and dependency proceedings;

(iii) familiarity with the role, purpose, and function of guardians ad litem in both juvenile and district courts; and

(iv) ability to develop training curricula and reliable methods for data collection and evaluation.

(c) The director shall be trained in the United States Department of Justice National Court Appointed Special Advocate program prior to or immediately after his appointment.

(3) The guardian ad litem director shall:

(a) establish policy and procedure for the management of a statewide guardian ad litem program;

(b) manage the guardian ad litem program to assure that minors receive qualified guardian ad litem services in abuse, neglect, and dependency proceedings in accordance with state and federal law and policy;

(c) develop standards for contracts of employment and contracts with independent contractors, and employ or contract with attorneys licensed to practice law in this state, to act as attorney guardians ad litem in accordance with Section 78-3a-912 ;

- (d) develop and provide training programs for attorney guardians ad litem and volunteers in accordance with the United States Department of Justice National Court Appointed Special Advocates Association standards;
 - (e) update and develop the guardian ad litem manual, combining elements of the National Court Appointed Special Advocates Association manual with specific information about the law and policy of this state;
 - (f) develop and provide a library of materials for the continuing education of attorney guardians ad litem and volunteers;
 - (g) educate court personnel regarding the role and function of guardians ad litem;
 - (h) develop needs assessment strategies, perform needs assessment surveys, and ensure that guardian ad litem training programs correspond with actual and perceived needs for training;
 - (i) design and implement evaluation tools based on specific objectives targeted in the needs assessments described in Subsection (3)(h);
 - (j) prepare and submit an annual report to the Judicial Council and the Child Welfare Legislative Oversight Panel regarding the development, policy, and management of the statewide guardian ad litem program, and the training and evaluation of attorney guardians ad litem and volunteers;
 - (k) hire, train, and supervise investigators; and
 - (l) administer the program of private guardians ad litem established by Section 78-7-45 .
- (4) A contract of employment or independent contract described under Subsection (3)(c) shall provide that attorney guardians ad litem in the second, third, and fourth judicial districts devote their full time and attention to the role of attorney guardian ad litem, having no clients other than the children whose interest they represent within the guardian ad litem program.

2003

Appendix B

Statutory Duties of the Guardian ad Litem

Utah Code 78-3a-912 Appointment of attorney guardian ad litem - Right of refusal - Duties and responsibilities - Training - Trained staff and court-appointed special advocate volunteers - Costs - Immunity - Annual report.

- (1) The court may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court and shall consider only the best interest of a minor in determining whether to appoint a guardian ad litem.
- (2) An attorney guardian ad litem shall represent the best interest of each minor who may become the subject of a petition alleging abuse, neglect, or dependency, from the date the minor is removed from the minor's home by the division, or the date the petition is filed, whichever occurs earlier.
- (3) The Office of the Guardian Ad Litem Director, through an attorney guardian ad litem, shall:
 - (a) represent the best interest of the minor in all proceedings;
 - (b) be trained in applicable statutory, regulatory, and case law, and in accordance with the United States Department of Justice National Court Appointed Special Advocate Association guidelines, prior to representing any minor before the court;
 - (c) conduct or supervise an independent investigation in order to obtain first-hand, a clear understanding of the situation and needs of the child;
 - (d)
 - (i) personally meet with the minor;
 - (ii) personally interview the minor if the minor is old enough to communicate;
 - (iii) determine the minor's goals and concerns regarding placement; and
 - (iv) personally assess or supervise an assessment of the appropriateness and safety of the minor's environment in each placement;
 - (e) file written motions, responses, or objections at all stages of a proceeding when necessary to protect the best interest of a minor;

- (f) personally or through a trained volunteer, paralegal, or other trained staff, attend all administrative and foster care citizen review board hearings pertaining to the minor's case;
 - (g) participate in all appeals unless excused by order of the court;
 - (h) be familiar with local experts who can provide consultation and testimony regarding the reasonableness and appropriateness of efforts made by the Division of Child and Family Services to maintain a minor in the minor's home or to reunify a minor with the minor's parent;
 - (i) to the extent possible, and unless it would be detrimental to the minor, personally or through a trained volunteer, paralegal, or other trained staff, keep the minor advised of the status of the minor's case, all court and administrative proceedings, discussions, and proposals made by other parties, court action, and psychiatric, medical, or other treatment or diagnostic services that are to be provided to the minor;
 - (j) review proposed orders for, and as requested by the court, prepare proposed orders with clear and specific directions regarding services, treatment, and evaluation, assessment, and protection of the minor and the minor's family; and
 - (k) personally or through a trained volunteer, paralegal, or other trained staff, monitor implementation of a minor's treatment plan and any dispositional orders to determine whether services ordered by the court are actually provided, are provided in a timely manner, and attempt to assess whether they are accomplishing their intended goal.
- (4) (a) An attorney guardian ad litem may use trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other trained staff to assist in investigation and preparation of information regarding the cases of individual minors before the court. An attorney guardian ad litem may not, however, delegate the attorney's responsibilities described in Subsection (3).
- (b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained in and follow, at a minimum, the guidelines established by the United States Department of Justice Court Appointed Special Advocate Association.
 - (c) The court may use volunteers trained in accordance with the requirements of Subsection (4)(b) to assist in investigation and preparation of information regarding the cases of individual minors within the jurisdiction.
 - (d) When possible and appropriate, the court may use a volunteer who is a peer of the minor appearing before the court, in order to provide assistance to that minor, under the supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or other trained staff.

(5) The attorney guardian ad litem shall continue to represent the best interest of the minor until released from duties by the court.

(6) (a) The juvenile court is responsible for all costs resulting from the appointment of an attorney guardian ad litem and the costs of volunteer, paralegal, and other staff appointment and training, and shall use funds appropriated by the Legislature for the guardian ad litem program to cover those costs.

(b) (i) When the court appoints an attorney guardian ad litem under this section, the court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer expenses against the minor's parents, parent, or legal guardian in a proportion that the court determines to be just and appropriate.

(ii) The court may not assess those fees or costs against a legal guardian, when that guardian is the state, or against a parent who is found to be impecunious. If a person claims to be impecunious, the court shall require of that person an affidavit of impecuniosity as provided in Section 78-7-36 and the court shall follow the procedures and make the determinations as provided in Section 78-7-36 .

(7) An attorney guardian ad litem appointed under this section, when serving in the scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee of the state for purposes of indemnification under Title 63, Chapter 30, Utah Governmental Immunity Act.

(8) (a) An attorney guardian ad litem shall represent the best interest of a minor. If the minor's wishes differ from the attorney's determination of the minor's best interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in addition to presenting the attorney's determination of the minor's best interest. A difference between the minor's wishes and the attorney's determination of best interest may not be considered a conflict of interest for the attorney.

(b) The court may appoint one attorney guardian ad litem to represent the best interests of more than one minor child of a marriage.

(9) An attorney guardian ad litem shall be provided access to all Division of Child and Family Services records regarding the minor at issue and the minor's family.

(10) An attorney guardian ad litem shall maintain current and accurate records regarding the number of times the attorney has had contact with each minor and the actions the attorney has taken in representation of the minor's best interest.

(11) (a) Except as provided in Subsection (11)(b), all records of an attorney guardian ad litem are confidential and may not be released or made public upon subpoena, search warrant, discovery

proceedings, or otherwise. This subsection supersedes Title 63, Chapter 2, Government Records Access and Management Act.

(b) All records of an attorney guardian ad litem are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers, and shall be released to the Legislature.

(c) Records released in accordance with Subsection (11)(b) shall be maintained as confidential by the Legislature. The Office of the Legislative Auditor General may, however, include summary data and nonidentifying information in its audits and reports to the Legislature.

(d) Because of the unique role of an attorney guardian ad litem described in Subsection (8), and the state's role and responsibility to provide a guardian ad litem program and, as *parens patriae*, to protect minors, Subsection (11)(b) constitutes an exception to Rules of Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4). A claim of attorney-client privilege does not bar access to the records of an attorney guardian ad litem by the Legislature, through legislative subpoena.

(e) The Office of the Guardian Ad Litem shall present an annual report to the Child Welfare Legislative Oversight Panel detailing:

(i) the development, policy, and management of the statewide guardian ad litem program;

(ii) the training and evaluation of attorney guardians ad litem and volunteers; and

(iii) the number of children served by the Office of the Guardian Ad Litem.

2004

Agency Response

OFFICE OF GUARDIAN AD LITEM RESPONSE

January 31, 2005

Members of the Legislative Audit Committee:

The Office of the Guardian ad Litem has appreciated the courtesy and professionalism of the auditors within the Office of the Legislative Auditor General who worked on the audit of the Office of the Guardian ad Litem. It is sometimes difficult to understand the nature of the work the Office performs. There was a cooperative relationship with the auditors and we have made every effort to provide any information and assistance that was requested. We know we can benefit from many of the recommendations contained in the report. The Office can be improved. It was a helpful opportunity to step back from the hectic pace of overseeing a heavy caseload, to stop and examine some of the issues raised in the report.

The report provides us the opportunity to reflect on the duties assigned by the Legislature to attorney guardians ad litem back in 1994 contained in 78-3a-912. It has become very apparent that these duties, as they were written by the National Court Appoint Special Advocate Association (“NCASA”) for non-attorney volunteers, need to be reevaluated, just as the auditors recommend. It appears that auditors viewed the guardian ad litem attorney function as much more akin to a social worker from the Division of Child and Family Services, than an attorney representing a client. This may be due, in part, to their history and experience in conducting prior audits of DCFS. This is also due to the fact that the wording of some of the statutory duties does seem more like functions that would be performed by a social worker.

In 1994 when the statute was written NCASA had the only standards for guardians ad litem (“GAL”) in the country. Since then, the American Bar Association (“ABA”) and many other states have come out with standards by statute, case law, or rule directing the duties of an attorney guardian ad litem. GAL attorneys are not social workers. We acknowledge that to determine the best interest of the child, it is necessary to have training in numerous disciplines and to collaborate with multiple professionals. Much of our time and energy is spent in the courtroom advocating and making recommendations for our clients. The audit notes that “the Main Role of GAL is Legal Advocacy.” We could not agree more with this conclusion. The auditors, in deciding to exclude from their review any examination of court files or the work of the GAL in the courtroom, were not able to capture the complete picture of the work and service we provide. Having said that, we will address the various sections of the report and then respond to the recommendations.

Chapter II Guardian ad Litem Not Completing Some Statutory Duties

We concur with the recommendation that the Office of Guardian ad Litem Director implement formal program policies which would address: standards for file documentation, and guidance on performing statutory duties and other GAL job functions.

The audit focused on a relatively small sample of 35 child welfare case files. Most of these were closed cases. There was no review of district court cases, although, as noted in the report, those cases comprise over 30% of the caseload. Of the 35 cases, 30 involved court-ordered services for children and families where the child remained in the home. The GAL attorney was not interviewed in all of the 35 cases. Information was gleaned primarily from the GAL file, the auditors determined not to look in court files, listen to recordings of court hearings or review pleadings in the GAL files.

We also concur with the conclusion that GAL is not completing some statutory duties. The noncompliance by GALs is due to *high caseloads and the statute's lack of fit for an attorney*. As attorneys, the guardians are governed by statutes, the rules of juvenile procedure, the rules of judicial administration and under the Rules of Professional Conduct are charged with exercising "independent professional judgment." Different responses by lawyers assigned to differing cases, involving differing facts and circumstances will lead to differing outcomes.

What GALs have done is to take the statutory duties and adapt them to fit with the rules and statutes that govern practice by lawyers. In hindsight, a better approach would have been for the Director to have requested that the Legislature look at that adaptation and modify the statutory duties before now. The Director also acknowledges that some of the duties have been eliminated through past legislation. Part of the Director's hesitancy was the familiarity with the reason the Legislature in 1994 placed specific duties in statute for GAL attorneys. In Utah as well as throughout the country there had been problems with children not being adequately represented. In short, the GAL structure was plagued by some of the problems that the legislature is attempting to address now for parent counsel. First, the GAL function was handled by attorneys who bid on contracts to do that work, but these contracts were generally inadequately funded to allow the attorney to spend sufficient time on the cases. Second, those attorneys handled other types of cases and in some instances the GAL contract was a small portion of their work. Often they received no specialized training. Third, because the GAL work was not the main focus of many of those with contracts they did not develop expertise in the area. Fourth, the attorneys who had contracts were challenged financially to be able to use expert witnesses or to fully explore important areas of litigation. To solve these problem after the David C. litigation and the Legislature's own audit of the GAL structure in place at the time, three big changes were made. 1) An Office of the Guardian Ad Litem was created to allow for full time, specially trained attorneys (without outside caseloads) to handle the work. 2) Resources were added to create that office. 3) A very detailed and specific list of duties was mandated by statute. Perhaps the very specific list of duties was not necessary given the other changes of adding full time specially trained attorneys and CASA volunteers statewide to handle

the cases. That is apparent, however, only in hindsight. The GAL Director was hesitant to seek legislation to delete those duties, having seen the problems that were present before the duties were codified. In addition, it has been the trend throughout the country to put GAL duties in place by either contract, statute or court rule.

When Utah Code Ann. 78-3a-912 was written, the GAL duties for juvenile court were then incorporated by reference to district court cases in Utah Code Ann. 78-7-9, but that incorporation created confusion. There are many duties that the juvenile court statute contemplates that don't fit in district court criminal cases where the child is a victim and not a party to the case. For example 78-3a-912(e) requires the GAL to file written motions, responses or objections at all stages of a proceeding. But the GAL could not legally do that in a criminal trial. The way GALs have typically operated (except in the one unfortunate instance, leading to the Harrison decision) is to perform only those duties that the type of case would properly allow given the constitutional and other statutes that govern the particular type of case. Once again the GAL adapted the duties to fit the case.

Guardian ad Litem Files in Sample Did Not Contain Documentation of Some Duties

We acknowledge that GAL attorney files did not contain documentation of some duties. We acknowledge that the statute directs us to maintain accurate records documenting actions performed on a client's behalf. GALs assumed that having performed a duty in court, there is a court record of the duty having been performed. The auditors did not include official court records or transcripts in their review. We have discussed our desire that in future audits court records and transcripts be considered. We also recognize that we need to improve file documentation and management. It has not been our highest priority to document in the attorney file, not because it does not matter, but simply due to the frantic pace at which GALs are functioning. It was thought that DCFS and Court Records, since they are maintained by those two entities, did not need to be retained – especially in our closed files. There has been a problem for us in storing closed files because there is no room left in State Archives and we have had to store files on our own, sometimes requiring the GAL Office to rent storage space. We are hoping to use technology that is available to help us. For example, we may be able to store files electronically. We need to explore this and other options.

Duty 1: Documentation Varied for Independent Investigations

We acknowledge this fact. Some of the reasons for variation, however, are due to the variances in individual cases and fact situations. For example, not all cases contain the same documentation. In some GAL attorney files there are past DCFS reports, police reports or psychological assessments. In other cases those documents are not in the GAL attorney file because they don't exist. Phone notes are often kept in a notebook by the GAL attorney's phone and not in the GAL attorney case file. We need to do a better job of filing ancillary information we have gathered into the GAL attorney case file.

Duty 2: GALs Did Not Meet With all Minors

Duty 3: GALs Did Not Communicate With All Minors

Duty 6: Minors Were Not Always Kept Advised of Their Case Status

These three duties are similar and we believe the deficits, which we acknowledge, stem from the same problems.

Meeting with clients:

Meeting with children is very important. The challenge is being in court many days and then trying to find time to visit and speak with children. If you add up the number of clients we have and subtract the time we are in court, meeting with all of our clients where they are placed is not possible. In addition to more resources, we agree we need to come up with creative solutions. For example, in third district, the GALs assigned to District Court custody cases have huge caseloads (see graphs in this report). They have been forced to prioritize duties such as: 1. GALs send a letter out asking parties to provide in writing all information they think important. 2. The offices schedules an appointment with the custodial parent to bring the child to the GAL office where the GAL meets privately with the child . While visiting with the child in their home might be more ideal, in reality there is no way to do that, given the caseload. But meeting the child is critical – and these GALs meet with nearly every child even given their huge caseloads.

Advising clients:

Some clients are not advised due to the time challenges mentioned above. It should also be noted, however, that how much you “advise” child clients about their case status is a delicate issue. Our training tell us that children cannot always handle of the information about their cases and families. How much they should be told varies, based on age, emotional functioning and degree of abuse or neglect they have experienced. Also GALs make every effort not to say derogatory things to the child about their parent, but sometimes the facts make this a challenge. Sometimes the facts are derogatory (i.e. “your father didn’t pay child support again”, “your mother obtained a protective order because your father threatened her with a gun”, “your parents claim you are lying about the sexual abuse by your father and so we have to take the case to trial”). Figuring out how to convey this type of information to a child is difficult. GALs often work in conjunction with care givers and therapists in determining what should be appropriately told to the child client, again adapting the statutory duty in an appropriate fashion. Being available to answer questions for children regarding their cases is very important – some GALs speak frequently to clients by phone and teenage clients, in particular, can be well served with being allowed frequent phone contact.

Even though the auditors were gracious on not counting it against a GAL that they did not “meet with” the client if it was a baby, it should be noted that ideally one would meet the baby client and observe them in their living situation. Due to high caseloads this is not always possible and often where the client is non-verbal it is not a priority. However, observation of even non-verbal clients can be very informative and we will still seek to make this a priority and find creative ways of accomplishing contact with our infant clients.

Duty 4: GAL Placement Assessments Shown in One-Fourth of Case Files

We believe this conclusion needs additional consideration.

A review of the list of duties of the GAL makes it clear that some of them are not a good fit for an attorney. For example, the GAL is to assess the appropriateness and safety of the child's home environment. The auditors then use the term "home assessment" and were surprised that the GALs did not have a form for this function. Formal kinship studies or home studies are generally performed by licensed child placement agencies. GALs are not trained or licensed to perform that function. It is likely that the purpose of this duty was to direct GALs to look all of the available reports and information to determine whether the selected placement was in the best interest of the child or whether available information was ignored or overlooked in making a placement decision for the child. The auditors suggest a "home evaluation form" – we think that checklists and forms would make the work of the GAL duplicate what DCFS or the licensing agency has already done. We believe the actual reason to have a GAL is for the GAL to review the home study and other available information to conduct an analysis of that information from the perspective of whether it meets the best interests of the child. The real question for the GAL to consider is whether the needs of the child are being adequately addressed in the current placement. The placement, of course, is much more than the physical home. The quality of the placement really hangs on the ability and willingness of the care givers to meet the needs of the individual child. We certainly do not blame the auditors for the confusion.

For example, the auditors were concerned that guardians gave different responses as to whether they were allowed to make an "unannounced home visit" (this is not a statutory duty, although the guardian is charged with meeting with the minor, and to make an assessment of the appropriateness and safety of the minor in each placement). The term "unannounced home visit" comes from Practice Guidelines and Rules for Child Protective Services Workers within the Division of Child and Family Services. In the course of investigating a CPS referral it may be important to determine what the home and child appear like when the parent is not on notice that a DCFS worker is coming to the home. It is not the function of the GAL to investigate CPS referrals or police reports, but rather to obtain those and review them.

Therefore, different responses to a term that does not generally apply to us is understandable. Variables impact the answer for each case. For example, the Supreme Court Rules of Professional Practice prohibit a lawyer from contacting a person who is represented by counsel without counsel's permission. In a given case, did the parent's lawyer agree that the GAL could talk to the parent without the parent's lawyer being present? If not then, in a case where the child lives with the parent, whether the GAL could make an "unannounced home visit" might depend on whether the visit would require speaking with the parent about the case, the age of the child and the child's ability to communicate, whether the parent would allow the GAL into their home, whether the allegations in the case are about the home environment and the general tone in the case in terms of hostility toward the GAL and other safety concerns. The GAL does many things to assess the "appropriateness" and safety of the minor in a placement

that the auditors may not fully appreciate. Talking to relatives, teachers and others about how the child is functioning; also reviewing the past history with regard to DCFS, law enforcement and the courts. If the GAL had a concern about immediate safety of the child, the GAL would not personally go to the home but would contact CPS or law enforcement. The purpose of the visit by the guardian is not to catch anyone by surprise. Generally, a phone call would be made to set up an appointment to meet with the child either at home or at our office. We simply don't speak the social work language of "unannounced home visit."

Clear policy will not resolve all the variables in cases. That is what professionalism and the exercise of independent judgement inherent in lawyering requires.

Duty 5: Many GAL Cases Did Not Involve FCCRB Reviews.

We agree that many of the GAL cases reviewed did not involve FCCRBs. The auditors point out that in 30 of the 35 case files reviewed an FCCRB review was not held. So the five cases resulted in an a 80% "No" score based on non-attendance by the GAL at four FCCRB reviews in the five cases where they occurred. This noncompliance rating is somewhat misleading. The statutory duty of the GAL is to attend all "administrative and foster care citizen review board hearings." As was explained to the auditors, administrative reviews (which were case reviews conducted internally by DCFS) have been replaced by in court reviews. These in court reviews are very helpful in keeping everyone on track and getting modified court orders where necessary. **GALs attend nearly every single court review** – this function takes up a great deal of our time, yet we were not given any credit for attending these reviews because the auditors did not look at anything that was done in court. In reality these reviews accomplish the function that Duty 5 is meant to address.

GALs acknowledge that we have not made attendance at FCCRB's a priority. Relative to court hearings, GALs do not view FCCRB's as a productive use of time, because they duplicate court reviews. Court reviews are more effective because the FCCRB makes recommendations which then require court order to be implemented whereas in an in court review any modifications of service arrangement or orders can be made by the judge. At the time the FCCRB was created, most juvenile court judges did not conduct frequent in court reviews. Today they do. We have felt that the increased willingness and practice of juvenile court judges to conduct frequent in court reviews has positively impacted the system. Research has shown that many things are accomplished right before a court review. Appointments are made, reports finalized, children are visited. Therefore, the review itself often prompts parents and others to make progress. The review also provides a chance to get people back on track quickly and to address treatment goals.

The other barrier to attendance at FCCRB's is that they are not scheduled in coordination with the GAL attorney's calendar, but rather based on availability of DCFS supervisors.

Duty 7: Evidence Shows GALs Reviewed Proposed Service and Treatment Plans

We acknowledge that we view this as a critical part of our jobs and that it is a priority.

Chapter III: High Guardian ad Litem Case Loads Need to be Addressed

We agree that the GAL caseloads have increased significantly and that the caseload has outpaced our resources. We also acknowledge that our documentation of case flow information needs improvement and we are in the process of making that happen. The new juvenile court case management system, CARE, will provide us with the ability to better track cases and to create reports to help us better understand trends and case management activity. We are working with the IT department of the AOC currently in designing specific screens and reports for the GAL attorneys, CASA coordinators and the Director. The system is coming on line in 2005, which has already begun. We are looking forward to using the system, it will be a very valuable tool to assist us.

In addition to better data management and prioritizing functions, we believe that we simply cannot make sufficient changes without additional funding and resources. As to the caseload analysis, we agree that paralegals, secretaries and CASA coordinators can help stretch the number of cases a given attorney can handle, but there is a minimal number of attorneys needed for the in court work. We do not have the minimal number. We believe that a reasonable formula, besides just looking at case numbers, is to allocate 1 GAL attorney per juvenile court judge. That attorney can handle all of the in court work and could be assisted with much of the information gathering and other duties by non-lawyer staff. As to the District Court the formula would be different because many of the cases of a district court judge do not involve subject matter requiring a GAL. We think a formula of one GAL per district court commissioner (in those areas that utilize commissioners) would be adequate. In those areas that do not have court commissioners, a different formula would apply. That formula might be 1 GAL to handle district court matters in a given district, but may need more depending on the volume of cases and number of judges handling those cases. Currently in some of the rural areas we have one GAL handling all of the juvenile and district court assignments. You may see the GAL running courtroom to courtroom or courthouse to courthouse! Priority attention will be given to arriving at a staffing formula which will taken into consideration all of the above.

GAL Duties in Juvenile Court Cases Could be Examined

We agree with this recommendation, as is discussed earlier in this response. In addition, the duties for district court cases needs to be examined at the same time.

GAL Appointment in District Court Cases Could Be Reviewed

We agree with the recommendations about reviewing the extent of GAL involvement in district court cases. We further agree that the list of duties may not need to be the same. We are concerned, however, about some of the conclusions in this section which imply that district

court appointments are less important than those in juvenile court.

Children involved in custody battles where there are allegations of abuse or neglect are some of those most in need of legal representation. Often times, in addition to these children having been abused or neglected, their parents are involving them in a protracted custody dispute. There is a faulty assumption that every time DCFS makes a supported finding that a child is abused or neglected that the agency pursues a plan to address that abuse or neglect. DCFS only pursues juvenile court action where the perpetrator has ongoing access to the child. DCFS does not usually pursue a case where the perpetrator is an “out of home” perpetrator. DCFS generally regards a non-custodial parent as an “out of home perpetrator.” Therefore, the duty of protection is left to the non-abusing parent in cases involving custody or visitation disputes. The abuse may be every bit as severe, but it is viewed as the non-offending parent’s duty to protect the child through court proceedings. This assumes that non-offending parent has the resources and ability to do so. It is critical that these children have a GAL to represent their best interests before the court. We do not view these cases as less important. In fact, the role of the GAL is often more important because DCFS is not involved beyond the CPS investigation. We do agree that these cases impact the resources available to the office and that the district court caseload is on the rise. We think this may be related to case flow from juvenile court to district court.

In conclusion, all recommendations directed to the Office of the Guardian ad Litem will be implemented at the earliest opportunity.

Kristin G. Brewer, Director
Office of the Guardian Ad Litem

cc: Chief Justice Christine Durham
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator

January 31, 2005

Administrative Office of the Courts Response

Members of the Legislative Audit Committee

The Director of the Office of the Guardian ad Litem has provided a very complete and thorough response to the finding and recommendations contained in Chapters I, II, and III of the Performance Audit of the Office of the Guardian ad litem. This supplemental response is intended to address those issues pertaining to the Judicial Council in Chapter IV relating to program oversight. I should note that the timing of the release of this audit and the need to provide a timely response has permitted a review of the findings and recommendations with the Judicial Council's Management Committee, but not the full Council. Accordingly, my response to the recommendations reflect the actions which I will recommend to the Judicial Council at its next scheduled meeting, rather than formal action taken by the Council. I will report any additional response or action taken by the Council at the meeting when this audit is presented to your committee.

The audit findings set out in Chapter IV are not new to the Judicial Council. As the audit reports, the Judicial Council has studied the placement of the Office of the Guardian ad Litem on three separate occasions. The fact that the Council has studied this issue repeatedly shows an appreciation for the same concerns identified by the audit staff. As the Council conducted these reviews, the criteria for considering the issue of placement included: 1) what placement would best ensure independent, professional representation of the child's best interest; 2) what placement would ensure that the program was not politically or resource vulnerable; 3) would a placement be at odds with the requirements of the Adoption and Safe Families Act and the Federal Child Abuse Prevention and Treatment Act, thereby threatening federal funding to the State; and, 4) would a placement require the Office to expend additional funding on administrative support, reducing the ability to maximize the resources going to direct representation services. Each review by the Judicial Council has resulted in the conclusion that, when measured against the above criteria, placement with the courts remained the best of the available options. As reported in the audit, this placement is the norm for state administered programs, with 23 of 29 state programs administered through the judicial branch.

The audit correctly states the supervisory relationship between the Judicial Council and the Office of the Guardian ad Litem. That relationship intentionally has been one of administrative support, in that oversight of the legal representation provided by the Office would clearly constitute a conflict for a council composed primarily of judges. While we strongly believe that the Office of the Guardian ad Litem is providing very professional legal representation on behalf of children, the audit also correctly finds that any state program benefits from policy direction and monitoring. That is also true of the Office of the Guardian ad Litem and we support the recommendation for an interim study of an oversight structure. In addition, we believe such a study should take into consideration the type of criteria noted above to ensure that independent, professional representation is not compromised. We also support the recommendation that, pending such a study, the Judicial Council consider ways to improve the oversight of the Office. The suggestion of a Council-established non-judge oversight board will be recommended to the Judicial Council. Accordingly, we support both recommendations set out in Chapter IV.

Finally, I should note that the purpose clause of the Juvenile Court Act of 1996 provides the foundation for the need of the Judicial Council and individual judges to ensure that the Office of the Guardian ad Litem provides an effective and independent voice in representing the best interests of children. That Act reads in part, “The purpose of the court under this chapter is to ...strive to act in the best interests of the minor in all cases...” It is to this end that any review of the Office of the Guardian ad Litem should be directed.

The opportunity to respond to the report and recommendations is very much appreciated. I would also like to acknowledge the thorough and professional manner in which the staff of the Office of the Legislative Auditor General conducted themselves throughout this review.

Respectfully,

Daniel J. Becker

cc: Chief Justice Christine M. Durham
Chair, Utah Judicial Council
Kristin Brewer
Director, Office of the Guardian ad Litem

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