

May, 3, 1994

Senator Delpha A. Baird
Senator Eldon A. Money
Utah State Senate
State Capitol Building
Salt Lake City, UT 84114

Subject: **Guardian Ad Litem** (Report #94-02)

Dear Senators:

As you requested, my staff has completed their review of the state's Guardian Ad Litem (GAL) program. Utah's program can be improved if GALs uniformly follow procedures required by recent legislation and national standards. Recruiting more citizen volunteers to help GALs is also needed. As you recall, as part of our recent audit of Utah's Child Welfare System (report 93-06) we were asked to review the effectiveness of the GAL program. During that audit, GALs refused to allow us to review their records, citing attorney-client privilege as the reason. An ensuing legislative subpoena was "quashed" in court when the judge agreed with the attorney-client privilege argument.

However, while we were unable to get access to records, GALs did agree to discuss the program, share statistical information and discuss some cases with us. Some GALs met with us and discussed specific foster care cases reviewed during the audit of Utah's Child Welfare System. Time constraints during that audit prevented us from talking with additional GALs. Since that time, we have reviewed the program further because we wanted to provide the Legislature with as much information addressing their concerns as possible. We have subsequently interviewed additional GALs, conducted more in-depth discussions of previously interviewed GALs and further evaluated information given us by the GALs and the Administrative Office of the Courts (AOC). Since we were denied access to the GALs' records we were unable to verify what they told us during interviews. The information in this report is based on discussions with GALs, discussions with staff of the AOC, statistical information provided by the GALs to the AOC, and information from DFS case files. We

were unable to verify the statistical information we were given because we could not trace the summary data to individual case files. We also conducted a literature review of recent articles in national periodicals.

Though we have identified some concerns with the program which are addressed in this letter, we believe the guardians perform a very valuable and important role in the state's child welfare system. Juvenile Court Judges interviewed generally praised the guardian's work given their limited funding and limited number of volunteers in the past. Also, during our audit of the state's child welfare system, we found instances where the guardians took a very active role in protecting the child. For example, in the DFS case files there are notations indicating that some guardians filed motions to permanently deprive parents of their parental rights when the parents proved incapable of parenting. Also, interviews with caseworkers showed that some guardians were actively involved in permanency planning decisions throughout the course of the child being in DFS' custody.

During our review, the Legislature passed House Bill 396 which addresses many of our concerns. This statute increases funding for the program and requires GALs to adhere to many Court Appointed Special Advocate (CASA) standards. These standards have been developed by the National Court Appointed Special Advocate Association which is a nationally recognized professional association consisting of professionals involved in child advocacy including judges, GALs, citizen volunteers, and GAL coordinators. These standards are recognized nationally by child advocacy experts and are used by many GAL programs across the country. Because many of our concerns were addressed by recent legislation, we limited fieldwork in this area.

Following CASA standards as outlined in the new statute and other recommendations by experts will help GALs better represent the "best interests" of the child and provide more consistency statewide. The GAL is an attorney hired by the court to represent the best interests of the child. This attorney, often assisted by volunteers, is to make certain the child is protected from further abuse or neglect, is receiving needed services, and will receive a permanent home as soon as possible. The recently passed House Bill 396 and CASA standards are designed to help the GAL represent the child. These standards require the GALs to have regular in-person contact with the child; assess the appropriateness and safety of the child's environment in each placement; attend all hearings and reviews; work actively with each case until released by the court; and investigate independently each case by interviewing the child, foster parents, case worker, and other parties and by reviewing DFS and court records. Currently, these recommendations are not followed uniformly among all GALs. Several GALs said they do not have time to visit foster children in the foster home because of high case loads. Several GALs report they do not attend administrative reviews because they are not always told when the reviews are scheduled; however, DFS reports they notify the GALs. Other GALs report that on occasion they have problems obtaining access to DFS records. Finally, citing a high case load, one GAL closes some cases before being released by the court.

Recent legislation and AOC action has addressed these concerns. The state's GAL coordinator reports that legislation passed during the 1994 session increased funding over three-fold from about \$400,000 in FY1994 to over \$1.4 million for FY1995. Besides increasing funding, legislation also further clarified duties by requiring GALs to be present at shelter hearings and administrative reviews. AOC staff report they are developing

policies and additional training to implement this legislation. The AOC is also in the process of recruiting and training volunteers statewide using CASA standards. This legislation and action by AOC has either addressed or is in the process of addressing most of our concerns. However, additional procedures are needed to address some areas such as making sure children are assigned a GAL when their case is transferred to another juvenile court district. In addition, some practices such as following nationally recognized permanency priorities and working cases until released by the court need further emphasis.

History of the Guardian Ad Litem

The GAL program was established by federal legislation in 1974 as a result of concerns about the adequacy of legal representation of abused or neglect children. Legislation required that a GAL be appointed to represent every case involving an abused or neglected child 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, the National Court Appointed Special Advocate Association's CASA standards, and studies by researchers in the field have further elaborated the GAL's role. For instance, CASA standards indicate that the GAL should meet periodically with the child, attend all court hearings, and act as an independent fact gatherer.

To assist the GAL in accomplishing the duties outlined by CASA standards and federal legislation, many states use volunteers. Using volunteers 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.

Utah's GAL program varies among different judicial districts within Utah. For instance, Salt Lake and Ogden districts have extensive volunteer programs. Some other districts at the time of our review did not have volunteers. As mentioned below, we discuss several areas where the program could be strengthened. The AOC acknowledges our concerns and has taken steps to improve the GAL program. The AOC has begun an extensive recruiting and training program for volunteers. As mentioned previously, state legislation has also recently been passed requiring more complete adherence to CASA standards and providing more funding.

Following Standards Will Improve the Program

Our audit of the state's Child Welfare System (Report 93-06) as well as this review of Utah's GAL program identified several areas where GALs are not following CASA and other standards recommended by experts identified from our literature review. Standards have not been followed because GALs report they are either unaware of the standards or lack the time to meet them. For instance, standards recommend that the GAL visit with each child periodically. Some GALs said they want to meet with the child(ren) more often but lack the time. Others report they are unsure about how often each child should be visited and what those visits should entail. However, the state's GAL coordinator (AOC staff) said

that she has informed the GALs either through memo or formal training of the GAL's responsibilities. GALs need to follow legislative requirements and standards recommended by CASA and other experts. To make certain CASA standards and legislative requirements are being followed, the state's GAL coordinator needs to collect performance information on individual cases and hold the GALs responsible for fulfilling these requirements. In addition, more training and policy are needed and the state's GAL coordinator, with the assistance of the local GAL, needs to increase the number of volunteers in some districts. The state's GAL coordinator is already increasing the training and volunteer recruitment programs and plans to require all GALs to submit performance data beginning in July, 1994.

Some GALs Are Not Following Standards

Discussions with GALs reveal that some GALs are not periodically visiting and interviewing each child in his/her placement, some GALs are not attending all administrative reviews, one GAL closes cases before being released by the court, and several GALs are not given ready access to DFS records. Also, we found instances where a new GAL was not assigned when a case was transferred to a new juvenile court district.

CASA and experts identified from a literature review, indicate that interviews by the GAL with the child, parents, social workers and others knowledgeable about the child's situation are crucial in getting a clear picture of the child's life. The GAL or volunteer "should have regular in-person contact with the child." Also, experts indicate that the GAL should observe the child in each placement to assess the appropriateness and safety of the child's environment. Several GALs said they are unable to meet with children periodically. For instance, one GAL said he only has time to conduct interviews with the child and foster parents over the phone. Another said he only has time to visit with the child when first assigned or when appearing in court. Several GALs said they would like to visit each child more often but do not have time to do so. Two GALs said they spend most of their time preparing for and attending court hearings leaving little, if any, time available for personal visits. Consequently, visits usually only occur at court hearings or when a crisis occurs. CASA and other experts stress the importance of regular visits. Increased training to review the importance of in-person visits and recruiting more volunteers to assist the GALs are needed to ensure regular in-person visits occur. In addition, the state's GAL coordinator needs to collect case-specific data which logs the visits made by the GAL and volunteers. As discussed above, recent legislation provided more funding and the state's GAL coordinator is currently recruiting more volunteers, increasing training, and requiring GALs to submit performance data on individual cases.

CASA and other literature stress the importance of GALs attending hearings and reviews. State legislation passed during 1994 requires GALs to attend administrative reviews. Prior to this legislation, the state's GAL coordinator reports she explicitly stated in memo to the GALs statewide the importance of attending the administrative reviews. Several GALs said they do not always attend administrative reviews. Administrative reviews are held every six months by DFS and consist of a panel of three to five members, usually made up of DFS workers. Reviews are important because they assess the progress being made to reunite the child(ren) with parents, and recommend what direction the case should take over the next six months. Ideally, the GAL, parents, foster parents, the child

when older, therapist, and other interested parties along with the caseworker should attend reviews. In many foster care cases reviewed in our audit of Utah's Child Welfare System we found that the GAL was not always attending administrative reviews. Some GALs said that DFS was not always inviting them to reviews; in other cases, we found notation in the case file that when invited, GALs often did not attend. We were unable to verify whether DFS was sending the GALs notification in all cases or whether the GALs were misplacing the notice. However, several GALs said that notification of administrative reviews by DFS has improved in recent months and most GALs are now attending reviews. As noted above, legislation now requires the GAL to attend reviews. Also, the state's GAL coordinator is planning to require the GALs in July 1994 to report their attendance at administrative hearings by specific case.

CASA and other experts stress the importance of the GAL remaining actively involved in a case until released by the court. To reduce work load, one GAL puts into inactive status some cases where a child is returned home even though the court has not formally released the GAL. The GAL explained that in order to be placed in inactive status the child must not only be living at home but there must be a support system available to monitor the case. In these cases the court and DFS are still actively involved because custody has not been returned to the parents. This GAL said he relies on the court or DFS to inform him of subsequent problems. Currently, the juvenile court judge formally assigns the GAL to a case. The GAL is assigned to the case until the court terminates state involvement. Though the GALs typically remain involved until state involvement formally ends, as explained above we identified one GAL who closes some cases when a child is returned home though the court has not formally released the GAL from service. We identified two cases during our Child Welfare Audit from this GAL's district where the child was returned home, the GAL closed the case, and shortly afterwards the children were again removed from the home. In one case, police removed two small children from the home when they were left by the mother with inappropriate caretakers. The GAL was unaware of this incident. We believe GALs should follow CASA standards and actively work cases until formally released by the juvenile court.

CASA standards and literature from other experts indicate that GALs should have access to all pertinent records. Several GALs said they have had problems getting copies of DFS records. From our discussions this appears to be an isolated problem involving a few caseworkers who do not understand that GALs are entitled to case files and records. DFS management should ensure that GALs receive all the information they need.

As discussed above, federal law, CASA and other experts suggest a GAL should remain actively involved in a case until released by the court. Logically, this would suggest a new GAL be assigned if the case is transferred to another judicial district. There are no formal procedures ensuring a new GAL is assigned when a child's case is transferred to a different judicial district. Consequently, a child transferred to another district may not get a new GAL. For instance, one case reviewed during our audit of Utah's Child Welfare System involved an 11-year-old boy who was placed in foster care. Initially, a GAL was assigned to the case. Some months later court district reorganization placed this case in another district. The GAL in the new district has no record of this case. Apparently, when this case changed districts the child was not assigned a GAL. As a result, a GAL was not involved in this case to represent the child's best interests. This child stayed in foster care for over two years while the caseworker waited for the foster parents to decide whether they wanted to adopt

the child or not. Eventually the foster parents decided they did not want the child in their home and the child was transferred to a new foster home. Perhaps if a GAL had been actively involved in this case throughout the time in foster care, the child could have been adopted and a permanent home found much sooner. Currently, there is no formal process to ensure that GALs are assigned to transferred cases. The transferring court releases the GAL, which is documented in the court file. The court file is transferred to the new district. However, unless the judge in the new district reviews the file, a GAL may not be assigned. GALs said when a case is transferred to another district they send the file to the GAL in the new district. But this does not ensure that the GAL in the new district is assigned. The above example shows at least one case that was not assigned a GAL. Staff at the AOC agree this is a problem and plan on preparing formal policies addressing this issue.

To help the GALs adhere to legislation and CASA standards, we propose some procedural changes, increased training, and increased use of volunteers. The following sections describe our proposals in each area.

Collecting Performance Data, Reinforcing Policy, and Developing New Policy are Needed

The state's GAL coordinator needs to collect performance data on individual cases to ensure that the GALs meet the standards. Also, reinforcing current policy on access to records and developing new policy on transferring cases will help ensure that GALs get all needed information and will help ensure that clients transferred to another district get a GAL assigned.

The state's GAL coordinator needs to collect performance data from the GALs to determine how well the GALs are meeting statutory and contractual requirements to visit the child and attend administrative hearings. The recently passed legislation requires the GALs or volunteer to visit in-person with the child and attend administrative reviews. The contracts currently state that the guardian is to visit with the child regularly and attend administrative reviews. As previously noted, some guardians are not meeting these requirements. Though there is a need for training and more volunteers as explained below, the GALs must be accountable for performing their contractual obligations. The state's GAL coordinator recognizes this need and is planning to require the GALs to report monthly their visits with the child and their attendance at administrative reviews by individual case. With this information, the AOC will be able to hold the GAL at least somewhat accountable for visiting the child and attending administrative reviews on each case. If performance data show the contracted GAL is not performing as required, the AOC can take whatever disciplinary or other action is appropriate.

In addition to collecting performance data, the AOC needs to prepare policy on transferring cases between districts. The AOC does not have a formal policy indicating what happens when a case is transferred to another district. Currently, as explained above, when a case is transferred the juvenile court judge having jurisdiction over the case signs a document transferring jurisdiction to another judge. Also, the GALs interviewed said they notify the GAL in the new district of the transfer. However, as the sample of cases reviewed in our audit of Utah's Child Welfare System showed, occasionally a child doesn't get assigned a guardian. The AOC needs to prepare a formal policy on how cases are to be

transferred between districts.

Finally, DFS policy states that GALs should have access to all DFS records, but occasionally GALs report they have trouble getting records in several districts. They report that occasionally they have had to threaten to subpoena records from a few caseworkers in order to obtain these records. DFS management in these districts told us they have told the workers that GALs are entitled to all case records but a few caseworkers still may not understand. We recommend that DFS management reiterate once again that GALs are entitled to copies of all case records. If a caseworker will not provide the records after this notification, the GAL should report this problem to DFS management and DFS should take whatever disciplinary action is warranted.

More Training Will Help

Besides developing new policy and collecting performance information, increasing the amount of training will help the GALs better accomplish their mission. Some interviewed guardians were unsure of their role and of all options available to help the child. More training will help. CASA and other experts have emphasized the importance of initial and ongoing training for GALs and citizen volunteers. According to experts some of the topics that should be included in a training program are: the role and responsibilities of the GAL; mediation and negotiation techniques; state statutes pertaining to child abuse and neglect; the operation of the court system including the nature of court hearings and understanding of the persons involved and their roles; the roles of social services agencies and law enforcement; and the developmental needs of children. We believe that increased training programs for GALs and volunteers based on CASA standards are needed.

Some GALs said they did not understand their responsibilities when they were first hired. They were unsure of their role, other than to "represent the best interests of the child." They felt that bid documents and contract requirements do not clearly indicate what was expected. One GAL said he learned his role "more by hit and miss" rather than formal training. Our discussions with GALs indicate they are particularly unsure about what their role is in matters outside the area of representing the child in court. For instance, some GALs are unsure whether they are required to personally visit a child or whether a telephone interview will suffice. They are unsure whether they should contact the child monthly or whether less frequent contacts will suffice. Prior to 1994, guardians report there has been very little formal training. However, the AOC recently increased the training program both for GALs and the volunteers. GALs interviewed said the recent training program is very helpful and they would like the training to be expanded. The AOC is in the process of developing even more training for GALs based on CASA standards and the legislation. CASA standards should be used in training GALs and their volunteers. Training should clarify GAL's duties and focus, not only on legal but also on social services issues.

We identified several cases from our audit of the state's Child Welfare System where further training on how the GAL can protect the child's best interest in establishing permanency may have helped. For instance, in one case DFS set a goal of long-term foster care for two young children without trying adoption first. Several years later when the children became teenagers the foster parents had difficulty with the children and the children had to be moved. Consequently, a new placement home had to be located for these children

after several years in foster care. Public Law 96-272, the caseworker manual and experts in the field indicate that the priority for placements in most instances should be:

- 1) return home to biological parents
- 2) placement with a relative
- 3) adoption
- 4) long-term foster care
- 5) independent living

DFS staff said they did not pursue adoption because the children were mixed race, making them difficult to adopt, and the children were in a good foster home. However, we believe that adoption should have been attempted before deciding on long-term foster care. The GAL attorney now on this case said the case file is unclear as to why but it appears as though the GAL agreed with DFS' decision. GALs in the past had not been formally trained in permanency priorities. This will be included in the training program being developed now by the AOC. We believe the GALs need to be trained on making sure that DFS' case-workers follow the placement option priority of return home, relative placement and adoption before permanent foster care. To ensure permanency priorities and procedures are followed, the GALs need to be trained in generally accepted permanency priorities.

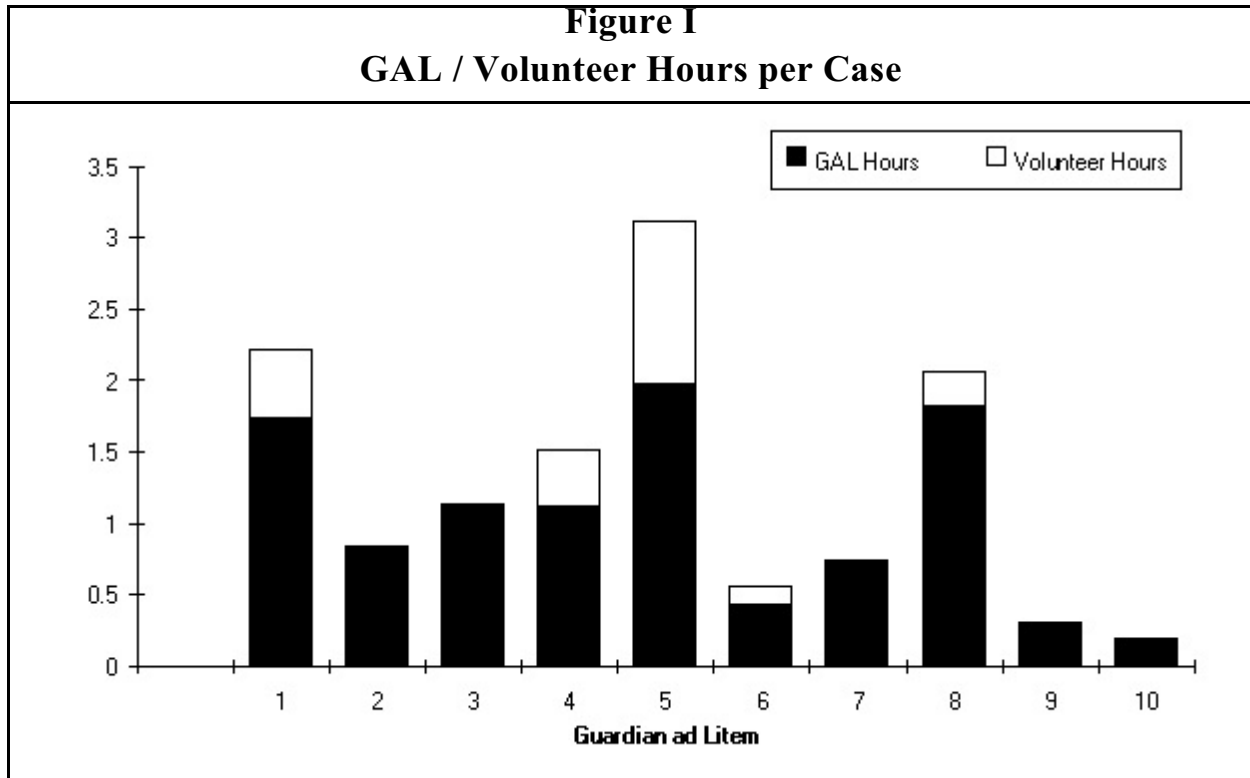
More GALs and Volunteers Will Help

While GALs need additional training in some areas as discussed above, they also report they need more resources. Some GAL attorneys report they do not have enough time to satisfy all CASA standards. Also, literature reviewed stresses the importance of using citizen volunteers to assist GALs. In fact, using volunteers to assist the GAL attorney is considered by one study to be far more effective than using the GAL attorney alone. The need for more GALs and volunteers is being addressed through increased funding and by recruiting more volunteers.

GALs said they generally do not have enough time to cover all of their cases adequately. They indicate that more funding is needed to provide sufficient coverage on each case. Review of GAL reports submitted to the AOC show that in 1993 the number of children assigned a GAL increased statewide by 37 percent. Recent legislation as discussed earlier has addressed this increase by significantly increasing funding. As discussed above, during the 1994 session the Legislature increased the funding for the GAL program nearly three-fold, from \$394,000 in FY 1994 to about \$1,200,000 in FY 1995. This funding increase should increase the amount of attorney time spent per case.

In addition to more funding, using more volunteers will help increase the amount of time devoted per case. Monthly statistical reports submitted by the GALs show that using more volunteers significantly increases the amount of time spent per case. Figure I below shows the average amount of time spent per case during 1993. Of the 10 GALs reporting, five are using volunteers and five are not. As shown, GAL number five is able to significantly increase the average amount of time spent per case by using volunteers. Those GALs not using volunteers said they want to use volunteers and those GALs now using volunteers said they want more volunteers. Volunteers visit the child periodically, attend hearings and in other ways assist in representing the child's best interest. In our opinion, using volunteers is

a good way to increase the number of contacts with the child.



The AOC in recent months has begun actively to recruit and train volunteers. For instance, in the first judicial district about 30 volunteers were recently recruited and trained, and in the fourth district about 40 volunteers were similarly recruited and trained. GALs in these districts believe the increased number of volunteers will greatly assist in case investigation and monitoring. AOC staff plan to recruit volunteers in all districts annually. The AOC has also developed a training program for volunteers based on CASA standards and is considering hiring a state volunteer coordinator to assist with the volunteer program. We believe increased use of trained volunteers will help improve the GAL program.

Recommendations:

1. We recommend that the Administrative Office of the Courts:
 - a. require either the GAL or volunteer to visit each child regularly and report these visits on a case-by-case basis, and
 - b. require that GALs attend administrative reviews as required by recent legislation and report these visits on a case-by-case basis.
2. We recommend that DFS management ensure that GALs have access to case file records.
3. We recommend that the Administrative Office of the Courts develop procedures that:
 - a. require GALs to actively work cases until state involvement formally ends, and

- b. ensure that cases transferred between judicial districts are assigned a GAL in the new district and that the GAL be provided with a copy of the prior GAL's case file.
4. We recommend that the Administrative Office of the Courts train GALs on DFS' desired permanency priority which is in order of priority:
 - a. return home to the biological parents,
 - b. placement with a relative,
 - c. adoption,
 - d. long-term foster care,
 - e. and independent living.

We hope this letter provides you with the information you need on this issue. If you have any questions or need additional information, please let me know.

Sincerely,

Wayne L. Welsh
Auditor General

WLW:LSP/lm