

ISSUES RELATING TO GUARDIANS AD LITEM

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FOREWORD

This report has been prepared in response to Senate Concurrent Resolution No. 100, S.D. 1, H.D. 1, which requests the Legislative Reference Bureau (Bureau) to conduct a study of the practices that exist in Hawaii and on the mainland with respect to guardian ad litem and appointed counsel in child protective cases to determine whether a more effective and less costly model can be identified. The Resolution also requested the Bureau to include an analysis of the fees paid by the Family Court to guardians ad litem and appointed counsel and of the adequacy of the fees in view of the duties of the guardians ad litem and counsel.

The Bureau would like to thank all those in the Judiciary who provided assistance and information for this study. In particular, the Bureau extends its appreciation to the Honorable Francis Q.F. Wong, Senior Judge of the Family Court of the First Circuit, Larry Coldiron, Director of Policy and Planning, Kenneth Ling, Chief Court Administrator of the First Circuit Court, and to the members of their staff. The Bureau also expresses its deep appreciation to the many individuals around the country who provided information on the practices of guardians ad litem and appointed counsel in their jurisdictions.

Ken H. Takayama
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FACT SHEET

Highlights

Federal law requires states to appoint an individual to represent the interest of children involved in judicial proceedings regarding abuse and neglect, as a prerequisite to receiving funds for child abuse and neglect prevention and treatment. However, the law fails to specify how states are to provide such representation. In the nearly thirty years since this law was enacted, the representation of children has developed into a highly specialized area that involves increasingly sophisticated and complex laws and underlying interdisciplinary factors. The absence of standards of practice or guidelines has been commonly blamed as a major cause of substandard or ineffective representation of children. Many states are striving to improve the representation of children in abuse and neglect cases, but are struggling with how to provide quality representation in a cost-effective manner. Considerable variation in how guardian ad litem services are provided exists among the states and even within some states. While general models exist, most jurisdictions appear to have adapted such models to their own unique circumstances and needs. The end result is that there are innumerable variations on any particular model.

Frequently Asked Questions

1. Is there any one model of providing guardian ad litem services that is clearly superior to others?

There is no universal agreement on the "right" or "best" way to provide guardian ad litem services. However, there are several factors that appear important to ensuring quality guardian ad litem representation. These are adequate compensation of guardians ad litem: mandatory, comprehensive training programs; and a system that allows for flexible use of resources.

2. Are there other steps that can be taken to improve the cost effectiveness of guardian ad litem services and court-appointed counsel in abuse and neglect cases?

Several states have established a separate state agency, similar to the Office of the Public Defender, that is charged with ensuring the provision of quality guardian ad litem services and appointed counsel in abuse and neglect cases in a cost effective manner. Furthermore, a requirement that the court make a determination of indigency would help to ensure counsel is appointed only for indigent parents in abuse and neglect cases. Finally, changes in the collection of data to capture information related to guardian ad litem services and appointed counsel in abuse and neglect cases is a necessary prerequisite to any analysis of the cost effectiveness of Hawaii's present system of providing guardian ad litem services.

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Chapter 1

INTRODUCTION

Senate Concurrent Resolution No. 100, S.D. 1, H.D. 1, requested the Legislative Reference Bureau (Bureau) to conduct a study of the practices that exist in Hawaii and on the mainland with respect to guardian ad litem and appointed counsel in child protective cases "to determine if a more effective and less costly model can be identified for both family court compensation system for guardians ad litem and the attorneys." (See Appendix A) The Resolution also requested the Bureau to include "an analysis of the fees paid by the Family Court to guardians ad litem and counsel, the adequacy of those fees in view of the duties of the guardians ad litem and counsel."

The Bureau encountered difficulties in obtaining comprehensive information on practices concerning guardian ad litem and appointed counsel in child protective cases in other jurisdictions. Although Bureau staff consulted state statutes, these provided little concrete information regarding actual practices concerning or compensation of guardian ad litem and appointed counsel. Relying upon information from various national organizations, staff attempted to contact individuals in targeted states for in-depth information. This effort was more successful in some jurisdictions than others. Obstacles encountered included: difficulty locating a knowledgeable or appropriate contact person, failure of the contact person to follow-through with sending promised materials, lack of written documents relating to actual practices in a jurisdiction,¹ and wide variations in practices between judicial districts or circuits within a state.² Accordingly, focusing on those jurisdictions from which the Bureau received the most credible and useful information, the Bureau has chosen to describe the practices in jurisdictions that are representative of others around the country that seem to present a viable alternative to present practices in Hawaii. These descriptive narratives are presented in Chapter 2, following a more generalized discussion of guardian ad litem services. Chapter 3 contains a discussion of practices in Hawaii. Chapter 4 presents the summary and recommendations.

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1. In these instances, much of the information obtained was anecdotal.
 2. In such cases, the information obtained pertained only to a particular judicial district and not to the entire state.

Chapter 2

GUARDIAN AD LITEM SERVICES IN OTHER JURISDICTIONS

Part I: Provision of Guardian Ad Litem Services Generally

As a prerequisite to receiving federal funds for child abuse and neglect prevention and treatment, the federal Child Abuse Prevention and Treatment Act of 1974 (CAPTA) required states to appoint an individual to represent the interests of children involved in judicial proceedings regarding child abuse and neglect.¹ Although CAPTA envisions that the child's representative will obtain, first-hand, a clear understanding of the situation and needs of the child and make recommendations to the court concerning the interests of the child, the Act does not provide any specifics concerning how states are to provide such representation, who is to serve as representative, nor what are the representative's expected qualifications, duties, and responsibilities.²

As a consequence, various models have developed throughout the states to provide children with representation, and in many cases, practices even vary within individual states. The term "guardian ad litem" (GAL) is used in the majority of jurisdictions to refer to the child's representative, and thus will be used herein, unless the context requires otherwise.³ In some jurisdictions, the GAL is required to be an attorney; in others, the individual may be trained in some other discipline or may be a trained volunteer, often called a court appointed special advocate. In a few jurisdictions, the court appoints both an attorney and a special advocate.

The roles and responsibilities of GALs are to some extent a function of the model of representation employed by a state and therefore vary from jurisdiction to jurisdiction.⁴ Furthermore, state statutes or court rules often provide little guidance on the specific duties expected. As one authority explains:

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1. Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 4 (1974) (codified at 42 USC §§5105-5107; see *id.* at 5106a(b)).
 2. For discussion of CAPTA and its legislative history, see generally R. Hertz, "Guardians Ad Litem in Child Abuse and Neglect Proceedings: Clarifying the Roles to Improve Effectiveness," 27 Fam. L. Q. 327-347 (Fall 1993).
 3. For example, other designations include but are not limited to law guardians, attorney advocates, and attorneys ad litem.
 4. See generally Child Abuse and Neglect Cases: Representation as a Critical Component of Effective Practice, National Council of Juvenile and Family Court Judges, Technical Assistance Bulletin at 58-64 & 76-77 [hereafter NCJFCJ Bulletin].

Unlike more traditional areas of practice where the model of representation and the lawyer code of conduct are essentially uniform from state to state, the practice of law for children has no commonly accepted uniform model or code, and many states provide inadequate guidance for attorneys doing this work. This is the case in part because the practice of law for children is a unique and relatively recent development, and because the evolution has occurred on a state by state basis.⁵

In the nearly thirty years since CAPTA, the representation of children has developed into a highly specialized area that involves increasingly sophisticated and complex laws and underlying interdisciplinary factors.⁶ There appears to be general agreement that child advocacy entails consideration of issues concerning: child and adolescent development from a psychological and legal perspective; communication,⁷ consultation and confidentiality; and the parent-child relationship.⁸ According to one authority, a GAL, at a minimum, should act as: an independent investigator of the facts related to the abuse or neglect; an advocate of the child's best interests; and a case monitor.⁹ Other recommended responsibilities include identification of community resources and services for the child and mediation among the parties to facilitate cooperative resolutions.¹⁰

The absence of practice standards or guidelines for attorneys representing children in child protection proceedings was commonly blamed as "a major cause of substandard and ineffective legal representation of children."¹¹ In response, a number of legal organizations, child advocates, and others have attempted to provide guidance by developing practice standards and guidelines.¹² For example, in 1996, the American Bar Association House of Delegates

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5. National Association of Counsel for Children, NACC Recommendations for Representation of Children in Abuse and Neglect Cases, Denver 2001 at Executive Summary [hereafter NACC Recommendations].
 6. The old view of juvenile and family courts as a lesser "kiddie court" is no longer valid. Adoption 2002: The President's Initiative on Adoption and Foster Care, Guidelines for Public Policy and State Legislation Governing Permanence for Children, U.S. Department of Health Human Services ACF ACYF Children's Bureau, 1999.
 7. For example, "[u]nderstanding of emotional, motor, and cognitive development is essential for effective communication," citing M. Ventrell, "Childlaw Symposium Issue: Essay; Rights and duties: An Overview of the Attorney-Child Client Relationship," 26 Loy. U. Chi. L.J. 259, 272-73 (1995).
 8. M. Drews & P. Halprin, "Determining the Effective Representation of a Child in Our Legal System," 40 Fam. Ct. Rev. 383, 385 (no. 3 July 2002) [hereafter Drews] (citations omitted).
 9. See U.S. Department of Health and Human Services, Final Report on the Validation and Effectiveness of Legal Representation Through Guardian Ad Litem (Washington D.C., 1994).
 10. See e.g., ABA Center on Children and the Law, Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (Washington D.C., 1996), available online at <<http://www.abanet.org/child>>; ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, (NACC Revised Version) NACC Children's Law Manual Series, 1999 Ed., available online at <<http://www.naccchildlaw.org>>.
 11. NACC Recommendations, *supra* note 5, at Executive Summary.
 12. See e.g., National Advisory Committee for Juvenile Justice and Delinquency Prevention Standards for the Administration of Juvenile Justice (1980); National Association of Counsel for Children Guidelines for

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adopted Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, which address the specific roles and responsibilities of attorneys to represent children and include the following: duties, responsibilities, training, compensation, and caseload.¹³ Furthermore, the Guidelines for Public Policy and State Legislation Governing Permanence for Children (hereafter Guidelines), which were developed in response to the Adoption 2002 Initiative, urge that individual states establish, either by statute or court rule, a set of practice standards for attorneys representing children.¹⁴ A number of states have adopted rules or guidelines to provide further guidance on these issues,¹⁵ including Arkansas,¹⁶ California,¹⁷ Colorado,¹⁸ Kansas,¹⁹ Kentucky,²⁰ Michigan,²¹ North Carolina,²² Tennessee,²³ and West Virginia.²⁴

Guardians ad Litem in Abuse and Neglect Cases (1987); American Academy of Matrimonial Lawyers, *Representing Children: Standards for Attorneys and Guardians ad Litem in Custody or Visitation Proceedings* (1995); American Bar Association, *Standards of Practice for Lawyers Representing a Child in Abuse and Neglect Cases* (1996). See also Recommendations of the Conference on Ethical Issues in the Legal Representation of Children, 64 *Fordham L.Rev.* 1301 (1996). For more in-depth discussion of such standards, see Ann Haralambie, *The Child's Attorney* (1993).

13. ABA Center on Children and the Law, *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (Washington D.C., 1996), available online at <<http://www.abanet.org/child>>. The ABA Standards are merely advisory.
14. Adoption 2002: The President's Initiative on Adoption and Foster Care, Guidelines for Public Policy and State Legislation Governing Permanence for Children, U.S. Department of Health Human Services ACF ACYF Children's Bureau, 1999 [hereafter Guidelines]. Among the Proposed Action Steps recommended in Adoption 2002, former President Clinton's Initiative on Adoption and Foster Care, was that of developing model guidelines for State legislation to advance the goal of giving every child in our nation's public child welfare system a safe and permanent home. The Children's Bureau within the Department of Health and Human Services, together with the Department of Justice, convened an interdisciplinary Expert Work Group to address these issues. The Guidelines are a technical assistance document intended to assist the States in reviewing their own laws and developing statutes and policies that reflect the best practices in child welfare today. The Guidelines also address representation of parents or guardians.
15. See R. Shepherd & S England, "I Know the Child is My Client But Who Am I?" 64 *Fordham L. Rev.* 1917, at 1940-41 (other states include New York and New Hampshire).
16. Ark. Sup. Ct. Admin. Order No. 15.
17. Calif. Rules of Ct., Rule 1438.
18. Colo. Sup. Ct. Directive 96-02.
19. Kan. Sup. Ct. Admin. Order 100, April 19, 1995.
20. Kentucky Court Improvement Project's Community Action Work Group, "Best Practice Methods and Essential Elements for Guardians Ad Litem."
21. Mich. Compiled Laws §712A.17c, as amended, December 1998.
22. N. C. Admin. Offc. Ctr. GAL Services Div., Guidelines For Best Practice.
23. Tenn. S. Ct. Rules 40: Guidelines for Guardians Ad Litem for Children in Juvenile Court Neglect, Abuse and Dependency Proceedings.

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According to recent academic literature, one of the major issues debated by those interested in the area of representation or advocacy for children is the proper role and responsibilities of a GAL. This issue is "compounded by the ongoing debate" within the legal community concerning whether it is appropriate for attorneys to assume the role of a GAL when representing children.²⁵ As noted by the National Association of Counsel for Children (NACC), the "significant disagreement as to whether representation for children should take a traditional client directed ('expressed wishes'), or an advocate directed ('best interests') form," has made adopting a model of representation "difficult."²⁶

The ABA Standards acknowledge that the "chief distinguishing factor" between these two roles is "the manner and method to be followed in determining the legal position to be advocated."²⁷ The Standards are based upon the premise that "[a]ll children subject to court proceedings involving allegations of child abuse and neglect should have legal representation as long as the court's jurisdiction continues."²⁸ Accordingly, the Standards express a clear preference for an attorney to be appointed as the child's attorney, not as a guardian ad litem,²⁹ to clarify that the attorney's duty is the protection of a child-client's legal rights and to ensure that the attorney owes the "same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client."³⁰ However, where an attorney is appointed as a "guardian ad litem" for the minor, the Standards stipulate that the guardian ad litem is "an officer of the court appointed to protect the child's interests without being bound by the child's expressed preferences."³¹

24. Sup. Ct. Order in *In Re Jeffrey R.L.*, 435 S.E. 2d 162, 178-179, (1993). For a thorough compilation of laws governing representation of children in child protection proceedings, see Peters, *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions*, Lexis Law Publishing, Charlottesville, Virginia, 1997, Appendix B, at 255-479.

25. *Shepherd*, *supra* note 15 at 1933 & n. 105.

26. NACC Recommendations, *supra* note 5, at Executive Summary.

27. ABA Standards A-2.

28. ABA Standards, Preface. See also NCJFCJ Bulletin at 3 ("it is vital that all parties in child abuse and neglect cases have adequate access to competent representation so that judges can make informed decisions").

29. See ABA Standards A-2. The Commentary states: "In some jurisdictions the lawyer may be appointed as guardian ad litem. These Standards, however, express a clear preference for the appointment as the "child's attorney." The Standards acknowledge that an attorney "may accept appointment in the dual capacity of a 'lawyer/guardian ad litem'" for the minor, but still owes the primary duty to protect the child-client's legal rights. See ABA Standards, Preface.

30. See ABA Standards A-1.

31. ABA Standards A-2. The Commentary states in pertinent part:

A lawyer appointed as guardian ad litem is almost inevitably expected to perform legal functions on behalf of the child. Where the local law permits, the lawyer is expected to act in the dual role

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The child's attorney, on the other hand, "should represent the child's expressed preferences and follow the child's direction throughout the course of litigation."³² The Standards encourage the child's attorney to request the appointment of a guardian ad litem in situations in which a child cannot express a preference and the attorney has made a good faith effort to determine the child's wishes and advocate accordingly.³³ Finally, if the attorney "determines that the child's expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer's opinion of what would be in the child's interests)," the Standards authorize the attorney to request the court to appoint a separate guardian ad litem to advocate the child's best interests, without being bound by the child's direction; and permit the attorney to continue to represent the child's expressed preference, "unless the child's position is prohibited by law or without any factual foundation."³⁴

The NACC endorsed the ABA Standards in 1997, but with a reservation concerning this client-directed attorney position of Standard B-4.³⁵ Members of the NACC were concerned that the client-directed attorney position "gave too much autonomy" to the young minor client and thus was "unrealistic."³⁶ The NACC Revised Version of the ABA Standards attempts to achieve more balance between client autonomy and protection of the minor, by carving out an exception to the traditional role of zealous advocate when the minor client cannot meaningfully participate in the formulation of the client's position. In such limited instances, the attorney exercises a GAL best interests judgment, using objective criteria.³⁷ The NACC Revised Version also requires the attorney, if attempts to counsel the minor client are unsuccessful, to request appointment of a separate GAL when the attorney considers the minor's wishes to be "seriously injurious" to the minor.³⁸ In 1999, in an effort to transcend the "long-standing debate over the

of guardian ad litem and lawyer of record. The chief distinguishing factor between the roles is the manner and method to be followed in determining the legal position to be advocated. While a guardian ad litem should take the child's point of view into account, the child's preferences are not binding, irrespective of the child's age and the ability or willingness of the child to express preferences. Moreover, in many states, a guardian ad litem may be required by statute or custom to perform specific tasks, such as submitting a report or testifying as a fact or expert witness. These tasks are not part of functioning as a "lawyer."

Id.

32. ABA Standard B-4.

33. *See* ABA Standard B-4 (1).

34. ABA Standard B-4 (3). The Standard also cautions that the attorney may not disclose "the basis of the request for appointment of a guardian ad litem which would compromise the child's position."

35. *See* ABA Standard B-4, which provides in pertinent part: "The child's attorney should represent the child's expressed preferences and follow the child's direction throughout the course of litigation."

36. *See* NACC Recommendations, *supra* note 5, at 14.

37. *Id.*

38. *Id.* at 14-15.

form of representation," the NACC developed "a policy framework for the legal representation of children, followed by a checklist of children's needs" that should be met, regardless of the form of representation employed by states.³⁹ Furthermore, the NACC affirmed its belief that: "every child subject to a child protection proceeding must be provided an independent, competent, and zealous attorney, trained in the law of child protection and the art of trial advocacy, with adequate time and resources to handle the case."⁴⁰

The Guidelines concur with the ABA Standards and the NACC that children involved in abuse and neglect proceedings should have legal representation.⁴¹ Similar to the position taken by the NACC, the Guidelines address the duties of the child's representative separately from the question of who determines the representative's goals and objectives.⁴² Nevertheless, the Guidelines envision vigorous and active participation by the child's attorney, regardless of whether the representative advocates the child's best interests or assumes a client directed role.

Some authorities argue that continuation of the GAL best interests advocate model enables courts to dispose of a case more efficiently, by relying upon the GAL as a kind of expert witness or special master. In contrast, those who support the traditional attorney model argue that a fair and accurate judicial decision-making process requires that decisions be based upon evidence that is presented zealously in court and subject to cross-examination and rules governing its admissibility.⁴³

Despite the "great weight of academic and professional opinion" urging that a child's attorney be client-directed, the majority of jurisdictions require the appointment of a GAL to represent the child's best interests.⁴⁴ A 1998 study by the National Council of Juvenile and Family Court Judges (NCJFCJ)⁴⁵ found that, of the forty states that typically appoint counsel for children in child abuse and neglect cases, thirty states appoint an attorney-GAL who serves "a

39. The NACC believes that children's legal service needs can be met by both client directed ("expressed wishes") and advocate directed ("best interest") models of representation.

40. NACC Recommendations, *supra* note 5, at Executive Summary.

41. *See* Guidelines, *supra* note 14, at Guidelines for Representing Children's Commentary (p. 11).

42. The Guidelines go further than the Federal law requirement and recommend that attorneys be appointed to represent a child in every child protection case; however, they also recognize that volunteer child advocates, i.e., Court Appointed Special Advocates (CASAs), "are very positive and helpful advocates for the child's best interests," and recommend the "expansion of CASA programs into every jurisdiction." Guidelines, *supra* note 14, at Guidelines for Court Appointed Special Advocates.

43. *See* Shookhoff & Brooks, "New Guidelines clarify, Strengthen Mission for Guardians Ad Litem," *Tenn. Bar J.* (June 2002).

44. *See* D. Duquette, "Legal Representation for Children in Protection Proceedings: Two Distinct Lawyer Roles Are Required," 34 *Fam. L. Q.* 441, 442-43 (2000).

45. *Child Abuse and Neglect Cases: Representation as a Critical Component of Effective Practice*, National Council of Juvenile and Family Court Judges, Technical Assistance Bulletin, (March 1998) [hereafter NCJFCJ Bulletin].

dual function" of representing the best interests, as well as the wishes, of the child.⁴⁶ In the other ten states, the counsel serves the sole function of representing the child, and thus the child's wishes, and a GAL may be appointed in addition to the attorney to advocate for the child's best interests.⁴⁷ Of the ten states that do not usually appoint counsel for the child, nine appoint a non-attorney GAL.⁴⁸ Frequently non-attorney GALs are provided with access to an attorney, such as a staff attorney, contract attorney, or pro bono attorney, for consultation. Non-attorney GALs often are social workers or court-appointed special advocates.

Court-appointed special advocates (CASAs) are trained citizen volunteers to represent the best interests of children in abuse and neglect cases. They do not provide legal representation to children, but their role is complementary to that of an attorney for a child. CASAs provide an independent resource to the court to review records, conduct detailed fact-finding investigations and interviews, make recommendations to the court concerning services and placement for the child, provide written reports, and monitor the progress of the case and services provided to the child. Any CASA program and other volunteer guardian ad litem program operating as part of the National Court Appointed Special Advocate Association network is required to comply with standards issued by the National Court Appointed Special Advocate Association.⁴⁹ These standards include low caseloads (not more than one or two cases per volunteer); careful selection and screening; and comprehensive and ongoing training. Furthermore the standards require adequate resources and state and judicial support to ensure quality volunteer representation. The NCJFCJ Report noted that while only twenty-eight state statutes specifically provide for the appointment of CASAs in abuse and neglect cases, forty-one states actually rely upon CASAs, although such appointment may be "limited to certain jurisdictions and by judicial discretion."⁵⁰ Furthermore, the decision whether to appoint a CASA is often "based upon their availability, funding, and resources."⁵¹

46. *Id.* at 44-45. The NCJFCJ Bulletin reported that 37 jurisdictions (including the District of Columbia) statutorily required the appointment of a GAL in every case: of these, 14 statutes provided for the appointment of an attorney/GAL and 23 statutes permitted the appointment of a non-attorney GAL. Of the remaining 14 jurisdictions, 11 statutes made appointment of a GAL discretionary and 3 did not specify provisions for a GAL.

47. See *id.* at 44-45. As an example of this, Tennessee's Supreme Court Rule 40 expresses a preference for a guardian ad litem to function as an attorney. In instances of conflict between a position taken by the minor client and the GAL's determination of the child's best interests, the guidelines establish a protocol to assist the attorney. The attorney may follow the ABA Standards approach and advocate for the child's wishes and request the court to appoint a new attorney to advocate for the child's best interests, or the attorney may follow Michigan's approach and advocate for the child's best interest and request a new attorney to represent the child's wishes. Tenn. S. Ct. Rule 40(e); See Shookhoff & Brooks, "New Guidelines Clarify, Strengthen Mission for Guardians Ad Litem," Tenn. Bar J. (June 2002).

48. *Id.* at 442, n 3. See NCJFCJ Bulletin at 44-45.

49. A number of states also have established individual state standards.

50. NCJFCJ Bulletin at 81-82.

51. *Id.* at 81.

Court Appointed Counsel for Parents

According to the NCJFCJ report, thirty-nine states appoint attorneys for parents involved in child abuse and neglect cases.⁵² In twelve of these states, attorneys are appointed in all dependency cases, whereas in another twenty-two states, parents must meet indigency requirements to be eligible for an appointed attorney. Three states appoint attorneys only if requested by the party, but as a matter of practice, the request for appointment is usually made and thus an attorney is appointed. In two states, attorneys are appointed only at the termination of parental rights stage.⁵³ Eleven states reported that attorneys typically are not appointed for parents. Seven of these indicated that attorneys may be appointed if requested by the parties; however, in practice these requests are often denied. In three of these, attorneys are appointed only if termination is being contested at the termination of parental rights stage.⁵⁴

Training

The quality and quantity of information a court receives is determined in large part by the competence and commitment of the child's representative.⁵⁵ In a survey by the National Council of Juvenile and Family Court Judges, the vast majority of court improvement specialists (84 percent) identified legal representation as a problematic aspect of case processing in child abuse and neglect cases.⁵⁶ Furthermore, of twenty-five Court Improvement Project self-assessments, most respondents identified legal representation or the need for improved legal training as an item for reform.⁵⁷

52. Out of the 39 state statutes providing that counsel be appointed for indigent parents, only 6 require counsel be appointed for parents in all dependency proceedings and 3 only provide for appointment of counsel in termination of parental rights proceedings. In addition, 3 states do not statutorily provide for appointment of counsel for parents. *Id.* at 21. *See also* Chart 2 at 22.

53. *Id.* at 23-24.

54. One state indicated that counsel may be appointed for a parent under age 18, although this rarely happens in practice.

55. NCJFCJ Bulletin at 3. *See also* NACC Recommendations II-A, Children's Legal Representation Policy, which states:

Children's attorneys play a critical role in empowering children and ensuring that children's views are heard in legal proceedings. Outcomes in our adversarial process are directly tied to the quality of legal representation. Additionally, the presence of children's attorneys is critical to ensuring the timeliness of proceedings.

56. NCJFCJ Bulletin at 14-15.

57. Summaries of Twenty-Five State Court Improvement Assessment Reports, Technical Assistance Bulletin, Permanency Planning for Children Project, National Council of Juvenile and Family Court Judges, at 18, (March 1998.) (Issues in need of reform included: lack of experience, skills, training, and adequate compensation).

As one authority noted, legal training does not qualify an attorney in abuse and neglect cases to "make such a comprehensive, life-impacting decision[s] for a child-client."⁵⁸ Specialized training is necessary to ensure attorneys are "sensitive to the needs of the child and the family, the child's development, and the child's decision-making process."⁵⁹ A number of authorities agree that training is imperative in representing children and understanding their developmental stage, cognitive ability, communication skills, decision-making processes, comprehension of consequences, and ability to appreciate the finality of decisions.⁶⁰ At minimum, training should include child development issues and basic skills in interviewing children.⁶¹

The NACC contends that "attorneys representing children should have a combination of knowledge, training, experience, and ability which allows them to effectively discharge their duties to their clients."⁶² Competent representation includes thoroughness, preparation, and knowledge of placement options and services available for the child and of services available to the child's family.⁶³

The ABA Standards provide that training should include at a minimum, the following:

- Information about relevant federal and state laws and agency regulations;
- Information about relevant court decisions and court rules;
- Overview of the court process and key personnel in child-related litigation;
- Description of applicable guidelines and standards for representation;
- Focus on the child development needs and abilities;

58. M. Drews & P. Halprin, "Determining the Effective Representation of a Child in our Legal system," 40 Fam. Ct. Rev. 383, 385 (no. 3 July 2002).

59. *Id.*

60. *See id.* at 394 (discussing recommendations from the Fordham Conference) (citations omitted).

61. *See Drew* at 393.

62. NACC Recommendations at II-A, Children's Legal Representation Policy. Accordingly, the NACC is strongly supportive of all federal, state, and local programs designed to enhance the competency of these attorneys.

63. NACC Recommendations at III-A-1, Comment B., citing *See*, Model Rule: 1.1; Model Code DR 6-101(A)(1)(2); ABA Standards B-1; C. Jurisdictions should provide special initial and periodic training to all attorneys in child welfare proceedings covering substantive law (federal, state, statutory, regulatory, and case law), procedure, trial advocacy, child welfare and child development.

- Information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in his or her home;
- Information concerning family dynamics and dysfunction, including substance abuse and the use of kinship care;
- Information on accessible child welfare, family preservation, medical, educational, and mental health resources for child clients and their families, including placement, evaluation/diagnostic, and treatment services;
- The structure of agencies providing such services as well as provisions and constraints related to agency payment for services; and
- Provision of written material (e.g., representation manuals, checklists, sample forms), including listings of useful material available from other sources.⁶⁴

Compensation

A number of authorities agree that the primary causes of inadequate representation of parties in these cases are low compensation and excessive caseloads. Reasonable compensation that reflects the level of seniority and experience of the attorneys and guardians ad litem is critical to ensuring that minors receive comprehensive representation and advocacy.⁶⁵ The NCJFCJ study found that three-fourths of the court improvement specialists of the forty states that appoint an attorney (regardless of whether in a dual attorney/GAL role or as a separate attorney) thought that attorneys for children were "under-compensated."⁶⁶ This was consistent with their response concerning appointed counsel for indigent parents.⁶⁷ States vary in the manner in which they provide compensation: some pay an hourly rate, which may differ for time spent in or out of court or whether the case results in termination of parental rights and may include a cap on the maximum rate. Other states pay a flat fee per case or per a "block" of cases. The NCJFCJ study reports that two states "treat [abuse and neglect] cases as pro bono work."⁶⁸ In several states or counties, the GALs are salaried employees of either an independent

64. ABA Standard I-2.

65. See Guidelines, *supra* note 14, (Compensation of attorneys handling children's cases should be on a par with that for attorneys handling matters of similar demand and complexity).

66. NCJFCJ Bulletin at 65.

67. *Id.* at 40.

68. *Id.*

government agency or nonprofit entity that provides guardian ad litem services.⁶⁹ The actual amounts paid by states differ considerably (See Appendix B).⁷⁰

The ABA Standards call for compensation that is "adequate and timely" and that "reflects the complexity of the case and includes both in court and out-of-court preparation, participation in case reviews and postdispositional hearings, and involvement in appeals."⁷¹ The Commentary to the ABA Standards recognizes that reasonable compensation is necessary "for improved lawyer representation of children and that where necessary judges should 'urge state legislatures and local governing bodies to provide sufficient funding' for quality legal representation."⁷² The Standards also provide for a comparable level of compensation for attorneys working under contract to provide child representation as that provided to experienced individual counsel.⁷³ Moreover, the Standards acknowledge that the minor's attorney should be reimbursed for supporting associated costs such as for experts, investigative services, paralegals, research costs, and other services.⁷⁴ Finally the Standards recommend that states adopt a statewide, uniform level of compensation for representation of children.⁷⁵

The NACC indicates that adequate compensation for attorneys representing children is a systemic safeguard that helps to ensure children's needs are met, stating: "For the sake of the child client and the interests of the system, attorneys must be provided appropriate and reasonable compensation."⁷⁶ The NACC specifically adopts the position of the Guidelines that: "Primary causes of inadequate legal representation of the parties in child welfare cases are low compensation and excessive caseloads. Reasonable compensation of attorneys for this important work is essential."⁷⁷ The Guidelines recommend compensating attorneys for time spent, instead of a "flat per case fee." The Guidelines maintain that this will encourage increased attorney

69. For example, the Office of the Legal Advocate in Maricopa County, Arizona, the Office of Public Advocacy in Alaska, the Legal Aid Society Juvenile Rights Division or the Lawyers for Children in New York.

70. *Id.* at 41 (Table 5).

71. ABA Standard J-I.

72. *Id.* (Commentary, quoting Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases, National Council of Juvenile and Family Court Judges at 22).

73. *Id.*

74. *Id.* (Attorney "should have access to 'investigatory, expert and other nonlegal services' as a fundamental part of providing competent representation").

75. *Id.* at Standard J-4.

76. NACC Recommendations, at III-A-2.

77. NACC Recommendations, at III-A-2, Comment B, citing Adoption 2002: The President's Initiative on Adoption and Foster Care, Guidelines for Public Policy and State Legislation Governing Permanence for Children, U.S. Department of Health Human Services ACF ACYF Children's Bureau, 1999, at VII-4.

involvement in the case and help improve the image of attorneys who specialize in this type of work.⁷⁸ The Guidelines urge states to:

- Provide reasonable compensation for children's attorneys;
- Ensure that resources are sufficient for attorneys to meet the state standards of practice;
- Require development of reasonable caseload standards for attorneys, based on the number of hours required per case, and then fund positions in accordance with those caseloads;
- Provide legal counsel through specialty offices or agencies so there is ongoing supervision and support for representatives;
- Ensure a structure that guarantees supervision and professional support for attorneys, including pro bono attorneys and attorneys for the child, regardless of whether they work in an office or independently;
- Ensure that suitable and adequate working conditions are maintained, including access to desks, telephones, copying equipment, etc.;
- Provide private space to meet with clients; and
- Ensure continuity of representation for all parties.⁷⁹

The issue of adequate compensation for attorneys and guardian ad litem in abuse and neglect proceedings is one with which many states grapple. For example, Colorado has requested additional funding to raise the compensation rate for guardians ad litem, but has been unsuccessful in obtaining the increase because of budget shortfalls facing the state. In a class action suit, the U.S. District Court for the Eastern District of New York found that the state's compensation limits for court appointed counsel for indigent parents systematically deprive the

78. The Guidelines assert:

"When attorneys are paid a set fee for complicated and demanding cases, they cope either by providing less service than the child-client requires or by providing representation on a pro bono or minimum wage basis. Neither of these responses is appropriate. Rates should also reflect the level of seniority and level of experience of the attorneys. In some offices, lawyers handling child welfare cases receive lower pay than other attorneys. This is inappropriate. Compensation of attorneys handling children's cases should be on a par with other lawyers in the office handling legal matters of similar demand and complexity. The need for improved compensation is not for the purpose of benefiting the attorney, but rather to ensure that the child receives the intense and expert legal services required."

Guidelines *supra* note 14, at VII-4.

79. See Guidelines, *supra* note 14.

indigents of their constitutional right to effective counsel.⁸⁰ The federal court, as part of a preliminary injunction, ordered compensation at \$90 an hour for both in-court and out-of-court time, not to exceed \$1,500 in any one case.⁸¹ Concerned about inadequate compensation levels, the Tennessee Supreme Court amended its rules to increase compensation for attorneys handling abuse and neglect cases and to explicitly treat post-dispositional representation of minors as a separate proceeding, for which guardians ad litem are entitled to additional compensation.⁸² A pilot project to explore the concept of a statewide GAL system, similar to the public defender system, was put on hold in Kansas due to the lack of funds and the state's reluctance to assume responsibility for what is currently a county expenditure. It was estimated that the present hourly GAL compensation in Kansas ranges from approximately \$35 to an average of \$50, although it has reportedly been as low as \$16 per hour for one of the urban districts. Also, in some areas, contract GALs serve as part of a panel and receive a flat sum for all cases, regardless of the number or type of cases. The compensation rate for these contract GALs "varies widely." Moreover, some GALs are paid for travel and investigation time, and some are paid only for the time they spend in court. It was noted that travel is "a big deal in Kansas. It is not unusual to have the child placed in a foster home or group home [located] 200 to 300 miles from the county with jurisdiction."⁸³

Caseload

Authorities also agree that the system of representation must establish reasonable caseload limits to ensure attorneys can perform adequately.⁸⁴ The NACC concurs with the cap recommended by the U.S. Department of Health and Human Services Children's Bureau Guidelines and the American Bar Association that "a full time attorney represent no more than one hundred individual clients at a time, assuming a caseload that includes clients at various stages of cases, and recognizing that some clients may be part of the same sibling group."⁸⁵

80. See *In Re Sharwline Nicholson*, et.al. 181 F. Supp. 2d 181 (2001); *Nicholson v. Williams*, 203 F.Supp. 2d 153 (2002).

81. *In Re Sharwline Nicholson*, et.al. 181 F. Supp. 2d 181, 192 (2001) (amount reflects new rate for appointed counsel in federal criminal cases).

82. See Shookhoff & Brooks, "New Guidelines clarify, Strengthen Mission for Guardians Ad Litem," *Tenn. Bar J.* (June 2002) (rule change implicitly recognized that nature and extent of many responsibilities of the GAL were too demanding, given the limited compensation).

83. Information received from Mark Gleeson, Family and Children Program Coordinator, Kansas Office of Judicial Administration, December 10, 2002.

84. See ABA Standards at L-1 (Court should control the size of caseloads to ensure attorneys can provide adequate representation); NACC Recommendations at III-A-2 (Children need attorneys with adequate time and resources.) Guidelines, ("No standards or training or professional devotion to duty will produce optimal results if caseloads are too high.")

85. NACC Recommendations at III-A-2, Comment A (One hundred cases averages to 20 hours per case in a 2000-hour year); ABA Abuse and Neglect Standards §§L-1, L-2. (caseload cap should be set at 100 children depending on the level of support, the complexity of the case, and whether attorney takes other types of cases).

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Part II: Representative State Descriptions

The number of variables that exist among the states' approaches to providing GAL services and the particular idiosyncrasies of the various jurisdictions make any meaningful evaluation of approaches difficult. Given the nature of this study, the difficulty of obtaining detailed information, and the time frame for response, it is impossible to make reliable quantitative or qualitative comparisons. Accordingly, in lieu thereof, this Part provides a description of provision of guardian ad litem services in several representative states.⁸⁶

Alaska

The Alaska Office of Public Advocacy (OPA) was established in 1984 as a state agency and is headed by an appointed Public Advocate. Its stated mission is to "protect the rights of vulnerable Alaskans by providing excellent, cost-effective legal and guardian representation to abused and neglected children, incapacitated adults, and others."⁸⁷ The OPA has sixty employees, including staff attorneys, with offices in Anchorage, Fairbanks, and Juneau. The OPA provides guardian services in abuse and neglect cases in a number of ways. The OPA employs nonattorney professionals on a contract basis for the majority of cases, although it also contracts with some attorney GALs. The OPA has found that it is easier to teach advocacy to nonattorney professionals experienced in areas such as education or social work, than it is to teach attorneys child development and family dynamics.⁸⁸ The OPA's staff attorneys handle the more complex cases and provide legal services to and supervision of the contract GALs, using a team approach.

The OPA pays an hourly rate to its contract GALs in most locations. Nonattorney professionals receive \$35 to \$50 an hour, whereas attorney GALs receive \$70 to \$80 an hour. In a few locations where the caseload is relatively stable, the GALs receive a monthly rate. The Public Advocate stressed the need to ensure that nonattorney GALs have access to attorneys for those cases that require the filing of motions or consultation for advice or guidance.

In addition to contract GALs and staff attorneys, the OPA relies upon approximately one hundred eighty CASA volunteers to handle certain cases, under the supervision of OPA contract

86. Although a few states such as Florida rely heavily on the CASA program to provide GAL services, the success of this approach depends upon a sufficient number of volunteers. Hawaii's Fifth Circuit is the only area where such heavy reliance on volunteers has proven feasible. Accordingly, the Bureau focused on programs that provide for compensated GALs.

87. See website at <<http://www.state.ak.us/local/akpages/ADMIN/opa/homeopa.htm>>. The OPA also provides guardian services for adults and handles conflict cases for the public defender.

88. Telephone interview with Brandt McGee, the Alaska Public Advocate, November 25, 2002.

guardians ad litem. The CASA volunteers review records, gather information, interview the minor and those involved with the minor, including the parents, teachers, foster parents, and therapists. Based upon this information, they present recommendations to the judge concerning the minor's best interests.⁸⁹ Once accepted as a CASA volunteer, the volunteers receive training in courtroom procedures, social services, the child welfare system and the special needs of minors who have been abused and neglected.

The OPA acknowledges that it costs a considerable amount to supervise and train the CASA volunteers, and thus, the use of volunteers is not viewed as a "money saver." However, the OPA contends that its system of using professional supervisors and volunteers, working together, obtains the "best results" and ensures the court receives the "best informed recommendations" concerning a minor.⁹⁰

The Public Advocate indicated that he has had to request supplemental funding each year because of the difficulty of predicting increasing caseload eighteen months out. He acknowledged that, if the individuals serving as guardians ad litem are truly committed, funding using a flat fee for a block of cases could be an advantage, because it eliminates much of the paperwork and administrative work. For the most part, however, he believes that such a funding scheme impacts the quality of work by discouraging contract GALs from working hard. He maintains that it is a clear choice between financial predictability and quality of work.⁹¹ He conceded, however, that the block funding probably would not create this type of disincentive, if a contract GAL handled a sufficient volume of cases. Ideally, he asserted that a state agency with salaried GALs is the most cost effective system because it results in less cost per case, is more efficient, allows for more specialization, and results in experienced staff, higher standards and more professionalism.⁹²

Arkansas

In 1999 as a result of Court Improvement Project efforts, the Arkansas Legislature established a state-funded Dependency-Neglect Representation Division in the Administrative Office of the Courts (AOC) "to provide an appropriate and adequate level of representation to all children" in dependency-neglect proceedings.⁹³ The AOC is responsible for establishing and maintaining a system that:

89. The mission of the OPA's CASA program is "to recruit, train, supervise and support quality volunteers who reflect the diversity of Alaska's population. These CASA volunteers speak for the best interests of abused and neglected children in the courts, and advocate for each child to have a safe, permanent, nurturing home." See <<http://www.alaskacasa.org/index.htm>>.

90. Telephone interview with Brandt McGee, the Alaska Public Advocate, November 25, 2002.

91. *Id.*

92. *Id.*

93. It is the intent of the Arkansas General Assembly, in the transition to a state-funded system of dependency-neglect representation, to provide an appropriate and adequate level of representation to all children in

Footnote continued on next page.

- Equitably serves all areas of the state;
- Provides quality representation;
- Makes prudent use of state resources; and
- Works with those systems now in place to provide an appropriate level of representation of children and courts in dependency-neglect cases.⁹⁴

The AOC's Dependency-Neglect Representation Division specifically is responsible for administering attorney ad litem and CASA programs and establishing a program to represent indigent parents or guardians in dependency-neglect cases.⁹⁵ The Dependency-Neglect Representation Division is staffed by a court-appointed special advocate coordinator and an attorney coordinator. The Director of the AOC is authorized to employ or enter into professional service contracts with private individuals or businesses or public agencies to represent all children in dependency-neglect proceedings. The director is further authorized to establish a statewide court-appointed special advocate program and provide grants or contracts to local court-appointed special advocate programs.⁹⁶

The AOC increased court costs to cover funding of attorneys ad litem and court-appointed special advocates to represent children and indigent parent counsel in dependency-neglect proceedings. The funds are deposited into a special fund, known as the Administration of Justice Fund, that is not subject to general revenue cuts.

In September 2001, the Arkansas Supreme Court, pursuant to statute, adopted Administrative Order Number 15, establishing qualifications and standards of practice for attorneys ad litem and indigent parent counsel appointments in dependency-neglect cases.⁹⁷ The Standards appear to be more comprehensive and detailed than most. In the two years prior to the date an attorney qualifies as a court-appointed attorney for children or indigent parents in dependency-neglect cases, an attorney, in addition to being licensed and in good standing, must have completed an initial education program of not less than ten hours in the following:

dependency-neglect proceedings, as required under federal and state law pursuant to §9-27-316. See Ark. Code Ann. §9-27-401(b)(5)(A)(i).

94. *Id.* at §9-27-401(b)(5)(B).

95. See Ark. Code Ann. §9-27-401.

96. The statute also encourages the development of local trained volunteers programs in the minor divisions of chancery court to provide valuable information to the courts concerning the best interests of children in dependency-neglect proceedings. *Id.* at §9-27-401(c).

97. The Arkansas Supreme Court shall adopt standards of practice and qualifications for service for all attorneys who seek employment or contracts to provide legal representation to children in dependency-neglect cases. See Ark. Code Ann. §9-27-401(b)(4) & (d)(3).

- Child development;
- Dynamics of abuse and neglect;
- Attorney roles and responsibilities, including ethical considerations;
- Relevant state law, federal law, case law, and rules;
- Family dynamics, which may include the following topics: substance abuse, domestic violence and mental health issues; and
- Division of Children and Family Services (DCFS) policies and procedures.

Additional initial legal education may include:

- Grief and attachment;
- Custody and visitation;
- Resources and services; and
- Trial and appellate advocacy.

Following completion of the initial ten hours of legal education, attorneys must complete at least four hours per year of continuing legal education related to representation in dependency-neglect cases.⁹⁸ Attorneys serving as ad litem or as parent counsel also must meet clinical prerequisites for new appointments in dependency-neglect cases, by assisting in representation of a child with an experienced attorney in the following hearings: emergency; adjudication/disposition; review; permanency planning; and termination of parental rights. The AOC is responsible for designing and conducting programs for the initial ten hours of legal education, either alone or in collaboration with other agencies or entities.

The Standards of practice require that the attorney ad litem, personally or in conjunction with a trained CASA volunteer, conduct an independent investigation consisting of a review of all relevant documents and records,⁹⁹ interview the child, and in conjunction with an appointed trained CASA volunteer, interview the parents, foster parents, caseworker, service providers, school personnel and others having relevant knowledge to assist in representation. The attorney ad litem is mandated to maintain regular contact with the child and engage in continuing

98. These may include any one of the foregoing categories or any combination thereof.

99. These include but are not limited to: police reports, DCFS records, medical records, school records, and court records. See Ark. Sup. Ct. Admin. Order No. 15, section 2a.

investigation.¹⁰⁰ The standards require the attorney ad litem to determine the best interests of a child, by considering such factors as the child's: age and sense of time; level of maturity; culture and ethnicity; and degree of attachment to family members including siblings, as well as issues of continuity, consistency, and the child's sense of belonging and identity.¹⁰¹ An attorney ad litem also is obligated to "make earnest efforts" to attend all case staffings and court-ordered mediation conferences, appear at all hearings to represent the best interests of the child and to present all relevant facts to the court, and to meet with his or her client prior to every hearing.

Furthermore, the standards direct an attorney ad litem to communicate the child's wishes to the court, if the child's wishes differ from the ad litem's determination of the child's best interest.¹⁰² The attorney ad litem also is charged with: explaining the court proceedings and the role of the attorney ad litem in terms that the child can understand; advocating for specific and appropriate services for the child and the child's family; monitoring implementation of case plans and court orders; filing appropriate pleadings; reviewing the progress of the child's case and advocating for timely hearings; and requesting orders that are clear, specific, and, when appropriate, include a time-line for assessment, services, placement, treatment and evaluation of the child and the child's family.¹⁰³

Finally, the standards impose a maximum caseload limit, by mandating that a full-time attorney not have more than seventy-five dependency-neglect cases and a part-time attorney not have more than twenty-five dependency-neglect cases. The Administrative Office of the Courts must approve any deviations from this standard, based upon specific criteria.¹⁰⁴ The standards caution that an attorney should not accept appointment of any case for which the attorney cannot devote the requisite amount of time, consistent with the foregoing Standards of Practice and the ABA Model Rules of Professional Conduct.¹⁰⁵

The standards for the indigent parent counsel are similar in most respects; those that differ reflect the nature of the counsel's role. For example, the standards require that an attorney: diligently and zealously protect and advance the client's interests, rights and goals at all case staffings and in all court proceedings; explain each stage of the court proceedings to the client;

100. *Id.*

101. *Id.* at section 2b.

102. *Id.* at section 2c.

103. *Id.* at section 2d-i.

104. The standards direct that the AOC shall consider the following, including but not limited to: the number of counties and geographic area in a judicial district, the experience and expertise of the attorney ad litem, area resources, the availability of CASA volunteers, the attorney's legal practice commitments and the proportion of the attorney's practice dedicated to representing children in dependency-neglect cases, the availability of qualified attorneys in the geographic area, and the availability of funding. An attorney who is within 5 cases of reaching the maximum caseload shall notify the Administrative Office of the Courts and the Minor Division Judge. *Id.* at section 2n.

105. *Id.* at section 2o.

advise the client of the likelihood of achieving the client's goals; identify, when appropriate, alternatives for the client to consider, including rights of appeal; explain the risks, if any, inherent in the client's position; and present all evidence and develop all issues to advocate zealously for the client and to further the client's goals.

Funding

The Dependency-Neglect Representation Division received over \$10 million for the FY 2001-2003 biennium to provide state funding of attorneys ad litem, to maintain and expand CASA programs in judicial districts and, for the first time, to provide state funding for indigent parent counsel in dependency-neglect proceedings.¹⁰⁶ Presently, the Division has a combination of seventeen full-time attorneys ad litem employees and ninety-two part-time contractors who have qualified pursuant to Administrative Order Number 15. Pursuant to statute,¹⁰⁷ the Minor Judges' Committee of the Arkansas Judicial Council adopted a funding formula for attorney ad litem representation as follows:

Full-time: Grade 25 - State positions with benefits and the following salary structure:¹⁰⁸

Level 1	\$37,000	Entry level, 0 to 3 years experience
Level 2	\$43,000	3.1 years to 5.0 years experience
Level 3	\$48,000	5.1 years to 7.0 years experience
Level 4	\$53,000	7.1 years to 9.0 years experience
Level 5	\$57,000	9.1 years or more

106. Acts 1418 and 1532 of 2001 appropriated \$2,854,104 for FY 2001 and \$2,860,752 for FY 2002 and provided for 17 full-time positions and professional service contracts for attorney ad litem representation. Act 1532 of 2001 appropriated \$1,360,000 for FY 2003 for reimbursement for indigent parent counsel in dependency-neglect cases.

107. Ark. Code Ann. §9-27-401(b)(3)(B) (The distribution of funds among the judicial districts shall be based on a formula developed by the Administrative Office of the Courts and approved by the Minor Judges Committee of the Arkansas Judicial Council.) See also Ark. Code Ann. §9-27-401(d)(8) (In order to ensure that each judicial district will have an appropriate amount of funds to utilize indigent parent or guardian representation in dependency-neglect cases, the funds appropriated shall be apportioned based upon a formula developed by the Administrative Office of the Courts and approved by the Minor Judges Committee of the Arkansas Judicial Council).

108. This funding went into effect on July 1, 2001, with a 2.6% raise effective July 1, 2002 for full-time attorneys as state employees. Although increases from one level to another are not given during the biennium, they may be calculated and paid at the beginning of the next biennium if the AOC receives sufficient funding from the legislature in 2003.

In addition, a managing attorney has \$3,000 per year added to the salary amount. Full-time expenses/reimbursements include: \$6,000 per year in operating expenses; and \$1,000 per year for mileage reimbursement, multiplied by the number of counties served.¹⁰⁹

Attorney ad litem contractors who are part-time receive \$800 per case per year. If an attorney had twenty-five cases, the attorney would receive \$20,000 per year. The amount would be a salary amount and the contract would require that all cases filed be handled. Part-time expenses/reimbursements include: \$1,500 per year in operating costs; and mileage reimbursement as provided previously.

Parent counsel receives reimbursement up to \$75 per hour with no distinction for in or out of court¹¹⁰ and a \$2,000 per case per year cap that can be exceeded with a special finding from the judge or if the case goes to TPR or appeal.¹¹¹ The judge must make a determination that a parent in a dependency-neglect case is indigent, before ordering payment of the parent's attorney's fees and expenses by the Administrative Office of the Courts from the funds allocated for the judicial district.¹¹² The court may require the parties to pay all or part of the fees and expenses, if they are financially able.¹¹³

Right to Counsel Issues

Arkansas law requires that the court appoint an attorney ad litem who meets the standards and qualifications established by the Arkansas Supreme Court to represent the best interests of the minor in a dependency-neglect proceeding.¹¹⁴ If the minor's wishes differ from the attorney's determination of the minor's best interests, the attorney ad litem is required to communicate the minor's wishes to the court, in addition to presenting the attorney ad litem's determination of the minor's best interests.¹¹⁵

The law also authorizes the court to appoint a volunteer court-appointed special advocate to advocate for minors in dependency-neglect proceedings.¹¹⁶ Prior to appointment, the court-

109. Mileage is available only when an attorney leaves the city limits of their home office for official business.

110. Reportedly, some judges will order less for out of court or transportation to and from court.

111. Ark. Code Ann. §9-27-401(d)(7) (The Administrative Office of the Courts shall establish guidelines to provide a maximum amount of expenses and fees per hour and per case that will be paid under this section).

112. Judges in each judicial district are limited to state funds allocated to each district based upon a funding formula adopted by the Minor Judges Committee of the Arkansas Judicial Council.

113. Ark. Code Ann. §9-27-401(d)(6).

114. Right to representation is triggered when petition is filed or when an emergency ex parte order is entered in a dependency-neglect case, whichever occurs earlier. *Id.* at §9-27-316(f)(1).

115. *Id.* at §9-27-316(f)(5). Compare to HRS §587-34(c).

116. Advocate must meet all state and national court-appointed special advocate standards. *Id.* at §9-27-316(g)(1).

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appointed special advocate must complete a training program in compliance with National Court Appointed Special Advocate Association and state standards and be approved by the local court-appointed special advocate program.¹¹⁷ Duties of a court-appointed special advocate include: investigating the case to provide independent factual information to the court through the attorney ad litem or through court testimony and court reports; monitoring the case to ensure compliance with the court's orders; and assisting the attorney ad litem in representing the minor's best interests.¹¹⁸

Finally, the statute provides a right to counsel for the parent or guardian in all proceedings to remove custody or terminate parental rights of a minor.¹¹⁹ Appointment is contingent upon request by a parent or guardian and a determination by the court of indigence. If the court makes a determination of ability to pay, after review of an affidavit of financial means, completed and verified by the parent or guardian, the court shall order financially able parents or guardians to pay all or a part of reasonable attorney's fees and expenses for the court-appointed representation. All such payment are deposited in the juvenile court representation special fund to be used in providing counsel for indigent parents or guardians at the trial level in dependency-neglect proceedings.¹²⁰

California

Unlike most states, California statutory law provides for the appointment of both legal counsel and a court appointed special advocate (CASA) for a minor in abuse and neglect cases. The California statute makes clear that the legal counsel plays a more traditional role in representing minors, stating that an attorney representing a minor in a dependency proceeding "is not required to assume the responsibilities of a social worker and is not expected to provide nonlegal services" to the minor.¹²¹

Court-Appointed Counsel for Minors

California law requires the court in dependency proceedings to appoint counsel for any unrepresented minor, unless the court finds on the record that the minor "would not benefit from the appointment of counsel."¹²² The law emphasizes that a "primary responsibility" of such

117. Approval includes appropriate criminal background and child abuse registry checks. *Id.* at §9-27-316(g)(2)(B).

118. *Id.* at §9-27-316(g)(3).

119. *Id.* at §9-27-316(h).

120. *Id.* at §9-27-316(h)(3).

121. Cal. Welfare and Institutions Code §317(e).

122. The court must state its reasons supporting the finding on the record. *Id.* at §317(c).

counsel is "to advocate for the protection, safety, and physical and emotional well-being" of the minor.¹²³ Stating that the minor's counsel "shall be charged in general with the representation of the child's interests," the statute specifies the following duties:

- Make investigations reasonably necessary to ascertain the facts, including the interviewing of witnesses;
- Examine and cross-examine witnesses in both the adjudicatory and dispositional hearings;
- Make recommendations concerning the minor's welfare;
- "Participate further in the proceedings to the degree necessary to adequately represent" the minor;
- If the minor is four years of age or older, interview the minor to determine the minor's wishes and assess the minor's well-being and advise the court of the minor's wishes; and
- Investigate interests of the minor beyond the scope of the juvenile proceeding and notify the court of those interests that may require protection through the institution of other administrative or judicial proceedings.¹²⁴

The statute cautions that counsel for the minor "shall not advocate for the return of the minor if, to the best of his or her knowledge, that return conflicts with the protection and safety" of the minor.¹²⁵ Finally, the statute authorizes the court to set the compensation of appointed counsel and requires the adoption of court rules to establish caseload standards, training requirements and guidelines for appointed counsel for minors to ensure their adequate representation.¹²⁶

Court-Appointed Special Advocate

California statutory law provides for a state-funded court-appointed special advocate (CASA) program consistent with California law and with the guidelines established by the National Court Appointed Special Advocate Association. The provisions provide for a request-for-proposal process to: establish, maintain, or expand local CASA programs; and require local

123. Counsel may be a district attorney, public defender, or other member of the bar, but may not represent another party or county agency whose interests conflict with the minor's. *Id.*

124. *Id.* at §317(e).

125. *Id.*

126. *Id.*

matching funds or in-kind funds.¹²⁷ As a prerequisite to receiving funding, each participating superior court must adopt the program guidelines and incorporate them into the local rules of court.¹²⁸

Each CASA program is designed to have at least one paid administrator, directly accountable to the presiding juvenile court judge, and a board of directors. The CASA programs provide qualified volunteers to serve as court-appointed special advocates in juvenile dependency and parental termination proceedings.¹²⁹ Each special advocate commits to a minimum of one year of service to a minor, until a permanent placement is achieved or until relieved by the court. The statute requires each volunteer special advocate to complete an initial and an ongoing training program that includes, but is not limited to, each of the following:

- (1) Dynamics of child abuse and neglect.
- (2) Court structure, including juvenile court laws regarding dependency.
- (3) Social service systems.
- (4) Child development.
- (5) Interviewing techniques.
- (6) Report writing.
- (7) Roles and responsibilities of a CASA.
- (8) Rules of evidence and discovery procedures.
- (9) Problems associated with verifying reports.¹³⁰

The statute authorizes appointment a special advocate when, in the court's opinion, a minor requires services that can be provided by the special advocate, consistent with the local rules of court. The statute mandates the following duties of a special advocate:

- (1) Provide independent, factual information to the court regarding assigned cases;

127. State funding is contingent on a program adopting and adhering to guidelines adopted by the California Judicial Council. *Id.* at §100.

128. The funding criteria encourage multicounty CASA programs, where appropriate, and prohibit funding of more than one program per county. *Id.*

129. Screening of CASA volunteers include personal interviews, reference checks, checks for records of sex offenses and other criminal records, information from the Department of Motor Vehicles. *Id.* at §102 (e).

130. *Id.* at §102(d).

- (2) Represent the best interests of the children involved and consider the best interests of the family; and
- (3) At the request of the judge, monitor assigned cases to ensure that the court's orders have been fulfilled.¹³¹

Although the court determines the specific extent of the special advocate's duties in each case, the statute indicates that these duties generally include: an independent investigation of the circumstances of the case; interviewing and observing the minor and other appropriate individuals; reviewing of appropriate records and reports;¹³² following the directions and orders of the court; and reporting the results of the investigation and any other information requested to the court.¹³³

Court-Appointed Counsel of Parents

The court is required to appoint counsel for the indigent parent or guardian of a minor that has been, or is at risk of being, placed in out-of-home care, unless there is a knowing and intelligent waiver of counsel. In situations in which the minor is not removed from the home, the court has discretion to appoint counsel for an indigent parent or guardian.¹³⁴

County Practice

There appears to be considerable diversity among the various California counties in how GAL and court-appointed counsel services are actually provided in child abuse and neglect cases, which are referred to as dependency cases. For example, in a number of counties, the courts provide that, for purposes of complying with the Federal Child Abuse Prevention and Treatment Act and state law, the department of social services case manager is considered the minor's "guardian ad litem."¹³⁵ Many counties also authorize the court to appoint any qualified

131. *Id.* at §102(c).

132. These include pertinent records of any agency, hospital, school, organization, division or department of the state, physician and surgeon, nurse, other health care provider, psychologist, psychiatrist, police department, or mental health clinic. *Id.* at §107.

133. *Id.* at §104.

134. *Id.* at §317(b).

135. See e.g., Fresno County Superior Court, Rule 51.6; Uniform Rules, Superior Court of Kern County, Rule 712.1; Superior Court of Placer county, Rule 50.12(a).

person as guardian ad litem to represent any incompetent parent or guardian of a minor in a dependency proceeding.¹³⁶

Amador County

In Amador County, local court rules provide that the person specified as guardian ad litem in abuse or neglect cases is the attorney appointed to represent the child pursuant to state law.¹³⁷ The rules further specify that, if the court implements a CASA program, the court may appoint a special advocate as the guardian ad litem.

Orange County

The Orange County juvenile court has a contractual arrangement for the representation of dependent minors. The court appoints the attorneys holding the contractual agreement to represent all minors whom the court determines would benefit from the appointment of counsel as provided by Welfare and Institutions Code section 317(c).¹³⁸ In practice, the court contracts with one large law firm to handle all appointments except for those few that are conflicted out.¹³⁹ If the contract attorney has a conflict in the representation of a minor, the court appoints an attorney from a specially selected juvenile court panel of attorneys.¹⁴⁰

The court appoints the Public Defender to represent parents and guardians of minors who qualify for appointed counsel, as provided by Welfare and Institutions Code section 317(b). Parents and guardians seeking appointed counsel may make either an oral or written request.¹⁴¹ The juvenile court has a primary and a secondary contractual agreement for the representation of parents or guardians of dependent children.¹⁴² If the Public Defender has a conflict, the court appoints the primary attorney provider. If the primary attorney provider has a conflict, the court

136. See e.g., Fresno County Superior Court, Rule 51.7; Uniform Rules, Superior Court of Kern County, Rules 712.1 & 712.2; Superior Court of King's County, Rule 614; Superior Court of Placer county, Rule 50.12(b). Such provision usually applies to other juvenile proceedings as well.

137. Amador County Court Rule 14.02 (See §§317 & 317.6.)

138. Orange County Superior Court Rule 907(H).

139. New York appears to have a similar "master contract" arrangement with its local Legal Aid Society and with an organization known as the Lawyers for Children.

140. The panel is made up of approximately 8 private practitioners who have extensive experience in dependency cases. Telephone interview with Cary Sheffield, Orange County Juvenile Court Administrator, November 18, 2002.

141. Orange County Superior Court Rule 907(G).

142. In practice, the primary contract is with a large law firm; the secondary contract is with a solo practitioner. Sheffield interview, *supra* note 140.

appoints the secondary attorney provider. If the secondary contract attorney provider has a conflict, the court appoints an attorney from the juvenile court panel of attorneys.¹⁴³

Contract attorneys are paid flat rates per event, such as: detention hearings; disposition hearings; review hearings at six months, twelve months and eighteen months; and petitions for writ. The juvenile court panel of attorneys are compensated at a rate of \$75 per hour in court and \$50 for out of court work.¹⁴⁴

All attorneys appearing in juvenile dependency proceedings must meet minimum standards of competence and obtain a Certification of Competency.¹⁴⁵ The minimum training and educational standards require that the attorney have either:

- (1) Participated in at least eight hours of training or education in juvenile dependency law, including information on the applicable case law and statutes, the rules of court, judicial council forms, motions, trial techniques and skills, writs and appeals, child development, child abuse and neglect, domestic violence, family reunification and preservation and reasonable efforts; or
- (2) At least six months of experience in dependency proceedings in which the attorney has demonstrated competence in the attorney's representation.

An attorney must renew the Certification of Competency every three years, by providing evidence of having completed, since the last certification, at least eight hours of continuing training or education directly related to dependency proceedings.¹⁴⁶ The attorney's continuing training or education shall be in the areas listed above for certification or in other areas related to juvenile dependency practice.¹⁴⁷

143. Sheffield interview, *supra* note 140; Orange County Superior Court Rule 907(I).

144. Sheffield interview, *supra* note 140.

145. Standards apply to attorneys representing public agencies, public agencies attorneys and court-appointed attorneys in juvenile dependency proceedings. See Orange County Superior Court Rule 907(A) & (B).

146. The Rules provide that such evidence may include: "a copy of a certificate of attendance issued by a California MCLE provider; a certificate of attendance issued by a professional organization which provides training and/or education for its members, whether or not it is an MCLE provider; a copy of the training or educational program schedule together with evidence of attendance at such program; or ... other documentation [reasonably considered] to demonstrate the attorney's attendance at such program. Attendance at a court sponsored or approved program will also fulfill this requirement. *Id.* Rule 907 (C)(1)(b).

147. These include but are not limited to, special education, mental health, health care, immigration issues, the rules of evidence, adoption practices and parentage issues, the Uniform Child Custody Jurisdiction Act, the Parental Kidnapping Prevention Act, state and federal public assistance programs, the Indian Child Welfare Act, client interviewing and counseling techniques, case investigation and settlement negotiations, mediation, basic motion practice and the rules of civil procedure. *Id.* at Rule 907 (C)(1)(c).

The rules contain the following specific minimum standards of representation for attorneys appearing in dependency proceedings:

- (1) The attorney shall thoroughly and completely investigate the accuracy of the allegations of the petition or other moving papers and the court reports filed in support thereof. This shall include conducting a comprehensive interview with the client, if four years of age or older, to ascertain his or her knowledge of and/or involvement in the matters alleged or reported; contacting social workers and other professionals associated with the case to ascertain if the allegations and/or reports are supported by accurate facts and reliable information; consulting with and, if necessary, seeking the appointment of experts to advise the attorney or the juvenile court with respect to matters which are beyond the expertise of the attorney and/or the juvenile court; and obtaining such other facts, evidence or information as may be necessary to effectively present the client's position to the juvenile court.
- (2) The attorney shall determine the client's interests and the position the client wishes to take in the matter. Except in those cases in which the client's whereabouts are unknown, or where the client is a child under the age of four years, this shall include a comprehensive interview with the client. If the client is a minor child who is placed locally out of the home, in addition to interviewing the child, the attorney shall also interview the child's caretaker. The attorney or the attorney's agent shall make at least one visit to the child at the child's placement prior to the jurisdiction hearing. Thereafter, the attorney or the attorney's agent should make at least one visit to the child at the child's placement prior to each review hearing.
- (3) The attorney shall advise the client of the possible courses of action and of the risks and benefits of each. This shall include advising the client of the risks and benefits of resolving disputed matters without the necessity for a hearing and of the necessity for adhering to juvenile court mandated time limits.
- (4) The attorney shall vigorously represent the client within applicable legal and ethical boundaries. This shall include the duty to work cooperatively with other counsel and the juvenile court, to explore ways to resolve disputed matters without contested hearing if it is possible to do so in a way which is consistent with the client's interests, and to comply with local rules and procedures as well as with statutorily mandated timelines.¹⁴⁸

The Rules also provide procedures for reviewing and resolving complaints concerning appointed counsel in a dependency proceeding. In the case of a complaint concerning a minor's attorney, the complaint may be made on the child's behalf by the social worker, a caretaker

148. *Id.* at Rule 907 (D).

relative or a foster parent.¹⁴⁹ The Rules also specify procedures for informing the court of the interests of a dependent child, at any time during the pendency of a dependency proceeding. If the minor's attorney becomes aware that the minor may have a right or interest that needs to be protected or pursued in another judicial or administrative forum, the attorney is required to notify the court as soon as it is reasonably possible.¹⁵⁰ The court may take such action it determines is necessary on behalf of the child, including authorizing the minor's attorney to pursue the matter on the child's behalf or appointing a guardian ad litem for the child for the purposes of initiating or pursuing appropriate action in the other forums.

In California, the courts rely upon a state-assisted program of court-appointed special advocates (CASA) for children involved in juvenile dependency proceedings, including guardianships, adoptions, and actions to terminate parental rights to custody and control. Therefore, CASAs are appointed, in lieu of guardians ad litem, for children involved in juvenile dependency proceedings. However, because of the lack of sufficient numbers of volunteers, a special advocate is not appointed for each child involved in dependency proceedings. Rather, the court will appoint a special advocate if a child has special needs or the court determines that such appointment is beneficial.¹⁵¹

In Orange County juvenile court, the appointment of "guardians ad litem" appears to be reserved for parents of minors in dependency proceedings who are mentally incompetent. Appointment is made from the juvenile court panel of attorneys who serve without compensation, as there are no provisions in the rules or statutes allowing payment in such instance. It is estimated that these cases amount to no more than 50 annually.

Colorado

Office of Child Representative

The Colorado General Assembly adopted legislation in 2000 creating an independent agency to address many problems in the state's GAL system, including lack of oversight, training, consistent representation, and unfair compensation.¹⁵² The Office of the Child's Representative (OCR) has jurisdiction over guardians ad litem, court-appointed special advocate

149. *Id.* at Rule 907 (E).

150. The attorney must include: what action is necessary on the child's behalf; whether the attorney is willing or able to pursue the matter on the child's behalf; whether the association of counsel specializing in practice before that agency or court may be necessary or appropriate; whether the appointment of a guardian ad litem may be necessary to initiate or pursue the proposed action; whether joinder of an administrative agency to the juvenile court proceedings may be appropriate or necessary to protect or pursue the child's interests; and whether further investigation may be necessary. *Id.* at Rule 907 (F).

151. See Sheffield interview, *supra* note 140.

152. This new state agency was created by House Bill No. 00-1371 during the 2000 legislative session. The OCR became operational in FY 2002.

(CASAs), and representatives of a child (appointed in domestic relations cases).¹⁵³ GALs who are appointed to represent a child in a dependency or neglect proceeding must be attorneys.

The statute authorizing the OCR recognized that effective legal representation and advocacy is "a critical element in giving the children a voice" in the court system.¹⁵⁴ By creating the OCR, the Colorado General Assembly took an "unprecedented step" in securing the fundamental rights of Colorado's most vulnerable children and protecting their legal interests, by establishing a formal legal representation system for children that is accountable to the state to provide uniform, high-quality counsel. The OCR is one of the few state agencies in the nation whose sole purpose is to protect and ensure children have a competent and effective voice in the courtroom.¹⁵⁵

The OCR's stated mission is:

[T]o provide Colorado's children with competent and effective "best interest" representation. As a state agency, the OCR must achieve this mission in the most cost-efficient manner that does not compromise attorney services and is accountable to the state of Colorado. The OCR is committed to ensuring that these children, Colorado's most vulnerable and voiceless population in the courts, receive the best attorney services available throughout the state.¹⁵⁶

153. The OCR estimates that 60 percent of all Colorado court cases involve families, with minors directly affected in the majority of these including dependency and neglect, domestic relations (dissolution or paternity), delinquency, truancy, adoption/relinquishment, probate, or mental health cases. In many of these cases, the court appoints a guardian ad litem, attorney special advocate or child's representative who is charged with representing the best interests of the minor. The state, through the OCR, bears all costs associated with these best interest appointments. If the minor is the subject of a high conflict divorce, the court may appoint an attorney to represent or make recommendations in the child's best interest (child's representative or attorney special advocate). The parties are responsible for any costs unless there is a finding that the parties are indigent. In cases where the parties are indigent, the OCR is responsible for all costs of the appointment.

154. Section 13-91-102(1)(a), C.R.S. The legislative declaration reads in pertinent part:

[T]he general assembly finds that the representation of children necessitates significant expertise as well as a substantial investment in time and fiscal resources. The general assembly finds that, to date, the state has been sporadic, at best, in the provision of qualified services and financial resources to this disadvantaged and voiceless population.

Accordingly, the general assembly hereby determines and declares that it is in the best interests of the children of the state of Colorado, in order to reduce needless expenditures, establish enhanced funding resources, and improve the quality of representation and advocacy provided to children in the Colorado court system, that an office of the child's representative be established in the state judicial department. Section 13-91-102 (1)(a) and (b), C.R.S.

155. Office of the Child's Representative, 2002 Report to the Colorado General Assembly, (September 1, 2002) at 4 [hereafter cited as OCR 2002 Rpt.].

156. *Id.* at 5.

The legislation sets forth critically important mandates that provided, for the first time in Colorado, the necessary tools to create a consistent best interest representation system for children. See Appendix C for full list of mandates. The mandates required the OCR to:

- Improve the quality of children's representation statewide;
- Provide and improve statewide training for attorneys, judges and magistrates;
- Establish fair and realistic compensation for state-appointed GALs;
- Establish minimum practice standards for all attorneys representing children, which include provisions for oversight;¹⁵⁷
- Create local oversight committees in each of the 22 judicial districts that will oversee the provision of services and report to the OCR director concerning the practice of GALs;
- Develop local CASAs in each of the 63 counties statewide;¹⁵⁸ and
- Enhance funding resources for CASA; and assess and document the effectiveness of various models of representation.¹⁵⁹

Statewide Assessment

In 2001 the OCR director personally traveled to every judicial district to: determine the quality and availability of attorney services within the state; assess the strengths and needs of each locality; determine how the office could best support and serve as a resource to urban and rural attorneys; meet personally with attorneys in the field; and become familiar with the various communities.¹⁶⁰ This comprehensive statewide assessment took over a year to accomplish and was completed in May 2002. During these visits, the director also met independently with the Court (local judges, magistrates, court administrators, and court facilitators), attorneys who provided or were interested in providing services, each county department of social services

157. The minimum practice standards are developed with the purpose of ensuring that children, the only client who cannot evaluate their services or voice a complaint, are properly served when represented by GAL. The OCR is in the process of revising the minimum practice standards. (For an overview of the proposed OCR minimum practice standards, see Appendix D.)

158. CASA currently serves 21 counties.

159. Colo. Rev. Stat. §13-91-105.

160. According to the OCR, these visits also assisted in the process of establishing meaningful local oversight committees, which would later be implemented by the OCR and utilized in the attorney selection process. OCR 2002 Rpt. at 7.

within the district, CASA, District Attorney's office, county attorney, and any other service provider or agency that works with children.

According to the OCR, the information gathered was invaluable, enabling the office to identify accurately those areas in which improvements were needed and creating "an awareness of instances of exceptional GAL services." For example, the OCR found that, in the rural districts, the attorneys must be "very committed and creative" in order to find resources to meet the needs of the children they represent and have a "tremendous amount of dedication" and commitment to ensure that their clients' best interests are met. The OCR concluded that paying the rural attorney the same flat fee (\$1,040 for two years per case) as an urban attorney is inequitable and unconscionable.¹⁶¹ In contrast, the OCR found that quality of services in the more populated urban areas varied widely.¹⁶² However, the OCR found a consistently better quality of attorney services in districts in which the attorney selection process included proactive participation by the judiciary or its administration.¹⁶³

The information obtained during the statewide assessment helped shape the interview questions and was shared with the local oversight committees and taken into consideration during the attorney selection process. The OCR, working with the local oversight committees, also developed goals and action plans to resolve issues identified during the statewide assessment and incorporated information concerning the attorneys' needs and how the OCR can best provide support into the OCR's training curriculum, resource center, and website.

Local Oversight Committees

As required by state statute, the OCR developed local oversight committees in each judicial district to assist the OCR in ensuring that the attorneys selected have the necessary training, competency and commitment to provide high quality legal representation to minors. In particular, the committees:

161. *Id.* at 8.

162. The OCR identified significant problem areas during the assessment in some more metropolitan areas. In one jurisdiction, the OCR discovered that a core group of attorneys were not seeing their minors in foster care. The attorneys attributed this problem to the department of social services, who reportedly refused to tell these attorneys where the minors were located. However, other qualified attorneys in this same jurisdiction routinely were able to overcome these alleged obstacles and maintain contact with their minors. In another metropolitan area jurisdiction, the OCR found that attorneys, on a regular basis, had no contact with the minors, did not return phone calls to other professionals, and seldom conducted an independent evaluation. OCR 2002 Rpt. at 9.

163. For example, in one district, the court administration developed an instrument that was used to evaluate attorney services and all attorney applicants were interviewed and reconsidered annually under this process. In another district, a local oversight committee was created and assisted the judiciary in their annual review of attorney applicants. This jurisdiction also solicited outside comments from other professionals and litigants in the jurisdiction. In another judicial district, the Chief Judge closely screened all applicants every year, solicited outside feedback on attorney services, and closely monitored performance throughout the year. Attorneys that did not meet her standards did not receive contracts the following year. OCR 2002 Rpt. at 8.

- Assist the OCR with its annual screening and selection process for attorney applicants;
- Provide continual input and feedback to the OCR on the quality of attorney services provided in their community;
- Identify training and other resource needs of guardians ad litem, child representatives, and special advocates within each judicial district and ensure that the necessary training and other resources are available in the district; and
- Annually assess, together with the OCR, the unique jurisdictional needs and characteristics in the district to enable the OCR to best serve the needs in that legal community.

Committee participants include representatives from the OCR, legislative delegates, judicial offices, local foster care providers, CASA volunteers, community representatives involved in children's issues, an attorney who has provided GAL services in the past or an attorney from the local bar association, and a district court administrator or court facilitator.

The OCR implemented a uniform attorney selection process statewide to ensure that information from a number of different sources was collected concerning the quality and availability of attorney services in each judicial district. In its first year of operation, the OCR received over 400 applications from attorneys interested in providing attorney services for children, in response to posted, mailed, and advertised solicitations. The OCR staff personally interviewed all applicants in each judicial district throughout the state. Although the OCR had the sole discretion to contract with attorneys, the local oversight committees assisted and advised the OCR in the attorney interview and selection process, which allowed essential input from the variety of professions with different backgrounds and perspectives. The overriding objective governing the interview and selection process was the best interests and needs of the minor. The OCR indicated it gave equal weight in the selection process to a number of variables, including:

- Information received in the application;
- Quality of job interview, attorney's litigation skills;
- Experience and education concerning minor's issues;
- Years of experience as an attorney; and
- Applicant's philosophy concerning how to best represent the minor's interests.¹⁶⁴

164. *Id.* at 11.

The OCR indicated that this process provided the valuable opportunity for participants to develop first-hand knowledge about the attorneys who are providing GAL services to children in their community. The OCR is committed to the philosophy that a fair, thorough selection process is critical to ensuring that only qualified, competent attorneys represent children.

Based upon this selection process, the OCR created a new attorney appointment list that became effective on July 1, 2002.¹⁶⁵ Henceforth, the OCR will select and contract with qualified attorneys on an annual basis for the applicable fiscal year. Judges have no discretion to appoint attorneys who have not been screened and included on the OCR appointment list.

The OCR is currently in the process of developing an instrument to evaluate attorney services provided to children, by randomly looking at a designated number of cases at staggered time periods that measures "consumer satisfaction" (i.e., are the taxpayers getting their monies worth?) instead of outcome based evaluation.¹⁶⁶

Training

As reflected in the list of OCR's mandates, training is a critical component to the success of enhancing the provision of legal services and advocacy for minors. The OCR maintains that:

A child-sensitive legal system depends upon a bench and bar of considerable sophistication and competence. In representing children, lawyers and judges must not only know the law well but also be able to draw upon interdisciplinary knowledge from psychology, sociology, social work and medicine. Children are best served by the legal child welfare system when lawyers understand the social, psychological, as well as legal implications of a case and what those mean developmentally for the child.¹⁶⁷

The OCR created a multi-disciplinary committee to develop a curriculum and standards for training. The committee is in the process of developing a training curriculum for new attorneys and an advanced continuing education module for experienced attorneys. The OCR has made meaningful and cost effective training for rural attorneys in the state a priority. During the past year, the OCR provided continuing legal education training in the four rural corners of

165. The OCR noted that it did not approve all applicants and did not contract with some attorneys who previously provided attorney services. *Id.* at 12.

166. OCR Fiscal Year 2003 Budget Request at 16 [hereafter OCR 2003 Budget Request]. The evaluation consists of either an in-depth interview or questionnaire that ascertains the type of services provided. The evaluation procedure will analyze crucial moments in the life of a dependency and neglect case and determine if the GAL was present at those critical stages. The OCR believes that a "consumer satisfaction" evaluation best serves the agency and the community and that, in contrast, an outcome-based evaluation is not as meaningful because it is not known exactly what was achievable. For example: even with the best GAL, an ineffective judge may have made decisions not in the minor's best interest; although cases might have reached a timely conclusion, the result may not have been in the minor's best interest; or some complicated cases might have kept the minor in the system longer because no better alternatives were available. *Id.*

167. OCR 2002 Rpt. at 12.

the state and included such topics as: high conflict mediation, ethics, expert testimony, child hearsay testimony, emancipation planning resources and funding, secondary trauma, child development, child development considerations in the development of parenting time orders, forensic interview techniques, early identification of developmental disabilities, domestic violence and its effects on children and implications for parenting time orders, and the effects of violence and maltreatment on brain development.

The OCR also hosted its first annual Denver Metro Conference, which extended over four days and included over thirty-five topics and over forty-five speakers. The Conference provided an in-depth training for less experienced attorneys seeking to enter the field, as well as an advanced curriculum for attorneys currently practicing in the field. The Conference drew broad participation from attorneys and other professionals in the area of dependency and neglect, domestic relations, truancy and delinquency.¹⁶⁸

OCR Resource Center and Webpage

Recognizing that the representation of minors "requires expertise in so many areas other than a firm understanding of the law," the OCR is committed to providing ongoing technical assistance, support and useful information to attorneys, judges, and others in the field. To accomplish this, the OCR has created a centralized legal and professional resource center for attorneys in the field, to serve as a "one-stop shopping center of information."¹⁶⁹ Information is collected in an office library and is provided at the OCR homepage, from which attorneys also can access contract, billing and training information and forms.¹⁷⁰ The OCR website, which is continually updated and expanded, provides technical support and a legal research center with continuing case law and statutory updates and includes links to specialty information, such as psychological effects of sibling development, conduct disorders, attachment disorders, developmental disabilities, brain development, adolescent adoption, and parental alienation. The OCR website also offers a list of services to attorneys, enabling them to interact, discuss issues, and ask questions on-line with other attorneys statewide. The OCR office library contains a number of books, journals, articles, videotapes, audio tapes, and a limited number of continuing legal education (CLE) materials, covering a variety of subjects related to the representation of children. Most of these books may be loaned to contracted attorneys and judicial officers for a two-week period.

168. CASA volunteers, county attorneys, respondent parent's counsel, social services caseworkers, Guardians Ad Litem and special advocates are invited to participate in the training sessions produced by OCR. OCR 2002 Rpt. at 13.

169. *Id.* at 14.

170. The web site is <http://www.coloradochildrep.com>. The OCR believes the web site is particularly useful for rural attorneys.

Budget

The OCR budget is based on its "core mission" to provide Colorado's minors with competent and effective legal representation. The OCR assumed the responsibility for processing payment for all GAL, child's representative and special advocate attorney services from the State Court Administrator's Office (SCAO) on October 15, 2001. This expenditure accounts for ninety-four percent of the entire OCR budget. The SCAO prepared the OCR's Fiscal Year 2002 budget and projected the budgetary line item for mandated attorney services based on fiscal year SCAO 2000 expenditures. The OCR expended \$1 million more for attorney services than was appropriated. During the supplemental budget process in January 2002, the OCR received over \$526,000 of the approximately \$1.1 million it requested. In August 2002, the OCR received approximately \$436,000 in additional emergency supplemental funds. The OCR strongly maintained that these additional funds "were not due to any additional costs arising from the creation of the OCR," but were attributable in part to the approximately 12 percent rate increase that the SCAO implemented on January 1, 2001,¹⁷¹ and to increased active caseloads.¹⁷² The OCR noted that only six percent of its original budget, or about \$493,000, was used to support OCR's operations, including: carrying out the day-to-day activities of the office; conducting an initial assessment of services; providing five training conferences to attorneys, judges, and magistrates throughout the state; assisting CASAs in providing assistance to their local organizations; creating an on-site library and website resource center; establishing local oversight committees in each judicial district; and interviewing and selecting attorneys to provide services for Fiscal Year 2003.¹⁷³

In its 2003 budget request, the OCR emphasized that "[a]ttorney services are not discretionary costs, but are mandated costs that must be paid."¹⁷⁴ However, the OCR indicated it had examined its operations and spending patterns to isolate problematic practices and had begun implementing fiscal management saving procedures, without sacrificing quality of services.¹⁷⁵

171. OCR 2002 Rpt. at 15.

172. This accounts for approximately \$405,000 of the increase. *Id.*

173. As the OCR reported:

The GALs' work is driven by case filings, which rose significantly over this past year. Unfortunately, the OCR's budget needs have an inverse relationship with economic conditions - when times are difficult abuse and neglect rises. The increases are attributable to general increases in the state's population, difficult economic conditions, higher incidence of drug abuse, and changes in practices of local departments of social services. Consequently, the OCR spent over \$1 million more on attorney services than in the prior year. There are no signs of this trend slowing. As local social service departments' budgets experience constraints, it is expected that resources will be directed toward the most severe cases, which will require more time on the part of the attorney and which will further drive up the costs per case.

Id. at 15.

174. *Id.* at 16.

175. OCR 2003 Budget Request at 3. These cost-saving measures included:

Footnote continued on next page.

In particular, the OCR found analyzing spending patterns and cost trends on an ongoing basis critical to "isolating problematic practices" that add unnecessarily to costs.¹⁷⁶

The OCR established new billing procedures that went into effect on July 1, 2002. These require that all excess fees be pre-approved, allowing the OCR to better manage its costs and if necessary limit costs before unnecessary fees are incurred. Other expenses such as out-of-state travel, interpreters, and experts also require pre-approval.

One of OCR's mandates is to determine fair and reasonable methods of compensation, in order to enhance the legal representation of children. It was recognized that the compensation system needed to be evaluated as a part of improving attorney representation. The OCR inherited a compensation system in which some attorneys were compensated on an hourly basis and others on a flat-fee basis. In most districts, both payment methods were in place, with no apparent reason as to which compensation method was used for whom. The OCR also inherited a staff model of GAL services that is operational in one county in the state. Beginning in Fiscal Year 2003, the OCR was able to implement changes to achieve some consistency in payment, either contract or flat-fee billing, within each district and was able to convert most rural areas to hourly billing, which the OCR considered as "one of the greatest areas of immediate need."¹⁷⁷ The flat-fee contract payment system was originally instituted as a measure to control costs.

According to the OCR, most attorneys who represent children in dependency and neglect cases currently are paid a flat fee of \$1,040 per case for 24 months of representation. If the case has not yet closed after 24 months, attorneys may bill the OCR at hourly rates of \$45 for out-of-court work and \$55 for in-court work. Each case usually involves several children; however, if there are more than four children to a case, additional fees of \$85 are paid for each child beyond

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- Monitoring of each judicial district's costs of attorney appointments.
 - Travel to jurisdictions that have higher than average expenditures for the services provided. During these visits, the OCR meets with the judges and magistrates to discuss the costs, necessary indigency findings under particular titles, and offer alternatives to address the high expenditures.
 - Offering alternatives in truancy and probate appointments.
 - Travel to all 22 judicial districts to assess services, meet with the attorneys with whom the OCR will be working and contracting with exclusively in Fiscal Year 2003, and train judges on domestic relations, probate and truancy appointments.

176. OCR 2003 Budget Request at 20. For example, when the OCR began assessing attorney billing practices, one of the most problematic billing practices it encountered related to failure of the court to make indigency determinations in domestic relations cases. This was a significant problem because the OCR has no statutory authority to pay for services in these cases when parties are not indigent. The OCR spent considerable time and energy personally educating the attorneys and judges regarding this issue. Analyzing cost trends on an ongoing basis enabled OCR to identify attorneys who had consistently higher bills than other attorneys and to consider this information in the interview and selection process. The OCR also noticed that costs in certain districts were high in relation to other districts. For example in one district, GALs were appointed to most probate cases, but this practice was uncommon in the rest of the state. After investigating, the OCR determined that, rather than appointment of a GAL, a court visitor could best fill this need and thereby reducing the cost to the state. OCR 2002 Rpt. at 16.

177. OCR 2002 Rpt. at 17.

the fourth. Furthermore, an additional \$560 is paid if a motion is made to terminate parental rights, to cover the costs of preparing for trial.¹⁷⁸ Exceptions to the flat-fee system exist for cases that are dismissed, closed within 60 days of appointment, or on appeal. In such cases, the attorneys are permitted to bill at hourly rates.¹⁷⁹

The hourly rate paid by OCR is \$45 for out-of-court work and \$55 for in-court work, which is the same rate paid to other public attorneys in Colorado.¹⁸⁰ The OCR requires that attorneys submit timesheets with their billing to support the hours worked on the case. There is a cap on the total amount that can be spent in a dependency and neglect case of \$2,000. If the case requires more work than the cap allows for, the attorney submits a request to the OCR, prior to incurring additional fees, for permission to exceed the cap.¹⁸¹

The OCR believes this method of compensation more accurately reflects payment for services rendered and would be consistent with other public sector attorneys receive. The OCR also contends that the hourly payment system ensures accountability as to what services were provided, as well as the timeliness of such provisions, and allows for cost controls such as caps on maximum fees and prior approval to exceed the cost caps.¹⁸²

The OCR has requested additional funding to convert the now partially flat-fee/hourly compensation system to 100 percent hourly, but has been unsuccessful in acquiring additional funding given the budget crisis in Colorado. The OCR has calculated that the flat-fee attorneys make an average of about \$33 per hour, which is not a realistic level of compensation.¹⁸³ The OCR asserts that the contract system discourages quality representation for children because the rate of return to the attorney diminishes with every additional hour worked. Moreover the OCR expressed concern that the approach actually encourages attorneys to prolong a case past the 24-month contract period so that additional fees may be earned on an hourly basis.¹⁸⁴ Furthermore, this payment method provides for little accountability, since the attorneys receive the fee upfront

178. *Id.* The OCR paid \$3,988,595 in flat-fee payments in Fiscal Year 2002 for 5,603 active cases.

179. Exception also applies when a new attorney takes a case after a change of venue.

180. The OCR paid \$2,480,824 in hourly billings in Fiscal year 2002 for 5,152 active cases.

181. The OCR estimates that fees in about 15% of the cases are in excess of the cap.

182. The OCR recognizes that the standard state hourly rate is relatively low in comparison with other states that pay on an hourly basis. However, given the state's budget limits, fee increases have not yet been requested. Nevertheless, the OCR acknowledged that an increase will be necessary at some point in order to keep pace with the market and retain services. OCR 2003 Budget Request at 30.

183. The OCR's position is that the flat fee system is not "a fair and realistic" form of compensation. It "discourages effective and meaningful representation of children, promotes abuses within the system, and creates an environment that makes it difficult to devote the appropriate amount of time and resources each child deserves for qualified and effective representation." *Id.* at 28.

184. *See* OCR 2002 Rpt. at 26-30 (historical data shows that about 25% of contract dollars have been spent for contracts that exceeded 24 months and thus required additional hourly billings. *Id.* at 27).

when they take the case, and ensures minimal reporting as to what was done on the case after that point. Finally, the flat fee system encourages attorneys to continue to take more cases beyond the limit of what they can handle. The net effect of excessive caseloads is ineffective representation of children.¹⁸⁵

Pilot Projects

4th Judicial District (El Paso County) GAL Office Pilot

The OCR inherited the 4th Judicial District Pilot Project, which was created in Fiscal Year 2000 in direct response to legislation directing the Judicial Department to explore alternative methods of providing GAL services in dependency and neglect cases.¹⁸⁶ The primary goal was to determine whether higher quality services could be provided through a "staff office model" at the same or less cost as the existing attorney payment process (contract/hourly billing model). The "staff office model" was intended to imitate the public defender system. The GAL office consists of 1 managing attorney, 8 staff attorneys, 3 caseworkers, 2 legal secretaries, 1 receptionist, and 1 office manager. One of the key components of the GAL office is that there is exceptional accountability for services rendered.

The OCR has done extensive investigation and research as to the quality of attorney services provided by this office and has concluded that it is providing the highest quality of attorney services in the state:

The attorneys are well trained and the supervising attorneys are recognized for their extensive experience in this special area of practice. They are able to maintain reasonable and manageable caseloads in order to provide a higher quality of service. The staff model office also allows for mentoring by the more experienced attorneys. This pilot is recognized for their effective representation through all phases of the case. Finally, they are able to front load attorney services in order to better serve their client, the child.¹⁸⁷

An important component of the staff model is the teaming of a managing social worker and case coordinator to work on the most difficult and high-risk cases.¹⁸⁸ The OCR estimates that case coordinators and the managing social worker provide services on 70 to 80 cases per month.¹⁸⁹

185. OCR 2003 Budget Request at 30.

186. Senate Bill 99-215 (Long Appropriations Bill), Footnote 135. Because all provisions of GAL services now rests with the OCR, the 4th Judicial District's pilot project will continue under the oversight of this agency.

187. OCR 2002 Rpt. at 18.

188. *Id.* at 19. With over 25 years of combined experience in the human services field, the case coordinator and managing social worker provide an important contribution to the effective legal representation of children.

189. The services provided include analysis of treatment needs, participation in case staffings, communication with treatment providers and family members, research, conducting psychosocial assessments on select cases, and

Footnote continued on next page.

Because the team has the ability to cover for GALs at treatment staffings when the GALs need to be in court, it provides important continuity on cases, leading to more effective legal representation of the children.

In Fiscal Year 2002, the GAL office handled over 1,300 cases; 2,071 children were served; 600 cases were successfully closed (meaning that the children were permanently placed); and the office participated in 13 adjudicatory trials and 56 termination hearings. According to the OCR, these statistics are the best in the state.¹⁹⁰ In Fiscal Year 2002, the office cost \$1,031,202, or \$39.96 per hour of representation compared with the estimate weighted average hourly rate of pay of \$47 for a contract attorney.¹⁹¹ The OCR contends that the GAL Office has "proven to be highly effective and is currently considered one of the best models of attorney services in the state"¹⁹²

17th Judicial District (Adams County)

The OCR also inherited an on-going pilot project in the 17th Judicial District (Adams County). This Family Court Project is in its second phase and involves consolidating all of the different case types for one family before one judge, in an effort to reduce court appearances and inconsistent court orders and better serve the needs of families and children in the court system. The OCR is participating in this pilot by providing a controlled and unique GAL service model (involves 60 dependency and neglect cases) with the assistance of the Rocky Mountain Children's Law Center. One attorney, with special training in child welfare and juvenile law and strong litigation skills, exclusively handles all of the family pilot cases, adhering to the attorney standards designated by the American Bar Association. According to the OCR, the pilot project will enable the OCR and the Rocky Mountain Children's Law Center to evaluate timely outcomes, caseload size, necessary training, and appropriate minimum attorney standards.

The OCR was asked to consider the establishment of a Denver GAL Office, similar to the El Paso pilot project, as a possible alternative to the flat fee approach. Although the OCR

observation of parent/child visitation. The managing social worker consults with the GALs on cases involving serious mental illness of children or parents.

190. The GAL Office put in 25,813 hours directly conducting investigations and advocating for the children whose best interests they represent.

191. Information received from Tammy Nelson, Financial Budget Officer, OCR, Nov. 4, 2002.

192. OCR 2002 Rpt. at 18-19. This assessment is based upon feedback from the community, the courts, the CASAs, the county attorneys, and the Administrative Review Division of the State Department of Human Services. The Administrative Review Process conducted by the State Department of Human Services, which reviews out-of-home placement every six months to assess whether the child's needs are being met in that particular placement, reports the highest participation rate from the GAL Office in El Paso County.

believes that a GAL office model is the best way to ensure high quality, cost-effective services, it considers the start-up costs to be prohibitive at this point, in view of the state's budget crisis.¹⁹³

Court Appointed Special Advocate (CASA) Program

The Colorado Court Appointed Special Advocate (CASA) program was established in 1985 and has 12 programs throughout Colorado serving 21 counties.¹⁹⁴ The OCR believes CASAs are invaluable in providing objective information to the courts regarding what would be the best outcome for the child. Handling only one case at a time permits the CASA to explore the history of each case. However, the CASA's most important contribution to the case is the close, consistent contact with the children. CASA volunteers find out as much as possible about the child by reviewing records, interviewing parents, talking to teachers and neighbors, and developing a relationship with the minor. In most districts, CASA volunteers submit separate reports to the court prior to a hearing and appear at the hearing to report on their findings. CASA volunteers are required to complete a preservice training program that includes instruction on recognizing child abuse and neglect, cultural awareness, child development, the juvenile court process, permanency planning, volunteer roles and responsibilities, advocacy, information gathering, and documentation. CASAs must also complete at least 10 additional hours of in-service training per year.¹⁹⁵

Colorado law delineates the following primary responsibilities of a CASA:

- Conduct an independent investigation;
- Determine if an appropriate treatment plan has been created;

193. OCR 2003 Budget Request at 31. The OCR noted that the start-up cost in the first year of operations of a staff model office is a definite "drawback." For example, the OCR's financial budget officer explained that it was necessary to hire a manager, office manager, and several staff attorneys to organize the office a few months before the El Paso GAL office actually began operations. She further noted that, once open: "It took about 4 months before the GAL office began taking appointments, and then staff was added on in increments until caseloads increased. The office spent \$908,583 in its first year of operations, but handled not even half of the caseload that they handled the following year for \$1,031,202. In addition to the \$900 and some thousand spent on the office in that first year money was also spent on hourly attorneys to continue taking appointments until the office could assume all appointments. Some dollars will always be spent outside the office for El Paso County because of cases in which the GAL office has a conflict." Information received from Tammy Nelson, Financial Budget Officer, OCR, Nov. 4, 2002.

194. The Court Appointed Special Advocate (CASA) program was created nationwide in 1977 as an agency of trained volunteers to speak up for neglected or abandoned children in the court. CASA volunteers are dedicated and intensively trained to thoroughly explore each child's background to assess the child's situation and make objective recommendations to the court.

195. C.R.S. §19-1-204. All non-attorney OCR trainings are open to CASA volunteers and may be used to satisfy the annual CASA training requirement.

- Make recommendations consistent with the best interests of the child regarding placement, visitation, and appropriate services for the child and family;
- Monitor the case to ensure that the child's essential needs are being met; and
- Appear as a witness for any party, if requested.¹⁹⁶

The OCR's mandates charge OCR to work cooperatively with the Colorado CASA to develop local CASA programs in each judicial district, or in adjacent judicial districts.¹⁹⁷ Funds for the Colorado CASA are provided through the OCR budget for program development and technical support of existing CASA programs.¹⁹⁸ The state statute also specifically requires the OCR to develop private and public funding to supplement existing funding sources to enhance the CASA programs.¹⁹⁹

196. C.R.S. §19-1-208.

197. The majority of the existing Colorado CASAs are in urban areas, whereas a real need exists in the rural districts because of minimal local resources.

198. \$20,000 was budgeted in both Fiscal Years 2002 and 2003.

199. C.R.S. §13-91-105(1)(b).

Chapter 3

PROVISION OF GAL AND COURT APPOINTED COUNSEL SERVICES IN HAWAII

The Family Court in the First, Second, and Third Circuits presently contract out GAL and court appointed legal counsel services to nonprofit entities and independent providers. Unlike its sister circuits, the Fifth Circuit relies primarily on volunteer GALS (VGAL) to provide guardian ad litem services in Chapter 587 cases.

First, Second, and Third Circuits

The following is a summary of the provision of GAL and court appointed counsel services for the First, Second, and Third Circuits, based upon information submitted by the Judiciary.

The Contract Process

The Judiciary issues a Request for Proposals (RFP) soliciting competitive sealed proposals for the provision of these services on a fiscal year basis.¹ The RFP indicates the proposal is to consist of: an application form detailing qualifications and experience; a description of the firm; specification of resources that will be committed to providing the services; the cost of the work, including a breakdown of expenditures and the types and amounts of costs charged; and the applicable family court to which services will be provided. Cost proposals are requested by both case blocks and per case rate.² The term "block" is defined as the "number of cases to be serviced," and "case" is defined as "each family unit involving the same birth mother."³ The RFP also specifies that each case includes all children of the same birth mother, regardless of paternity.⁴ Proposals may include more than 1 block and should specify the number of blocks/cases being proposed. All estimates are to be calculated on an annual basis and must include all applicable taxes. The proposal must be accompanied by: current state and federal tax clearances; evidence of a professional errors and omissions liability

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1. Proposals received after the deadline are not considered unless there is a need for emergency or additional case coverage during the fiscal year. See RFP at 6.
 2. The Judiciary conceded that, as payment under the RFP is made for a "block" of cases, there is little point of asking for a per case rate. The Judiciary noted this is left over language from an earlier RFP when the Judiciary was experimenting with the number of cases assigned.
 3. RFP at 2-3.
 4. See discussion on compensation in Chapter 4.

insurance policy in a minimum amount of \$100,000 per claim;⁵ and consent to a Child Protective Services registry check⁶ and a criminal history record check by the Judiciary.⁷

Proposals received up through the April 2000 RFP issue were evaluated by an evaluation committee composed of one representative from each of the circuits participating in the contract process. In 2001, the First and Third Circuits issued an RFP to obtain additional contract services; the Second Circuit is issuing their RFP in 2002. The Judiciary's RFP states the "following elements of the proposal will provide the rating criteria to be used in determining the award of contracts, not necessarily in order of importance:

- a. Qualifications and experience of firms/organizations, or individuals in the fields of Family Law and/or Child Welfare related services.
- b. Scope of services to be provided.
- c. Cost of services.
- d. Completeness of Proposal."

The family court awards contracts to "responsible offerors whose proposals are determined in writing to be the most advantageous to the Judiciary taking into consideration price and the evaluation factors set forth in the request for proposals."⁸ The contracts are awarded for the applicable fiscal year, with the option that the contract may be extended for 2 additional 12-month periods, not to exceed 24 months; provided that the compensation rate is lower, remains the same, or is negotiated and mutually agreed upon by each party.⁹ Curiously, the RFP also states that, pursuant to section 103-39, Hawaii Revised Statutes, which was repealed July 1, 1994,¹⁰ no contract shall be binding unless the Judiciary "certifies that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover" the required amount.¹¹

5. Must be a company licensed to do business in Hawaii.

6. A confirmed report of child abuse or neglect will disqualify an applicant.

7. Conviction of felony or misdemeanor that is a "crime of violence [involving] injury or threat of injury to the person of another" will disqualify an applicant.

8. RFP No. J01-220 at 6. The Judiciary acknowledged that, as payment under the RFP is a set price per block of cases, price is not a factor in determining awarding of the contracts. As in the example previously noted, this is language left over from earlier RFPs. See note 2 *infra*.

9. This provision seems to conflict with the payment amounts specified in the RFP. See *id.* at 7-8. The RFP also states that any contract extension is subject to the availability of funds. *Id.* at 6.

10. See Act 8, §46, Special Session of 1993.

11. RFP at 9. Furthermore, if a contract calls for performance or payment within more than one fiscal year, the Judiciary may certify only that portion of the funds required for the contract in the instant fiscal year.

The names of those receiving contract awards are placed, in the order in which the contracts were submitted and executed, on separate lists for GAL services and for court appointed counsel, as appropriate.¹² In the First and Third Circuits, cases are then assigned on a rotational basis, beginning with the contractor whose name appears at the top of the list. In the Second Circuit, an effort is made to assign GAL cases based upon: providers' evaluated knowledge and skills in abuse types, i.e., sexual, physical, psychological; identified problems within the petition; and the child's age and development stage. Payment to the contractor is contingent upon presentation by the contractor of a written invoice describing the work performed and stating work will be performed in accordance with the contract.¹³

The number of cases in a block and the compensation rates paid differ between the Circuits as outlined below. (See Appendix E for Chart of Compensation Rates.)¹⁴

First Circuit:

In the First Circuit, a block of cases consists of 5 cases. The Judiciary pays the GAL contractor \$5,100 for one block of five cases (\$1,020 per case) per 12-month period, with monthly payments of \$425, beginning with the assignment of the first case. Thus, even if the last case in a block is not assigned until several months later, the start and end of the billing cycle tracks that of the first case assigned. The Judiciary views this as an incentive to contractors to provide predictable cash flow. Another advantage is that the standardized billing relieves the contractor from having to keep track of hourly billings.¹⁵ Cases carrying over into the second year are compensated at a rate of \$1,020 per case, pro-rated over a 12-month period, and, if carrying over into the third year, are compensated at a rate of \$510 per case, pro-rated over a 12-month period. Compensation of cases that are 37 months or older is subject to review and approval by the Judiciary on a case by case basis.

The Judiciary pays the court-appointed counsel contractor \$3,000 for one block of five cases (\$600 per case), with monthly payments of \$250 per 12 month period. Cases carrying over

12. The Court Management Services Branch of the Family Court maintains the lists.

13. The invoice is due by the 10th day of the month following the month for which payment is requested and must be approved by the Judiciary. See RFP at 9.

14. The Judiciary explained that the differences are due to supply and demand issues. There are fewer numbers of attorneys willing or able to serve as GALs in the other circuits versus the First Circuit and thus the Judiciary has to pay a higher rate in those circuits.

15. See Annual Report to the Twenty-First Legislature on Part III, Section 8.1, Act 112, Session Laws of Hawaii 2000, "Relating to the Judiciary (Regarding the effectiveness and efficiency of the program that provides Guardian Ad Litem and Legal Counsel for the Family Courts.)," Office of the Administrative Director of the Courts, Hawaii (Dec. 28, 2000) at 1.7 [hereafter 2000 Judiciary Rpt.].

past the first 12 months are compensated at a rate of \$600 per case, pro-rated over a 12-month period.¹⁶

Second Circuit:

In the Second Circuit, one block consists of five cases and the total number of blocks are limited to: 50 blocks of new cases and 40 blocks of carryover cases on Maui; 10 blocks of new cases and 10 blocks of carryover cases on Molokai/Lanai. The Judiciary pays the contractor of either GAL or legal counsel services \$8,750 per block for the first year; \$1,250 per case for second year carryover cases, and \$500 per case for third year carryover cases. For cases 37 months and older, no compensation is made unless the court finds extraordinary circumstances. The court evaluates each of these cases, and if extraordinary circumstances are found, payment is \$500 per case.

Third Circuit:

In the Third Circuit, one block consists only of one case and total number of blocks are limited to: 200 blocks for East Hawaii and 100 blocks for West Hawaii for GAL services; and 100 blocks for East Hawaii and 50 blocks for West Hawaii for legal counsel services. In the Third Circuit, the Judiciary pays the GAL contractor \$1,700 for one block for the first year, \$1,100 for each block carrying over into the second year, and \$500 for each block carrying over into the third year. The Judiciary pays the court-appointed counsel contractor \$1,200 per block for the first year, \$700 for each block carrying over into the second year of the contract, and \$400 for each block carrying over into the third year.

Qualifications for Appointment as GAL

The Judiciary's RFP indicates that parties interested in providing services as GAL and court appointed counsel must meet the following requirements:

- Be a licensed attorney in Hawaii or possess a graduate degree and applicable licenses in social work, psychology, or a related field (non attorneys will be considered for GAL only and will be liable for obtaining and paying for their own legal counsel).
- Complete the Judiciary Volunteer Guardian Ad Litem training, which may include carrying a pro bono case to its conclusion, within 90 days of execution of the initial contract and prior to receiving the first case assignment.

16. Effective July 1, 2001, all first circuit cases assigned during prior contract years became subject to this payment schedule. See RFP.

- Provide documentation of a minimum of one year's experience with cases involving Hawaii Revised Statutes (HRS), Chapters 587 (Child Protective Act), 571 (Family Court), 586 (Domestic Abuse Protective Orders), 583 (Uniform Child Custody Jurisdiction Act),¹⁷ or divorce or paternity (Chapters 580 and 584).
- Complete a minimum of 20 hours of training in each fiscal year in areas such as: dynamics of child abuse and neglect; child development; cultural competence; child sexual abuse; sex offender treatment; family dynamics; domestic violence; or related areas.

Description of GAL/Counsel Appointment Process

In the First and Third Circuits, the Department of Human Services (DHS) submits a referral form (usually via fax) to the Family Court, advising that a petition on behalf of an abused or neglected child is forthcoming. Upon receipt of the petition, a court officer reviews the referral and petition and completes a request for appointment of a GAL (Request for Court Appointed Attorney Form) for the child. Section 587-34(a), HRS, requires the court to appoint a GAL to serve for the duration of the child protective proceeding. Section 587-34(a) also authorizes the court to appoint independent legal counsel for any other party if:

- (1) The party is indigent;
- (2) Counsel is necessary to adequately protect the party's interests; and
- (3) The interests are not adequately represented by another party who is represented by counsel.

In the Second Circuit, the Department of the Attorney General (DAG) telephones the Family Court, advising that a petition on behalf of an abused or neglected child is forthcoming.

To qualify financially for court appointed counsel, parents must complete an income statement form and meet the income eligibility criteria using guidelines established by the Legal Aid Society. Parents may have an Income Statement submitted to the court at the same time the petition is submitted or may complete the form on the day of their first court appearance, before the hearing. If the parent's income eligibility is met, a second Request for Court Appointed Attorney Form is completed and submitted on behalf of the parents.

The court may appoint contract counsel for financially qualified parents, if the child has been placed in foster custody. However, according to statewide guidelines, dated April 17, 2000, which were issued by the senior Family Court Judges for all circuits and provided by the

17. Chapter 583 was repealed and replaced by the Uniform Child-Custody Jurisdiction and Enforcement Act. See Act 124, Session Laws Hawaii 2002.

Judiciary to the Bureau, "no independent counsel shall be appointed" if a child is placed under family supervision, unless one of the following exceptional circumstances exist:

- (1) The parties are mentally deficient;
- (2) Language barriers exist; or
- (3) The case involves allegations of sexual abuse.¹⁸

The extent to which this mandate is actually followed in practice by the family courts is unclear.¹⁹

These guidelines also state that court appointed counsel is to be discharged if the court orders permanent custody or family supervision, unless the case otherwise qualifies for counsel. Furthermore, the guidelines indicate that court appointed GALs would be discharged and replaced by volunteer GALs (VGALs), if available, when permanent custody is ordered.²⁰ The First Circuit indicated that it periodically assigns permanent custody cases to VGALs. Additionally when contracted GALs have chosen not to continue contracting with the Judiciary, the VGAL program has assumed their caseloads. The First Circuit noted that this has resulted in savings to the court, rather than reassigning the case to a new GAL and having to pay the full contract price over again. Also, the VGAL Program recently has been added to the rotational appointment list, as new volunteers are trained on a quarterly basis. The volunteers have expressed a preference for new cases rather than taking over existing cases.

Duties and Responsibilities of a GAL

The statutory duties of a GAL are to:

- Report all activities on behalf of the child to the court and all parties in writing at six month intervals;²¹
- Make recommendations to the court concerning the best interests of the child;

18. See Appendix F for a copy of these guidelines.

19. See notes 31-32 *infra* and accompanying text.

20. Each case is to undergo annual judicial review to determine whether counsel may be discharged or whether VGALs may be appointed for GALs and whether the case is progressing within the permanent custody/termination guidelines (2 years if the child is in foster custody and 2 and one-half years if the court orders family supervision).

21. HRS §587-34(c) (or as is otherwise ordered by the court).

- Make face to face contact, at least once every three months, with the child in the child's family or foster home; and
- Inform the court of the child's perceived interests if they differ from those being advocated by the GAL.²²

In this latter instance, the court is responsible for evaluating the necessity of appointing special counsel to serve as the child's legal advocate for these interests.²³ Furthermore, the Judiciary notes that the GAL may request the court to appoint counsel to represent the child's wishes, in situations in which the child's wishes are contrary to the GAL's recommendation. According to the Judiciary, however, independent counsel is rarely appointed to represent a child, *in addition* to a GAL.²⁴ Independent counsel is appointed, in the majority of cases, only to represent one or both parents under section 587-34(a), Hawaii Revised Statutes.²⁵

To assist the GAL in carrying out such duties, the statute provides that a GAL must: be allowed access to the child by the child's caretakers;²⁶ have authority to inspect and receive copies of any relevant records, notes, and electronic recordings concerning the child;²⁷ and be given notice of all civil or criminal hearings and proceedings and protect the best interests of the child therein.²⁸ The Judiciary's RFP indicates that the GAL services are to include, but not be limited to the following:

- Acting as an independent fact finder to ascertain the facts and circumstances of the child's situation;
- Determining the child's interest, including maintaining a trusting relationship with the child via fact-to-face contact in the child's family or foster home at least once every 3 months;
- Advocating for the best interest of the child and the prompt resolution of the child's situation;

22. *Id.*

23. *Id.*

24. See Appendix G for Judiciary's response.

25. The Judiciary indicates that the GAL represents the "best interest of their client," whereas the legal counsel "represents what their client wishes."

26. HRS §587-34(b) (applies whether caretakers are individuals, authorized agencies, or health care providers).

27. *Id.* (does not require the consent of the child or individuals and authorized agencies who have control of the child).

28. *Id.* (unless otherwise ordered by the court).

- Providing written reports and recommendations to the court and all parties at each hearing, unless waived by the court; and
- Providing promptly a written report to the court if services are not being made available to the child or family or if the child is in an unsafe situation.

The court order appointing the GAL elaborates on these duties, indicating that a GAL should:

- Act as an independent fact finder or investigator and review all relevant records and interview the child, parents, social workers, teachers, and other persons to determine the facts and circumstances of the child's situation;
- Determine the interest of the child, taking into account the child's age, maturity, culture, and ethnicity, including explaining the court proceedings to the child in terms and language the child can understand, and maintaining a trusting meaningful relationship with the child via face-to-face contact;
- Seek cooperative resolutions to the child's situation within the scope of the child's interest and welfare;
- Provide the court with written reports of findings and recommendations at each hearing to assure all relevant facts are before the court; and
- Provide promptly a written report to the court if services are not being made available to the child or family, if the family fails to take advantage of such service, or if such services are not achieving their purpose, and bring to the court's attention any violation or orders, new developments, or changes.²⁹

Duties for Court Appointed Counsel

The RFP indicates that legal counsel will provide legal representation to the parents of children in abuse/neglect cases and enumerates the following specific responsibilities:

- Inform parents of their rights and responsibilities in abuse/neglect cases;
- Counsel parents on their options and the consequences of their choices;
- Communicate with clients and keep them informed of all proceedings; and
- Seek cooperative resolutions to the matter.

29. See Appendix H.

Training Requirements for GAL and Court Appointed Legal Counsel

The RFP indicates that both GALs and court appointed counsel are required to participate in the Judiciary Volunteer Guardian Ad Litem (VGAL) training program, with contracted GALs required to handle a pro bono case under the supervision and monitoring of the Judiciary's VGAL program. Both GAL and court appointed counsel are required to participate in a minimum of 20 hours of training in each fiscal year, in areas such as: dynamics of child abuse and neglect; child development; cultural competence; child sexual abuse; sex offender treatment; family dynamics; domestic violence; or related areas.

Supervision and Monitoring of GAL and Court Appointed Legal Counsel

The GALs in the First and Third Circuits work independently with no supervision. The Family Court monitors the cases, however, and a court hearing is required by Chapter 587 at least every six months. No information was provided with respect to supervision or monitoring of court appointed legal counsel.

Evaluation of GAL and Court Appointed Legal Counsel

Through year 2000, the First Circuit Family Court used an open-ended evaluation form listing all GALs on the appointment list. It appears only judges used it to comment on GALs who appeared in their court within the last 12 months. However, in 2001, the Family Court created a new evaluation form for GALs and court appointed counsel that addressed specific criteria and included a sliding scale response. In addition, those persons asked to evaluate the GAL were broadened to include the judge, court officers, deputy attorney general, DHS social worker, foster parent, and service providers. Those asked to evaluate legal counsel include the judge, the client, court officers, deputy attorney general, and DHS social worker. It is unclear whether the Third Circuit also uses this evaluation format.

In the Second Circuit beginning in the 1999-2000 contract year, formal evaluations were completed on all contractors. The objective was to evaluate overall quality of services provided as well as the quality of service provided by each individual contractor. For each contractor, 25 percent or a minimum of two cases were randomly selected for evaluation. Beginning in the 2000-2001 contract year, every case closed during the year was evaluated.

The evaluation form for GALs and court appointed counsel addressed specific criteria and included a sliding scale response. Evaluation forms were distributed to the case judge, assigned deputy attorney general, DHS social worker, court officer, child's caretaker, service providers and other individuals involved in the case. Whenever possible, the minor children and their caretakers were interviewed in person or by telephone. If not available, the children's caretaker was sent an evaluation form.

Support or Other Services Available to GALs or Court Appointed Counsel

The First and Second Circuits noted that GALs and court appointed counsel are invited to attend the limited amount of training provided by the court and that the court also notifies them of any other training opportunities of which the court becomes aware.

Since 1996, the Second Circuit has had a GAL Training Committee composed of one representative from each of the following: DHS, GAL, family court, a human services provider and the Children's Justice Center. The committee reviews training brochures and syllabuses, determines if the offering is appropriate to meet the ongoing training requirements mandated by the RFP and contracts, and the number of hours to be credited. Further, the committee periodically surveys their representatives' communities to determine training needs, coordinate and sponsor training based on the identified needs.

Use of Volunteer Guardians Ad Litem (VGAL)

The Bureau received information from the judiciary concerning the use of VGAL as this study was being completed. This information has been included in Appendix I.

Fifth Circuit

As noted previously, the Fifth Circuit relies primarily on VGALs to provide Guardian Ad Litem services in Chapter 587 cases. The Judiciary estimates that VGALs have been appointed in 86 percent to 89 percent of the cases over the last 4 years. If VGALs become unable to accept any more appointments because of caseload, attorneys are then appointed as GALs and are paid an hourly rate of \$60 in-court and \$40 out-of-court.

Description of Appointment Process

A VGAL or attorney GAL is appointed prior to or after the initial hearing in each case. The VGAL program matches and assigns a VGAL to the case. An attorney GAL is appointed by the court on a rotational basis, from a pool of attorneys who have indicated interest in being appointed in Chapter 587 proceedings. If the court determines that court-appointed counsel is required to protect the interests of an indigent party, the court appoints an attorney from this pool.

Qualifications

A VGAL must be at least 18 years old and have passed screening requirements that include a written application, a personal interview, references, child protective services check, and a criminal history record check. Applicants are rejected if they have been convicted of, or

have pending charges for, a felony or misdemeanor involving a sexual offense, child abuse or neglect or "related acts that would pose [a] risk to children or to the VGAL Program's credibility." Selection of volunteers is based upon relevant life and work experiences, motivation for type of volunteer work, and attitude toward child abuse and neglect and parenting styles.

Duties

The VGAL must be an advocate for the child in and out of the courtroom. Section 587-34(c), Hawaii Revised Statutes, requires the GAL to make personal contact with the child at least once every 3 months. In contrast, the Fifth Circuit's VGAL program requires more frequent contact between the VGAL and the child.

Training

Prospective VGALs are required to attend a 40-hour course modeled on the national court appointed special advocate (CASA) curriculum, tailored for use in Hawaii by the VGAL Program Coordinators throughout the State. Attorney GAL and court-appointed counsel are encouraged, but not required, to participate in the 40 hour training session. Presentations by volunteer attorneys, social workers and agency professionals are integrated into the curriculum. The Fifth Circuit holds in-service training as needed to address new procedures or requirements, and tries to encourage and facilitate attendance by VGALs at agency conferences or workshops that are of interest to the VGAL Program.

Supervision

In the Fifth Circuit, the VGAL Program staff provide regular guidance and support to the VGALs, through case conferences and close review of reports, until an individual VGAL is deemed to have developed the confidence and competence required to act independently. Thereafter, the VGAL Program staff is available to the VGAL in a consultant or liaison role, as necessary. Neither attorney GALs nor court appointed counsel are supervised or monitored.

Evaluation

There is no evaluation process of GALs or court appointed counsel in the Fifth Circuit.

Support Services Available

The Fifth Circuit indicated that 15 hours of legal services per month are made available, through the Court Improvement Project, to the VGAL Program and VGALs to assist with the legal complexities presented by some cases. Also, the VGAL Program reimburses VGALs for

mileage whenever they attend meetings, home visits, or court hearings and for any travel expenses when they visit children on neighbor islands, using funds from the Judiciary and the Bretzlaff Grant funds. The Fifth Circuit also holds an annual recognition ceremony to honor their judiciary volunteers.

Quantitative Data

At the request of the Bureau, the Judiciary provided data on the number of abuse and neglect cases involving GALs, VGALs, and court appointed counsel and the cost of those cases. The data reflects fiscal years 1999-2002. The Judiciary acknowledged that its data collection system is not designed to capture GAL related information. Therefore much of the information provided was of limited use to the Bureau in providing an analysis of fees or in assessing the cost-effectiveness of the present GAL system.

Table 1 and Charts 1-4 show the number of cases involving GALs, VGALs, and court appointed counsel in each of the circuits and statewide. The figures reflect the number of new cases filed in the applicable year, not the number of "open" or active cases that may be in their second or third year. The Judiciary noted that a case-by-case review of files would be necessary to obtain this information. As the charts reveal, the number of cases has fluctuated considerably over the last four years. The Judiciary reported that an increase in cases in some circuits may have been attributable to a new matrix adopted during that period by the Department of Human Services to assess abuse and neglect cases.

Although it is difficult to draw any reliable conclusions from this data, a few observations are worth noting. While counsel is appointed for parents in roughly one-half of the cases involving GALs in the First Circuit, the number of cases in which counsel is appointed for parents in the Second Circuit roughly equals or exceeds that of GAL cases. This is also true for the last two fiscal years in the Fifth Circuit as well. In the Third Circuit, the figures reflect no court appointed counsel cases, because the circuit did not have this data available. The Judiciary indicated that a case-by-case review of the files would be necessary to retrieve this information.³⁰ However, based upon the cost data provided for court appointed counsel cases, it seems clear that counsel is appointed in a majority of the abuse and neglect cases in the Third Circuit. If the court appoints counsel *only* in the case of indigent parents, these figures would seem to indicate that all or most abuse and neglect cases occur among families that are indigent. Furthermore, if statewide guidelines, issued by the senior family court judges, that appointment of counsel is permissible in court-ordered family supervision settings *only* if exceptional circumstances exist

30. The Judiciary indicated that:

[The] data relating to this category was not immediately available. More specifically, an individual case-by-case examination of each single case file would have to be manually conducted in order to obtain a hand count for this category. Due to the short time frame, Third Circuit program staff was unable to commit the time to conduct such a manual search in order to provide the requested information in an expeditious manner.

are being followed,³¹ then one may conclude that either most cases do not result in family supervision or that exceptional circumstances exist in most of these instances. In response to an inquiry by the Bureau concerning these guidelines, the Judiciary stated:

Furthermore, please note that the April 17, 2000, memorandum was written during a time of rising costs. It was a policy memorandum which was never meant to contradict the statute or to contradict individual judges' determination of what was necessary in specific cases. Many "family supervision" cases are not quiescent. In fact, many are quite volatile. Steady legal representation is often in the child's and family's best interests. A large number of families also move in and out of family supervision. Applying a strict policy against representation while in family supervision would be counterproductive, practically as well as fiscally.³²

The data reflects a high usage (about 86 percent of the cases) of VGALs in the Fifth Circuit, as noted previously. The First and Third Circuits also rely upon VGALs to a limited extent. The degree to which the Second Circuit relies upon VGALs is unclear. Information received from the Second Circuit indicates that the court uses VGALs, but the data provided by the Judiciary included no figures on the number of cases in which VGALs were appointed.

Charts 5-11 and Tables 2-7 reflect the costs for abuse and neglect cases involving GALs, VGALs, and court appointed counsel in each of the circuits and statewide. Note that the figures for number of GALs and VGALs reflect separate cases, except for the data provided for the Fifth Circuit, where the figures for GAL cases include *both* GAL and VGAL cases. (See Chart 10.) The costs reflect the overall costs and do not indicate the varying payout amounts depending upon whether active cases are in the first, second or third year. Furthermore, the costs for GALs do not include any associated costs for VGALs.³³ A break down of costs for VGALs during the specified period was provided only for the Fifth Circuit. (See Chart 10) Also, as noted, the figures for number of cases reflect only the new cases filed in the applicable year. Accordingly, no direct correlation can be made from the data provided concerning the cost per case. The Judiciary indicated that the only way to determine the real cost of each case would be to perform an audit of a representative sample of cases. Only the Fifth Circuit was able to provide a breakdown of such costs, because of its relatively lower number of cases. (See Chart 11 and

31. See notes 18-19 *supra* and accompanying text.

32. See letter from Larry L. Coldiron, Policy & Planning Division Head, Office of the Administrative Director of the Courts, to Wendell K. Kimura, Acting Director, Legislative Reference Bureau, dated November 1, 2002.

33. The Judiciary indicated that the formula for estimating VGAL costs that was used in the 2000 Report to the Legislature:

"Consisted of first compiling the salary cost of program staff involved in administering/assisting the VGAL program in each respective circuit. The cost of related activities such as training services as well as legal representation for VGAL's was then added. This total cost figure was then divided by the number of cases assigned to VGAL's in each circuit, to arrive at the estimated 'cost per VGAL case.' Further, as is apparent from the figures included in VGAL cost figures in the Judiciary's 2000 report to the Legislature, an extremely wide-range of differing cost figures result apparently from variances in salary costs, as well as in legal representation requirements."

Table 7.) The Fifth Circuit indicated that an increase in the complexity of cases and a different judicial philosophy accounted for its increase in costs in recent years.³⁴

At best then, a few observations may be made. The costs fluctuate, but not necessarily in relation to the number of cases filed. Because the fees paid to court appointed counsel are less than that paid to GALs, one would expect that the overall cost of court appointed counsel would also be less. This is the case in the First and Second Circuits, even though the number of cases in which counsel is appointed roughly equals or exceeds that of GALs in the Second Circuit. Furthermore, one would expect the cost of court appointed counsel to be higher than the cost of GAL/VGALs in the Fifth Circuit because the majority of cases are handled by volunteers rather than paid GALs. The figures for the Third Circuit are disturbing, however. Although the number of court appointed counsel cases was unavailable for this circuit, the costs associated with court appointed counsel cases are alarmingly high in relation to that for GALs and in the last two fiscal years have exceeded that of GALs. The Judiciary has posited that social and economic factors, as well as differing judicial philosophies, account for these figures. The Bureau lacks significant data to provide further assessment or comment.

34. The Judiciary elaborated on this:

It is not uncommon now to have multiple fathers associated with one case, which requires separate hearings even though there is only one mother involved, one or both parents in prison or drug treatment which requires additional accommodations, federal and state requirements for earlier permanency decisions than were previously required which impacts the number of hearings required, parties requesting more review hearings, increased attendance by attorneys at multi-disciplinary meetings or ohana conferences, and attorneys calling numerous witnesses and questioning witnesses at length due to the high stakes involved in termination of parental rights.

For the first time, there is one judge assigned to hear all Family Court cases rather than the previous method of using alternating district court judges and per diem judges. Numerous judges hearing different parts of the same case over the years means less investment and involvement on the part of each of the individual judges. The present judge, by virtue of the amount of time he spends on each case, requires more accountability in terms of judicial monitoring via hearings.

An additional factor to explain the increase in the costs is the shortage of VGALs during that period. Due to a shortage of appropriate staff, recruitment efforts for additional volunteers suffered during this period.

Letter from Norma Shishido, Policy & Planning Division, to Regina A. Jimenez, Administrator, Fifth Circuit, dated October 29, 2002.

Chapter 4

SUMMARY AND RECOMMENDATIONS

Many states are striving to improve the representation of children in abuse and neglect cases and the manner in which such services are provided. Moreover, many states are cognizant that the mandate to provide representation guardian ad litem services to children requires that sufficient resources be dedicated to ensure that such services are adequate. However, with the downturn in the economy nationwide and stiff competition from other programs for limited funds, many states are struggling with how to provide quality representation in a cost-effective manner.

Considerable variation in how guardian ad litem (GAL) services are provided exists among the states and even within some states. While there are general models of who provides such services (e.g., CASAs, attorneys with the assistance of non-attorney GALs or CASAs, attorneys serving dual function of attorney and GAL, or attorneys serving as the child's representative) and of how these persons are compensated (e.g., flat fee per case or block of cases per contract, hourly basis with or without a maximum cap, salaried employee), most jurisdictions appear to have adapted such models to their own unique circumstances and needs. The end result is that there are a myriad of variations on any particular model and no universal agreement on the "right way" to provide guardian ad litem services.

Despite there appearing to be no one model that is touted as the best for all jurisdictions, there are a number of factors that appear important to ensuring quality guardian ad litem representation.

Adequate Compensation

Adequate compensation for guardians ad litem is necessary to ensure adequate services are provided. To some extent, the amount spent reflects the priority put on the representation of children. Attorneys providing guardian ad litem services should be compensated equivalent to other "public service" attorneys. Insufficient compensation leads to guardians ad litem being overextended, as they take on more cases, but without adequate time and resources to devote sufficient attention to each case. This compromises the entire system of guardian ad litem services to children. States must set compensation at realistic levels that will result in the provision of decent services.

There is little agreement, however, on what is a realistic level of compensation. Information on actual rates of compensation in other jurisdictions was sketchy. Furthermore, given the diversity that exists among jurisdictions in the provision of guardian ad litem services, comparing such rates would be as helpful as "comparing apples and oranges." For example the Colorado Office of the Child's Representative contended that the present flat fee for contract attorneys (\$1,040 for 24 months) is an unreasonable level of compensation compared with the hourly compensation rate of \$45 out-of-court and \$55 for in-court. However, in several

jurisdictions, the hourly fees paid to attorney/guardians ad litem is considerably higher than in Colorado or under the old 60/40 hourly fee system in Hawaii (i.e., \$70-80 in Alaska; \$75 in-court and \$50 out-of-court in Orange County, California). Moreover, the federal district court in New York, in finding that the hourly compensation level for court-appointed counsel for indigent parents in abuse and neglect cases was so low as to deny adequate representation, approved payment of \$90 per hour (equivalent to the fee for federal court appointed defense counsel).

Several guardians ad litem in the First Circuit, where the fee is lower than the Second and Third circuits, expressed concern that the low contract fee amount is discouraging quality representation. The larger providers of guardian ad litem services, such as the Legal Aid Society of Hawaii and Domestic Violence Legal Clearinghouse Hotline, end up subsidizing their guardian ad litem cases because the reimbursement is insufficient to cover their costs.¹ Most individual attorneys do not have this luxury, however. It also was pointed out that the flat fee fails to take into account the complexity of a case or the number of children involved. For example in a case in which there are 4 children involved, the flat fee may be of little consideration if the case only results in an order of family supervision or if all 4 children are placed in the same foster care. More often than not, however, multiple children in the case may: range in ages (i.e., from infant to teen) and thus may be placed in different foster care situations; have different issues (mental or physical challenges, juvenile delinquency, drug addictions, teenage pregnancy, runaways, health issues);² go to different schools, or have different fathers. In such instance, the guardian ad litem has a totally different set of people with whom to interact for each child and, concomitantly, has different meetings to attend and care homes to visit. Colorado's OCR attempts to address these complex cases by providing for an additional payment of \$85 per child for the fifth or more child in a case and an addition payment of \$560 if a case goes to a parental termination proceeding.

Guardians ad litem also maintain that the Hawaii Judiciary's "related child" policy is unfair. Guardians ad litem explained that a guardian ad litem under the Hawaii system has responsibility for a case until it is closed. Consequently, if a mother gives birth to a new child just as the case is due to close, the guardian ad litem "inherits the baby for free," (i.e., the baby is included under the contract fee already negotiated). Thus the guardian ad litem has to "start over," as if it were a new case, but without any *additional* funds. Furthermore, the guardians ad litem contend that the Judiciary provides *no funds at all* past the third year of a case, even under these circumstances, due to lack of funds. When asked about this issue, the Judiciary maintained that it *does* pay additional funds in the third (or subsequent) year to cover a new born child.

Recommendation: The Legislature and the Judiciary should commit sufficient resources to ensure quality guardian ad litem services are provided to Hawaii's children. The Judiciary should establish a policy that clarifies it will expend funds to cover any new child born to the

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1. It was estimated that DVCLH handles about 100 cases at any given time, and LASH handles between 300-500 cases statewide.
 2. For example, infant may be a drug baby, toddler may have health problems, an elementary school age child may have learning disabilities, and a teenager may be pregnant.

mother during the pendency of the case. Furthermore, the Judiciary should also consider, and establish criteria for, additional payments to guardians ad litem in more complex cases. Finally, the Judiciary has indicated that it intends to submit proposed legislation to clarify its authority to contract for guardian ad litem services under section 571-87. (See Appendix J) The Bureau recommends that the Judiciary carry out this intention.

Training

The representation of children has become a specialized field, requiring extensive knowledge of the increasingly complex laws related to children, including those concerning welfare and education, and of a broad range of related interdisciplinary issues, such as child development, family dynamics, educational and developmental disabilities, available social services and community resources, and the dynamics of child abuse and neglect. Therefore, it is clear that training for all persons who serve as guardians ad litem is critical to providing quality representation. Initial training, as well as continuing education, should be mandatory.

Most states have initiated some training programs for their guardians ad litem. Local CASA programs and many other programs using volunteer or non-attorney guardians ad litem rely upon the training curriculum and materials created by the National CASA organization. These appear to be excellent, comprehensive training programs. In contrast, some jurisdictions do not require similar comprehensive training for attorneys serving as guardians ad litem, including the Fifth Circuit in Hawaii. As noted in Chapter 2, legal training as an attorney is insufficient by itself to qualify a person to serve a guardian ad litem.

In Hawaii, attorney/guardians ad litem and court appointed counsel are required to participate in the Judiciary's VGAL training program and undergo 20 hours of continuing education each year. New guardians ad litem are also required to handle a pro bono case under the Judiciary's supervision and monitoring. These requirements apparently are relatively new, with the Judiciary's transition, beginning in 1996, from a system of paying appointed guardian ad litem on an hourly basis to a system of contracting for services for a flat fee per block of cases. There was some dissatisfaction expressed to the Bureau by guardians ad litem concerning the quality of representation by guardians ad litem and the system of training, supervision, and evaluation. It is unclear, however, how much of this dissatisfaction is attributable to service by guardians ad litem under the old system versus by those meeting the new training requirements and subject to a new evaluation system. Furthermore, some guardians ad litem expressed concern that: the court does not use its evaluation process to eliminate guardians ad litem who provide inadequate service; and there is no feedback as a result of the new evaluation system.

Recommendation: Initial training, as well as continuing education, should be mandatory for all persons who serve as guardians ad litem in Hawaii. Furthermore, the Judiciary should assess the effectiveness of its evaluation program and consider how best to provide useful feedback to participants.

Flexible Use of Resources

Systems of providing guardian ad litem services that seemed most successful were those that allowed flexibility in the use of resources. These systems recognize that child advocacy requires expertise in a wide range of areas and that abuse and neglect cases often present issues that are best addressed by other specialists. Such an approach further acknowledges that, while legal issues may exist, the focus must be broader than legal representation. Rather, the focus should be on advocacy for the child, including crisis intervention and the ability to work with collateral agencies, interview children, and explore and negotiate community, educational, and medical services for the child and others. For example, a flexible approach would allow the person or entity providing services to draw from a cadre of investigators, social workers, mental health specialists, child advocates (whether paid or volunteer) serving as guardians ad litem, or attorneys to provide the various services needed in a particular case.³ Moreover, this approach enables an entity to use its personnel and resources effectively, ensures quality control and more experienced providers, and provides economies of scale in recruiting, training, supervising, and evaluating service providers, thus reducing costs. Furthermore, it encourages a partnership relationship between diverse professionals specializing in child advocacy issues. Examples of this approach may be found in Colorado's El Paso GAL Office or Orange County's use of a master contractor to provide guardian ad litem services.⁴

In late October, the Judiciary indicated that it was exploring, with the assistance of the National Council of Juvenile and Family Court Judges, the possibility of using professionals in areas such as social work, public health, or therapist as non-attorney guardians ad litem. The Judiciary further noted it was considering contracting with an established entity such as the Legal Aid Society of Hawaii to handle a larger block of cases.⁵

Recommendation: The Judiciary should pursue these ideas, perhaps initially as a pilot project to allow for sufficient evaluation. In particular, the Bureau believes a "master" contract with one or more experienced, willing providers could be beneficial. The approach should allow for maximum flexibility in the use of resources and guarantee the assignment of a specified minimum number of cases to ensure financial certainty to the provider. Although it does not

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3. For example, in some cases, an attorney may need to handle the entire case. Other cases may require extensive legal work, but also may involve numerous meetings with mental health providers, educational specialists, social workers etc. Allowing a trained advocate or specialist to attend such meetings in place of the attorney would be a more efficient and cost effective use of resources. In other cases, the social worker or other advocate or volunteer may be amply experienced, or the case sufficiently simple, that an attorney is not necessary. Furthermore, once legal issues are disposed of in a case, a non-attorney could assume responsibility for resolving the remaining issues. The First Circuit in Hawaii does this to the extent it has VGALs available to take over cases.
 4. New York appears to have a similar "master contract" arrangement with the local Legal Aid Society and an organization known as the Lawyers for Children. The advantages of such a system were also touted by the Alaska Public Defender. See Chapter 2, note 92 and accompanying text.
 5. Letter from Judge Frances Q.F. Wong, Senior Judge, Family Court of the First Circuit, to Charlotte Carter-Yamauchi, October 23, 2002.

appear to be a prerequisite to the start of such a pilot program, the Judiciary may want to consider proposing an amendment to section 587-2, Hawaii Revised Statutes, to clarify that the term "guardian ad litem" may include an "entity."

Separate Agency

As noted previously, the "success" in terms of cost-effectiveness of a guardian ad litem program is hard to measure. Nevertheless, it is note worthy that several jurisdictions, such as Alaska, Arkansas, Colorado, Indiana, North Carolina, and Utah have made protecting children's interest a high priority by establishing a separate state agency, independent of the court handling such cases, that is charged with ensuring the effective representation and advocacy of children in abuse and neglect proceedings.⁶ Some of these are independent agencies (such as in Alaska and Colorado), and others were established under the auspices of the state's Administrative Office of the Courts (such as in Arkansas, Indiana, North Carolina and Utah). While the Bureau acknowledges that the mere establishment of an independent agency is insufficient to achieve this goal, such an agency serves to clarify the objectives of this mission, consolidates responsibility and control, and provides for dedicated budgetary resources.

Recommendation: The Legislature may want to explore the creation of a separate, independent state agency, similar to the Office of the Public Defender, to provide representation and advocacy for children and appointed counsel for parents in child abuse and neglect proceedings.

Parent Court Appointed Counsel

Concern was expressed by the Judiciary that counsel is appointed for parents in abuse and neglect cases in instances in which the indigency of the parent or parents has not been established.

Recommendation: The Legislature may want to amend section 587-34, Hawaii Revised Statutes, to require a determination of indigency, similar to that provided in section 802-4, Hawaii Revised Statutes (relating to services provided by the Public Defender).

Data Collection

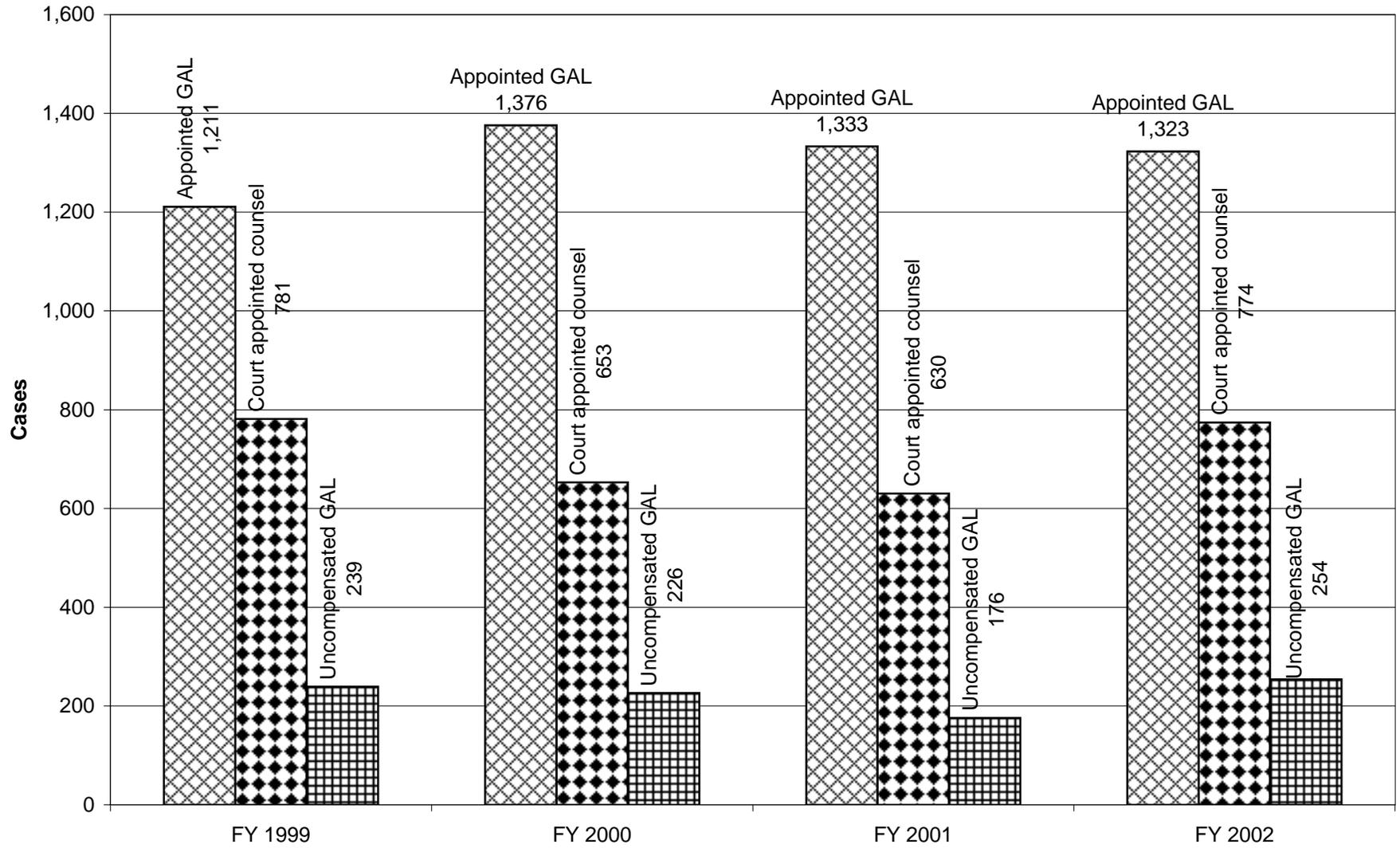
Much of the data provided by the Judiciary was of limited use in assessing the cost effectiveness of Hawaii's present system of providing guardian ad litem services in abuse and neglect cases, because the Judiciary's data collection system is not designed to capture information related to guardian ad litem services. Changes in the collection of data to capture that related to guardian ad litem services and appointed counsel in abuse and neglect cases is a

6. See, for example, North Carolina, Guardian Ad Litem Services Division's statement of its mission and goals at Appendix K.

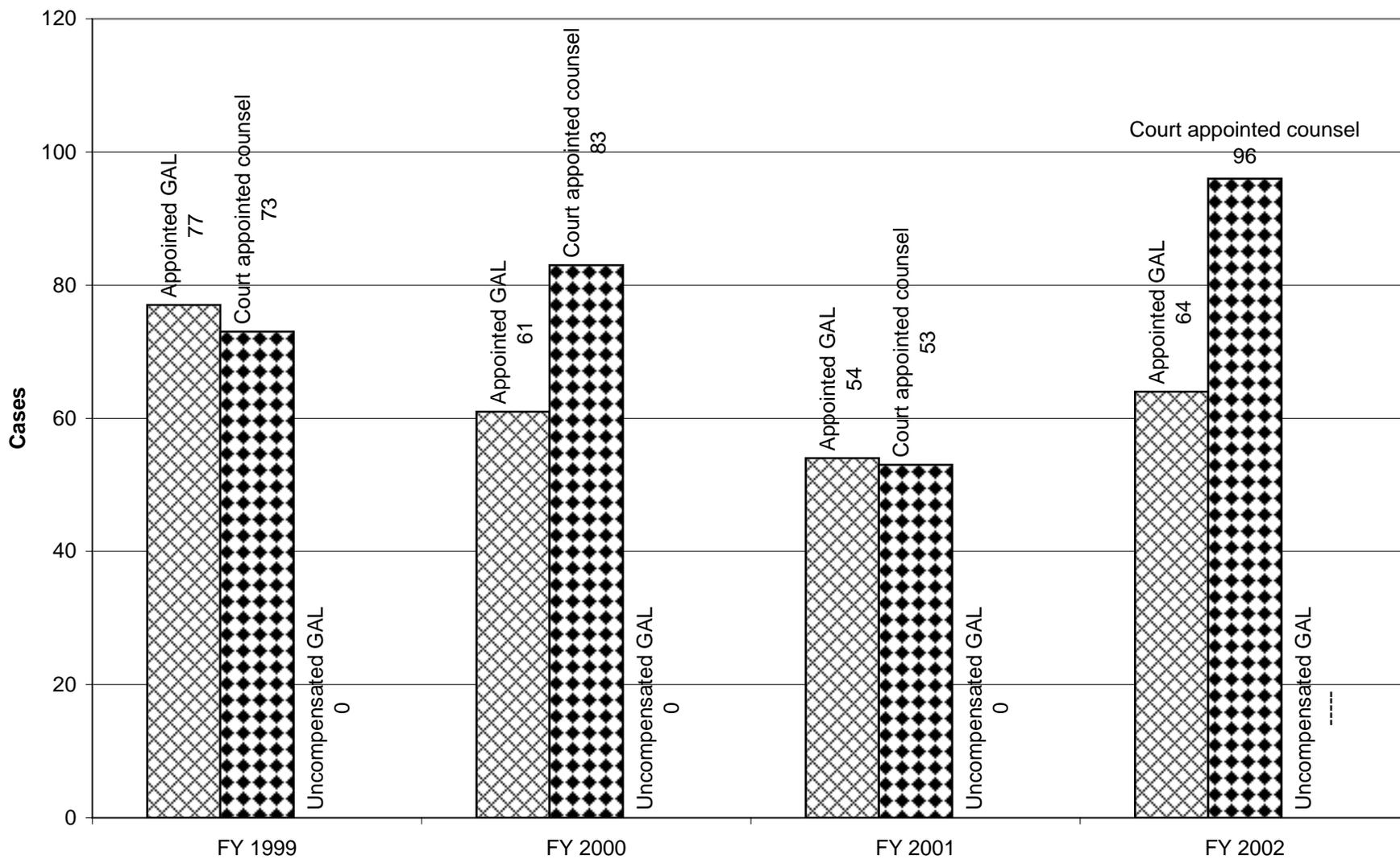
necessary prerequisite to any analysis of the cost effectiveness of Hawaii's present system of providing guardian ad litem services. The Bureau has no information on the difficulty, time-frame, or expense this effort might entail and, therefore, whether a change in data collection would itself be cost effective.

Recommendation: If the Judiciary wishes to pursue an analysis of the cost effectiveness of Hawaii's present system of providing guardian ad litem services, it should make changes necessary in its data collection system to capture pertinent information.

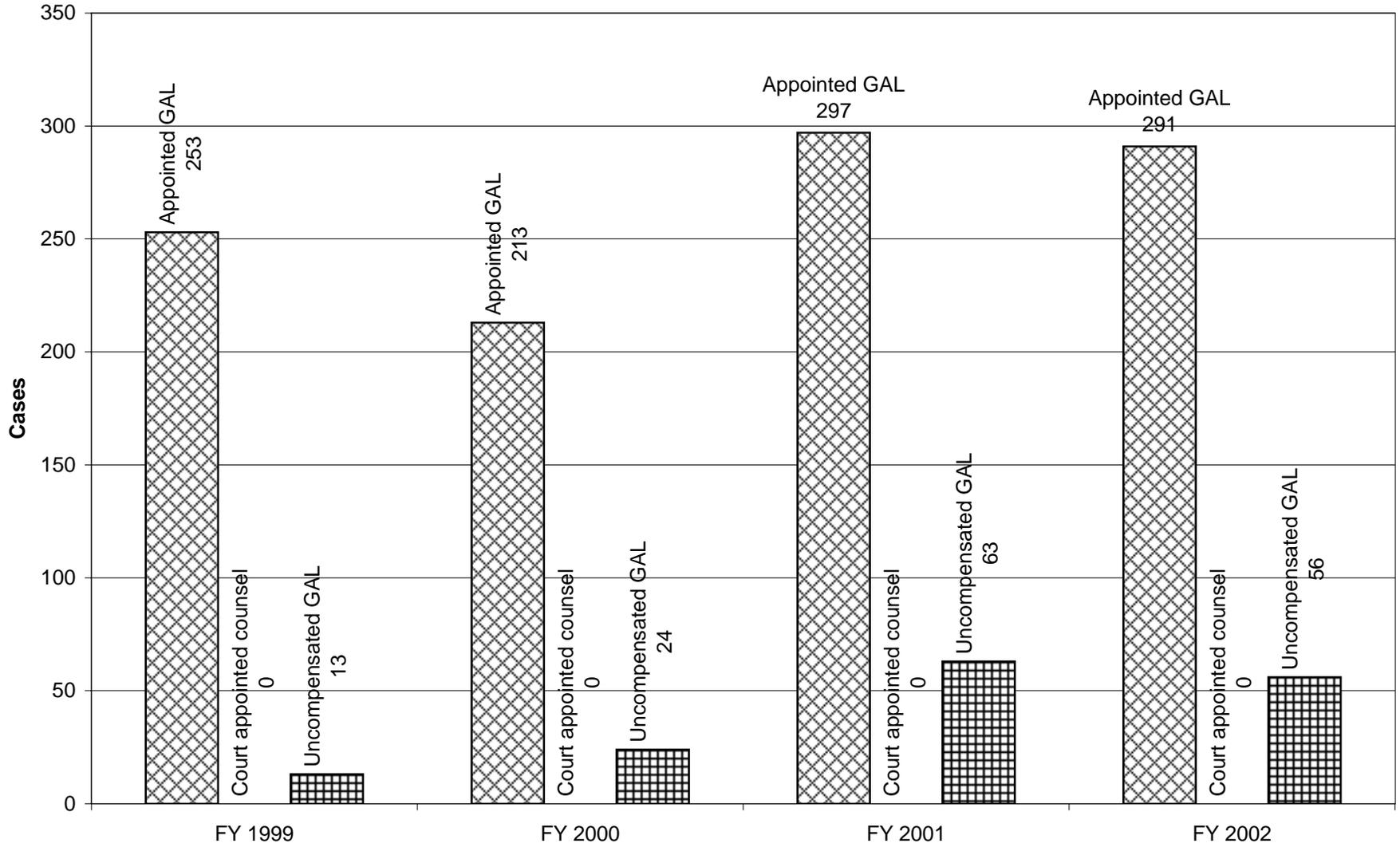
First Circuit GAL Data



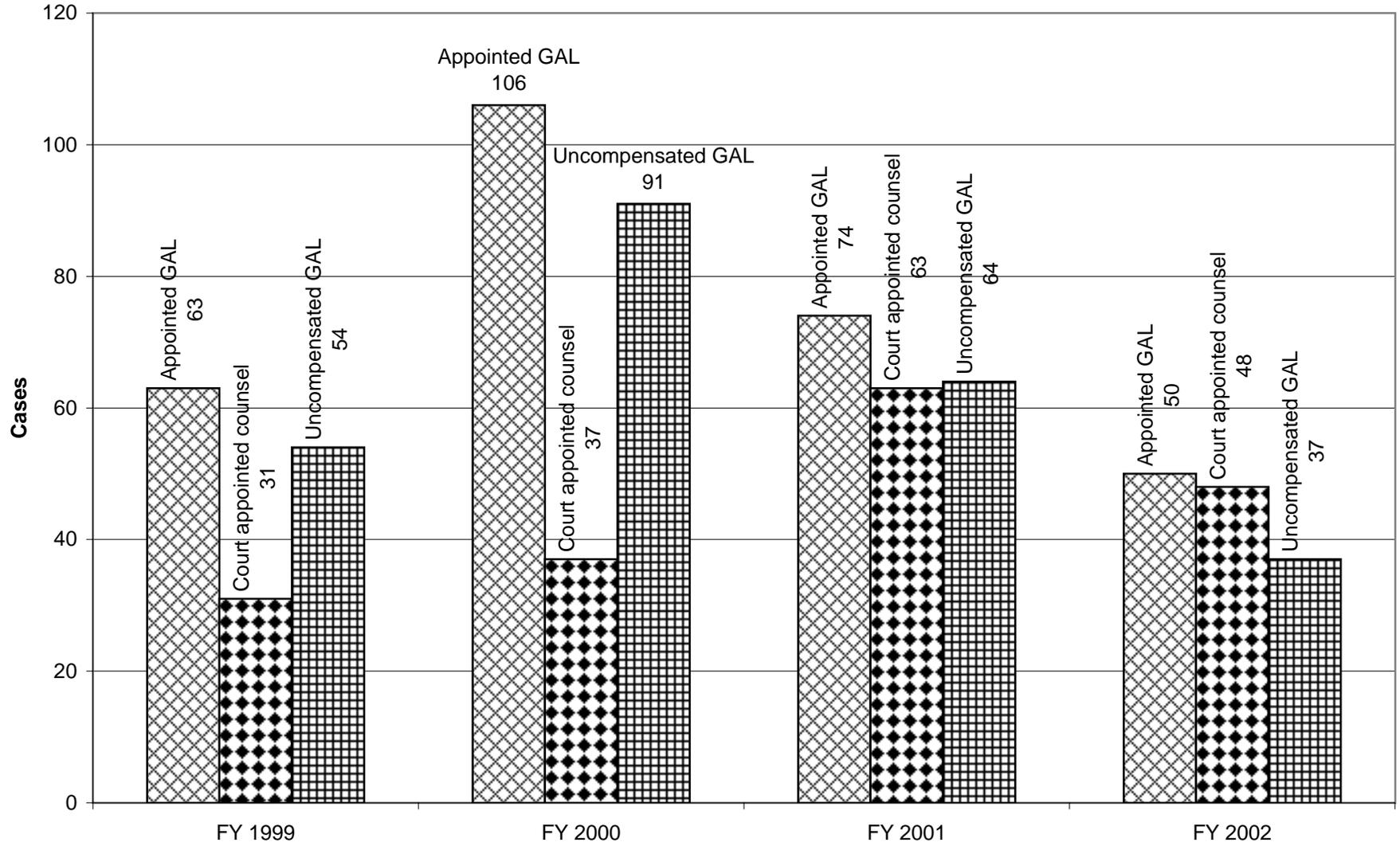
Second Circuit GAL Data



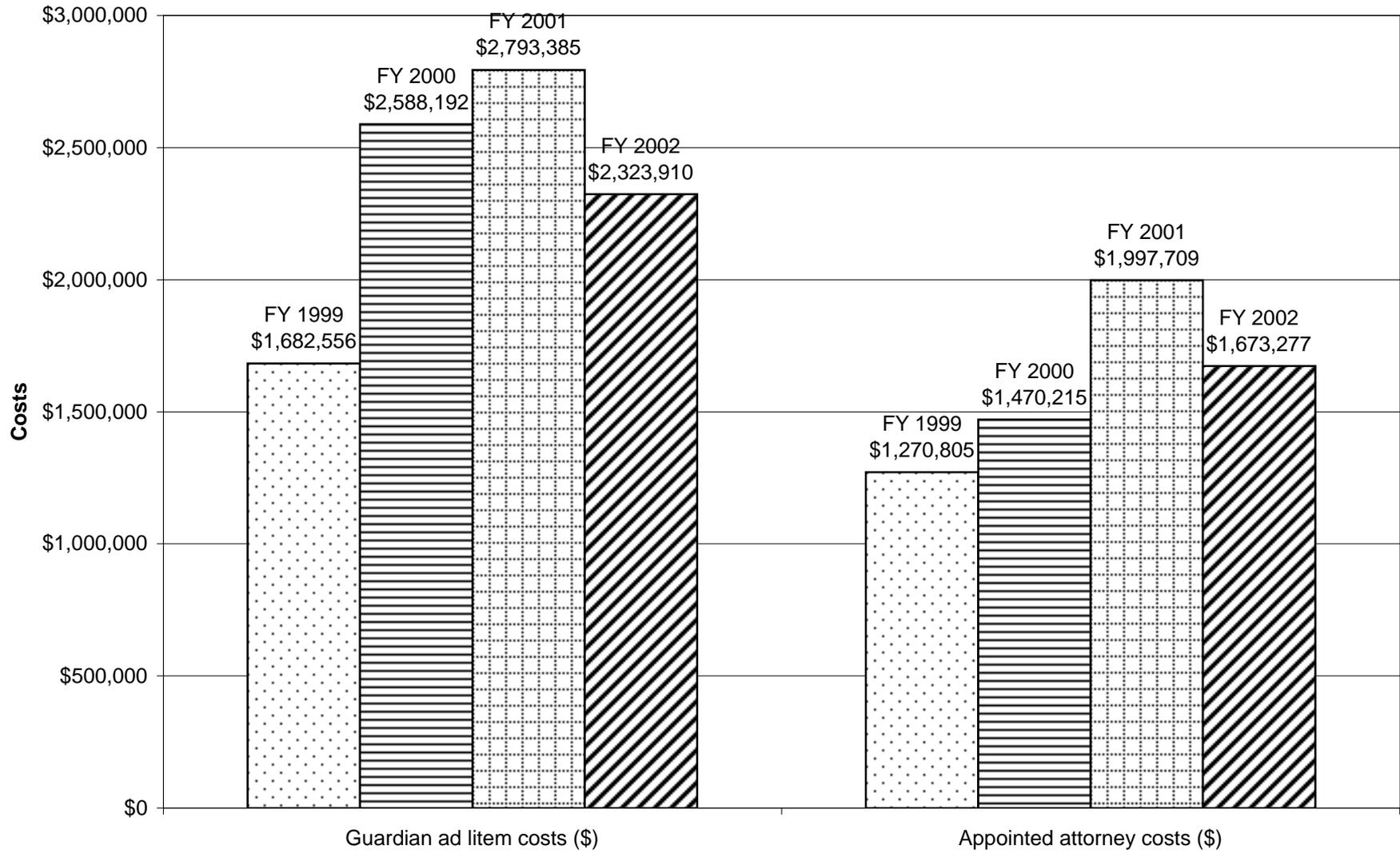
Third Circuit GAL Data



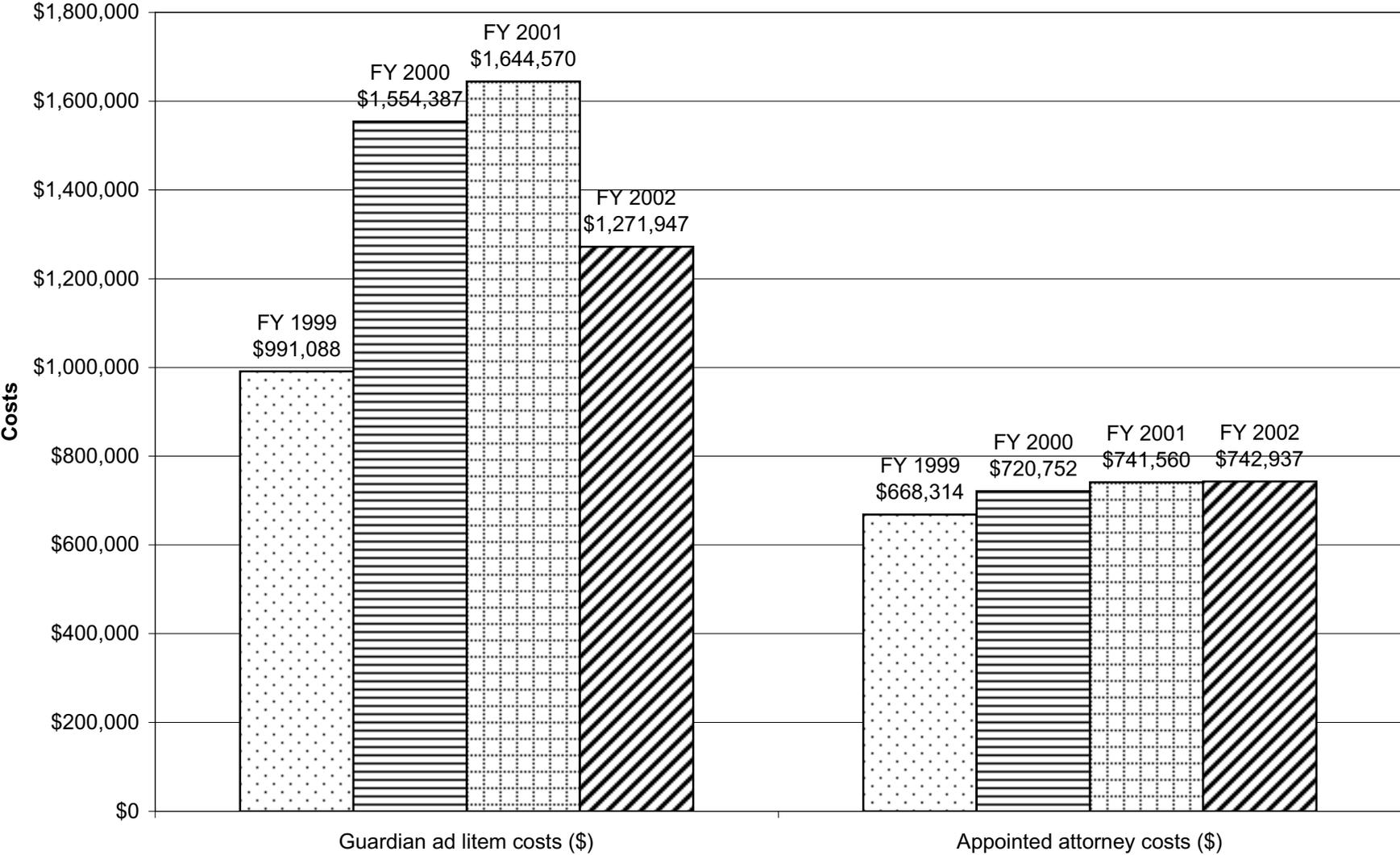
Fifth Circuit GAL Data



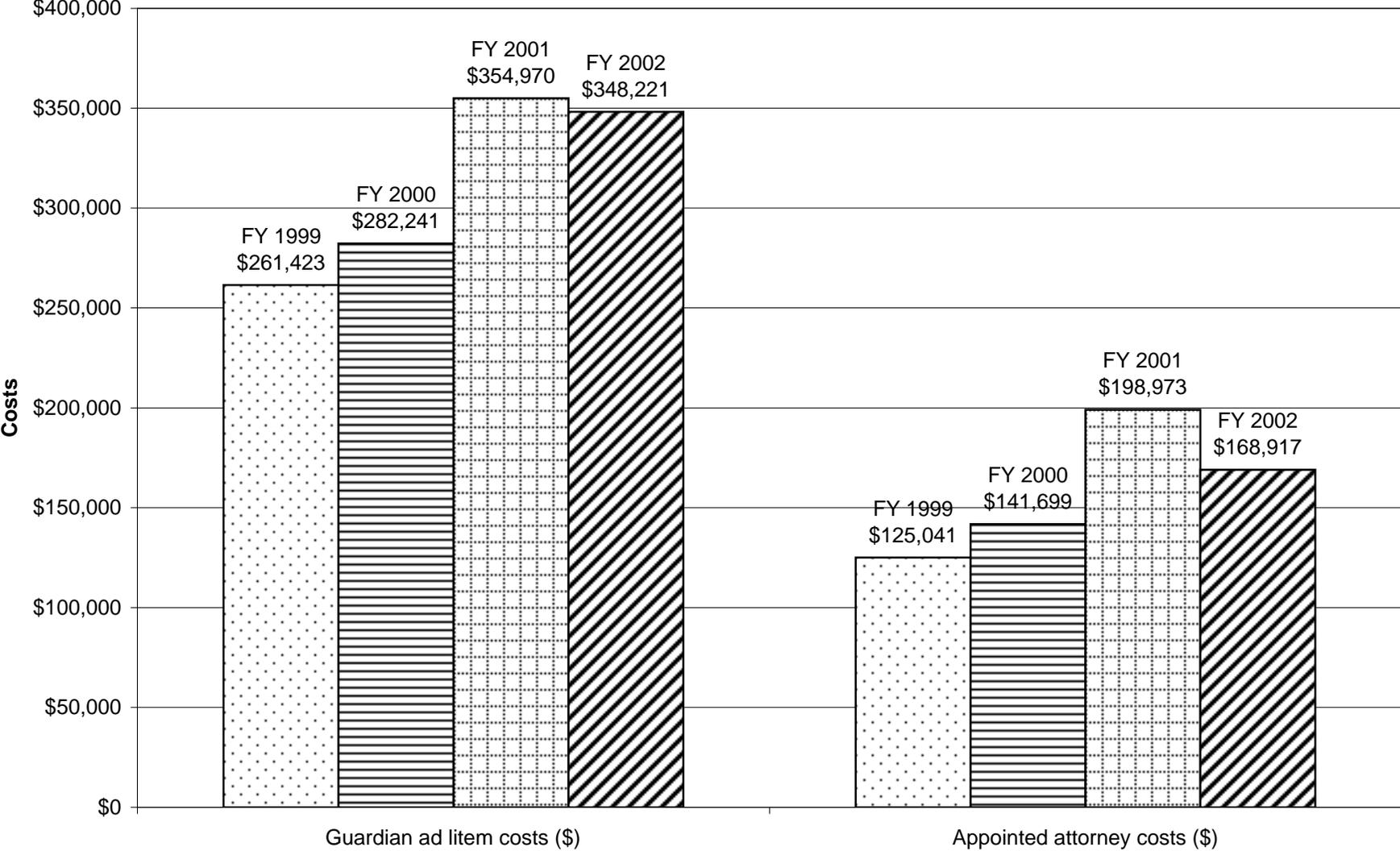
Statewide Costs



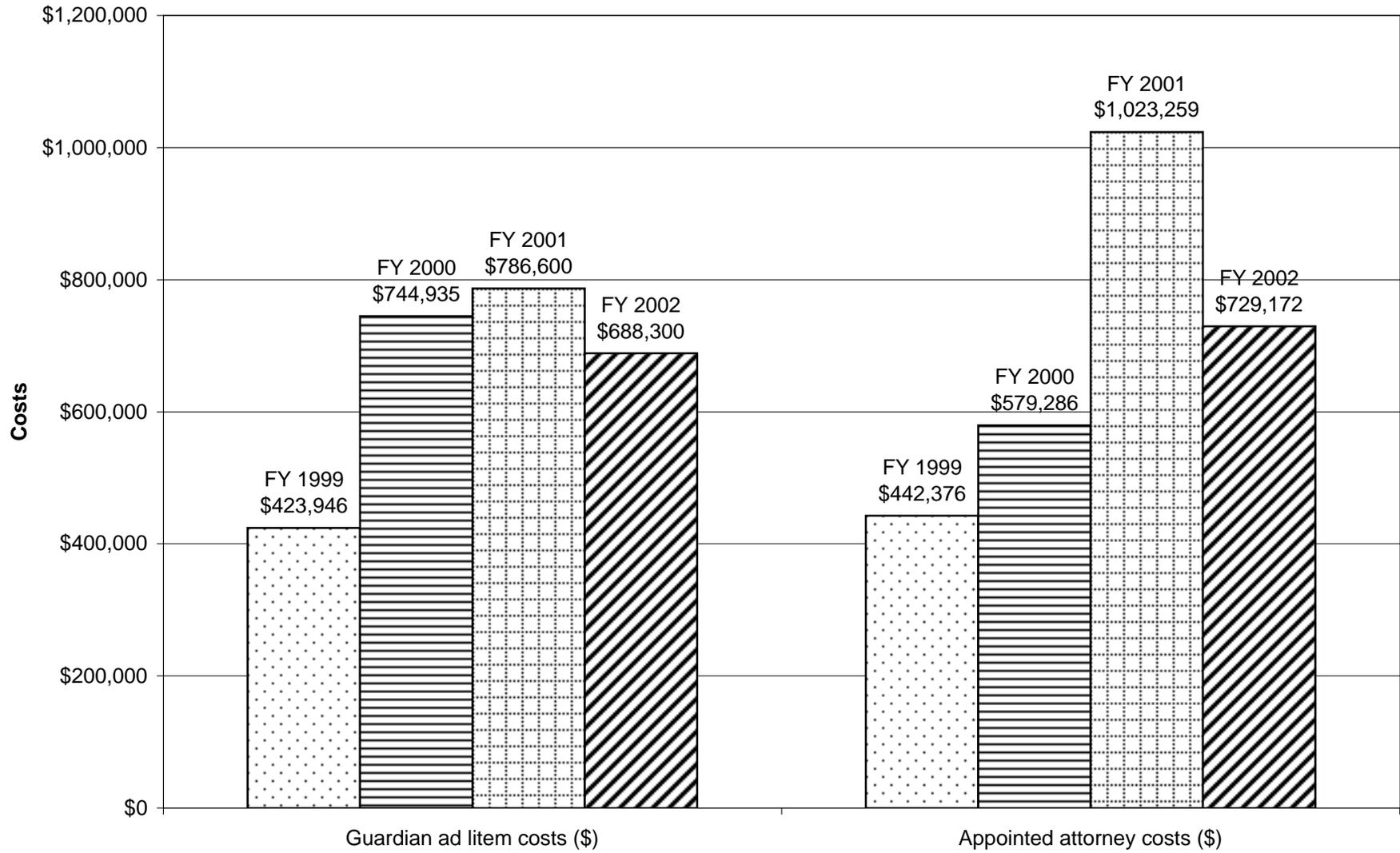
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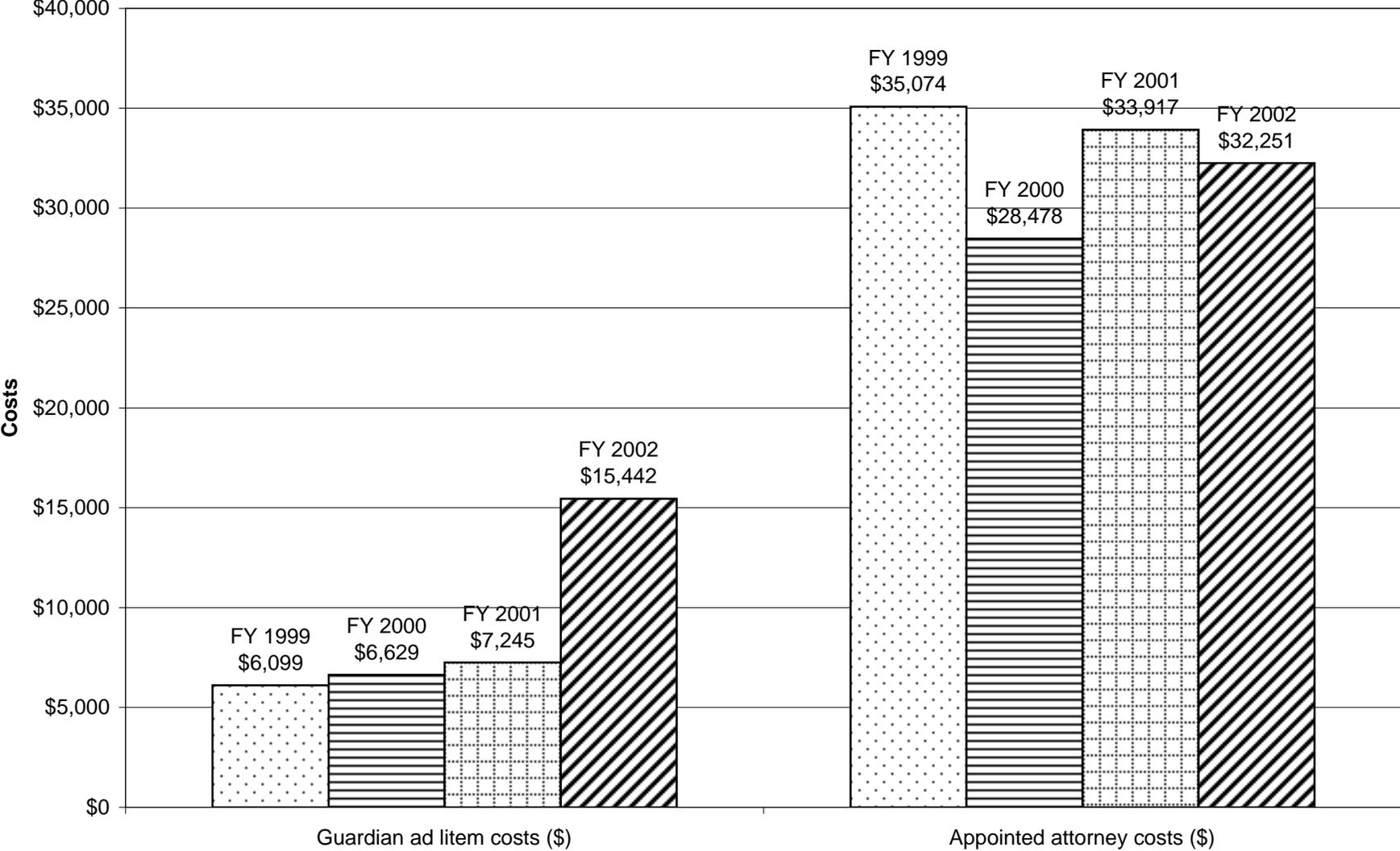
Second Circuit Costs



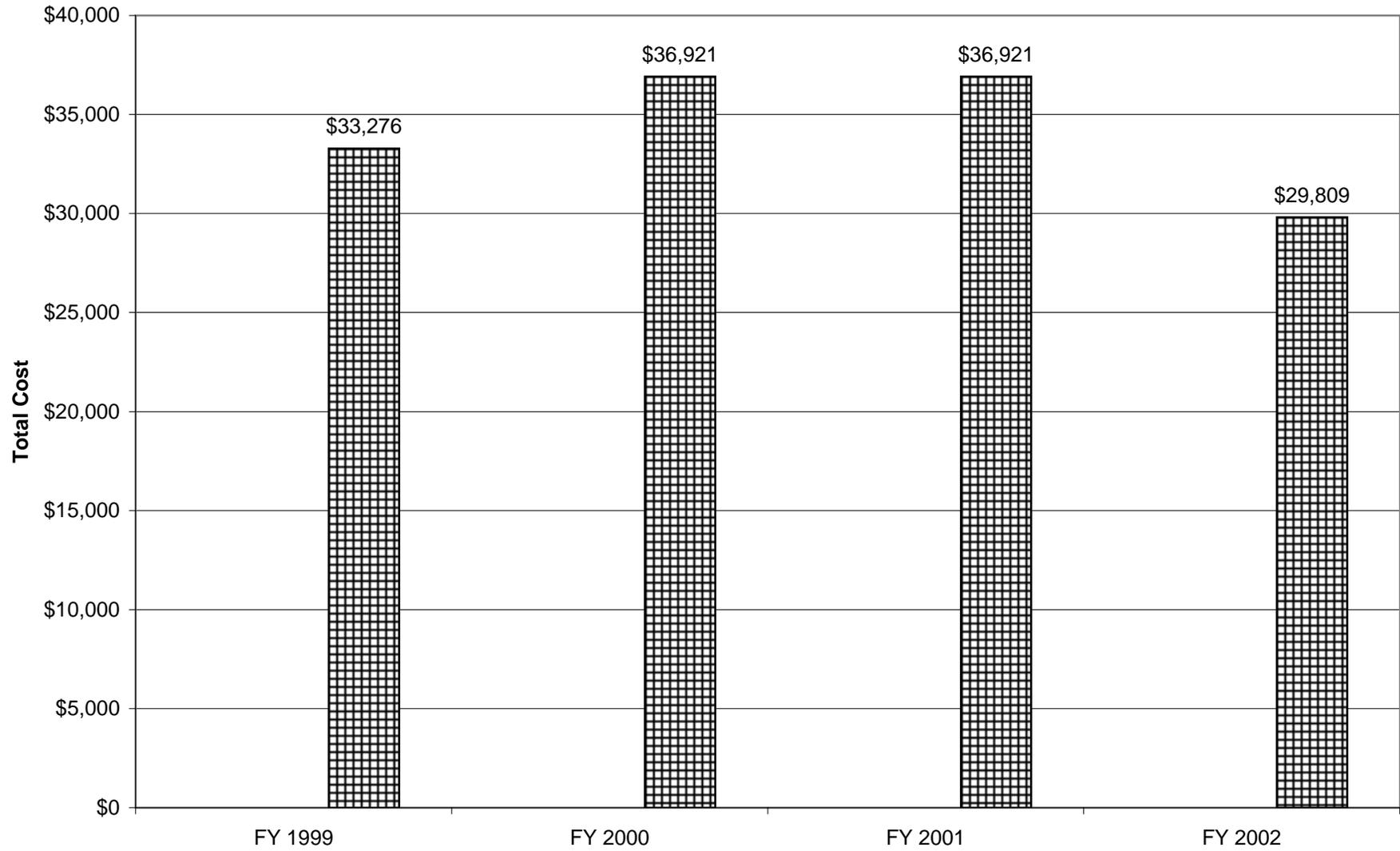
Third Circuit Costs



Fifth Circuit Costs



Total Cost for VGAL Cases



Average Cost per GAL Case

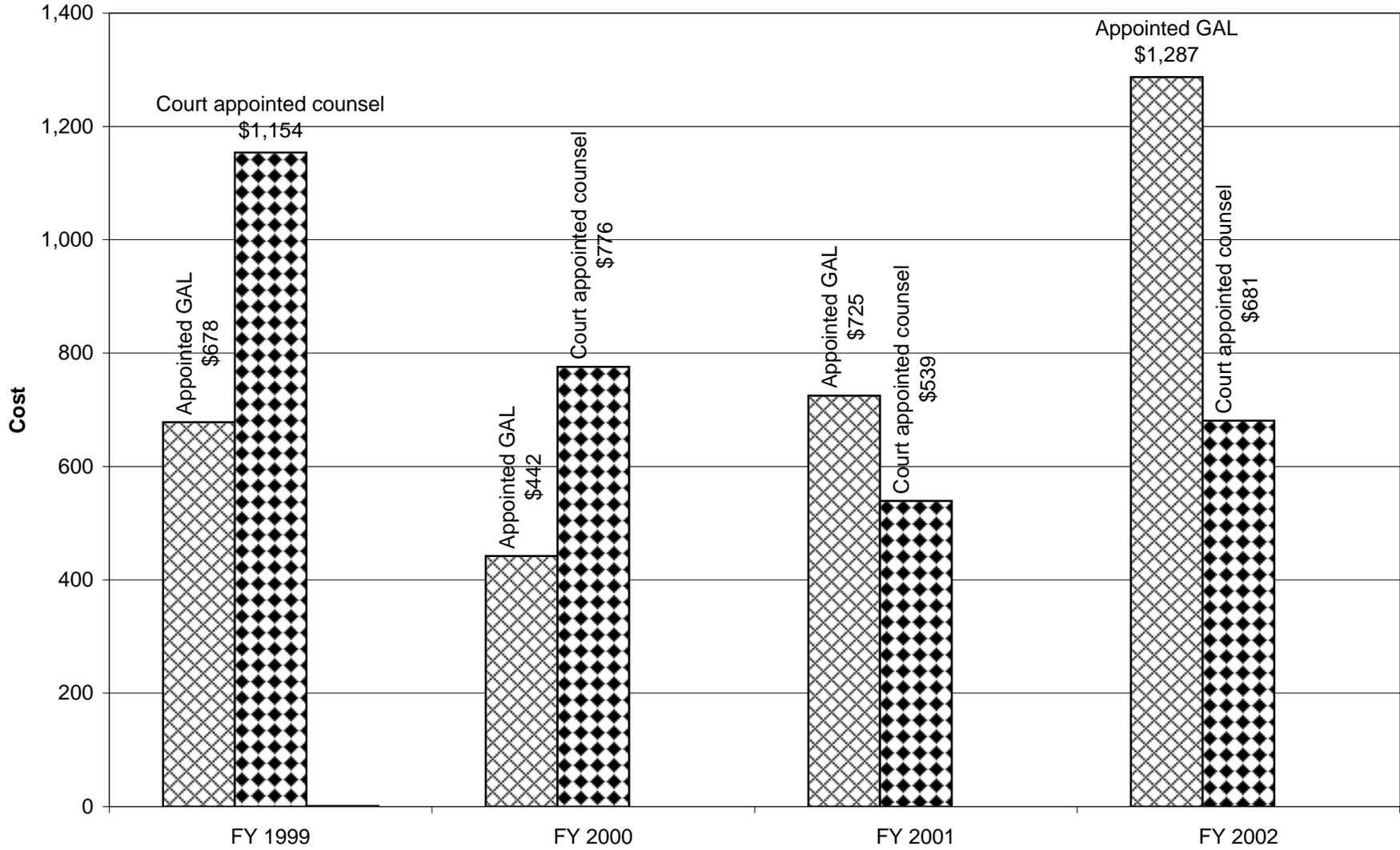


Table 1

FIRST CIRCUIT GAL DATA				
# of 1st Circuit cases involving:	FY 1999	FY 2000	FY 2001	FY 2002
Appointed GAL	1211	1376	1333	1323
Court appointed counsel	781	653	630	774
Uncompensated GAL	239	226	176	254

SECOND CIRCUIT DATA				
# of cases involving:	FY 1999	FY 2000	FY 2001	FY 2002
Appointed GAL	77	61	54	64
Court appointed counsel	73	83	53	96
Uncompensated GAL	0	0	0	-

THIRD CIRCUIT DATA				
# of cases involving:	FY 1999	FY 2000	FY 2001	FY 2002
Appointed GAL	253	213	297	291
Court appointed counsel	0	0	0	0
Uncompensated GAL	13	24	63	56

FIFTH CIRCUIT DATA				
# of cases involving:	FY 1999	FY 2000	FY 2001	FY 2002
Appointed GAL	63	106	74	50
Court appointed counsel	31	37	63	48
Uncompensated GAL	54	91	64	37

Number of cases involving GALs, VGALs, and court appointed counsel in each of the circuits and statewide.

Table 2

Guardian Ad Litem/Attorney Costs Statewide	
	Guardian ad litem costs (\$)
Fiscal Year	
FY 1999	1,682,556
FY 2000	2,588,192
FY 2001	2,793,385
FY 2002	2,323,910
	Appointed attorney costs (\$)
Fiscal Year	
FY 1999	1,270,805
FY 2000	1,470,215
FY 2001	1,997,709
FY 2002	1,673,277

Table 3

Guardian Ad Litem/Attorney Costs in First Circuit	
Fiscal Year	Guardian ad litem costs (\$)
FY 1999	991,088
FY 2000	1,554,387
FY 2001	1,644,570
FY 2002	1,271,947
Fiscal Year	Appointed attorney costs (\$)
FY 1999	668,314
FY 2000	720,752
FY 2001	741,560
FY 2002	742,937

Table 4

Guardian Ad Litem/Attorney Costs in Second Circuit	
Fiscal Year	Guardian ad litem costs (\$)
FY 1999	261,423
FY 2000	282,241
FY 2001	354,970
FY 2002	348,221
Fiscal Year	Appointed attorney costs (\$)
FY 1999	125,041
FY 2000	141,699
FY 2001	198,973
FY 2002	168,917

Table 5

Guardian Ad Litem/Attorney Costs in Third Circuit	
Fiscal Year	Guardian ad litem costs (\$)
FY 1999	423,946
FY 2000	744,935
FY 2001	786,600
FY 2002	688,300
Fiscal Year	Appointed attorney costs (\$)
FY 1999	442,376
FY 2000	579,286
FY 2001	1,023,259
FY 2002	729,172

Table 6

Guardian Ad Litem/Attorney Costs in Fifth Circuit	
Fiscal Year	Guardian ad litem costs (\$)
FY 1999	6,099
FY 2000	6,629
FY 2001	7,245
FY 2002	15,442
Fiscal Year	Appointed attorney costs (\$)
FY 1999	35,074
FY 2000	28,478
FY 2001	33,917
FY 2002	32,251

Table 7**5th Circuit**

Average Cost per GAL Case (\$)				
	FY 1999	FY 2000	FY 2001	FY 2002
Appointed GAL	678	442	725	1,287
Court appointed counsel	1,154	776	539	681
Total Cost for VGAL Cases (\$)				
	FY 1999	FY 2000	FY 2001	FY 2002
Uncompensated GAL	33,276	36,921	36,921	29,809

THE SENATE
TWENTY-FIRST LEGISLATURE, 2002
STATE OF HAWAII

S.C.R. NO. 100
S.D. 1
H.D. 1

SENATE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY OF THE GUARDIANS AD LITEM/ATTORNEY STATUTORY FEE REQUIREMENTS TO DETERMINE IF THERE IS A MORE EFFECTIVE MODEL THAT COULD BE ADOPTED FOR HAWAII.

WHEREAS, section 571-87, Hawaii Revised Statutes, relating to jurisdiction of the Family Court over children and minors, provides for the Family Court to appoint a guardian ad litem for the person to serve throughout the proceedings; and

WHEREAS, section 571-87, Hawaii Revised Statutes, also provides for the compensation of the guardians ad litem by the Family Court, including statutory fees; and

WHEREAS, guardians ad litem are usually appointed to serve for child abuse cases under section 587-34, Hawaii Revised Statutes, relating to the Child Protective Act; and

WHEREAS, section 587-34, Hawaii Revised Statutes, requires the guardian ad litem to report to the Family Court on, among other things, "recommendations concerning the manner in which the court should proceed in the best interests of the child"; and

WHEREAS, many guardians ad litem are also attorneys who are appointed as counsel under the same authority by the Family Court, and they usually perform dual functions of guardian and counsel for the person; and

WHEREAS, section 587-34, Hawaii Revised Statutes, provides for appointment of individual counsel for any other party if the party is an indigent and counsel is necessary to protect the party's interest; and

WHEREAS, section 587-34, Hawaii Revised Statutes, permits compensation of guardians ad litem and counsel who are appointed by the court; and

WHEREAS, the Judiciary has found it necessary to request increased guardian ad litem/appointed counsel appropriations in a number of recent years; and

WHEREAS, these mandated guardian ad litem/appointed counsel expenditures continue to exceed the budgeted amount; now, therefore,

BE IT RESOLVED by the Senate of the Twenty-first Legislature of the State of Hawaii, Regular Session of 2002, the House of Representatives concurring, that the Legislative Reference Bureau is requested to conduct a study of the practices that exist in Hawaii and on the mainland to determine if a more effective and less costly model can be identified for both family court compensation system for guardians ad litem and the attorneys appointed under Chapter 587, Hawaii Revised Statutes; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau is requested to include in the study an analysis of the fees paid by the Family Court to guardians ad litem and counsel, the adequacy of those fees in view of the duties of the guardians ad litem and counsel; and

BE IT FURTHER RESOLVED that the Family Court and all guardians ad litem and counsel are requested to cooperate with the Legislative Reference Bureau for the purposes of this study; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Acting Director of the Legislative Reference Bureau, the Chief Justice of the Hawaii Supreme Court, and the Senior Judge of the Family Court.

Report Title:

Guardians Ad Litem; LRB and Auditor Studies

Appendix C

The mandates listed in the Colorado statute include the following:

- Improve quality of children's representation statewide;
- Provide accessible training statewide for attorneys;
- Provide statewide training to judges and magistrates;
- Recommend and establish minimum training requirements for all attorneys representing children;
- Establish fair and realistic compensation for state-appointed GALs;
- Recommend and establish minimum practice standards for all attorneys representing children;
- Provide oversight of the practice of GALs to ensure compliance of the minimum standards;
- Create local oversight committees in each of the 22 judicial districts that will oversee the provision of services and report to the OCR director concerning the practice of GALs;
- Work with Court Appointed Special Advocates (CASA) to develop local CASAs in each of the 63 counties statewide; CASA currently serves 21 counties;
- Enhance funding resources for CASA;
- Work cooperatively with CASA to provide statewide CASA training;
- Serve as a resource; and
- Develop measurement instruments to assess and document the effectiveness of various models of representation.

Source: OCR 2002 Report at 5.

Appendix D

Minimum Attorney Practice Standards

The OCR is currently in the process of finalizing minimum practice standards that attorneys serving as GALs shall be required to meet. The current GAL practice standards are set forth in Chief Justice Directive 97-02 and were created prior to the creation of the OCR. Much effort and collaboration from a variety of professionals went into the creation of CJD 97-02. The standards closely encompass attorney practice standards as recommended by the National Association of Counsel for Children and American Bar Association. Minor modifications to the directive will make certain that children are seen in foster care and attorney services are front loaded. The OCR believes that front loading of attorney services is vital to ensuring the needs of the child are met. Providing services at the onset of a case is critical to reducing the time a child spends in the courtroom, out of home, or outside permanent placement.

As mentioned, standards are being revised and developed to incorporate the concept of front loading of attorney services in a case. The first 30 days of a case are the most critical. For many children this may involve their first out-of-home placement. It is a critical time when the child can most benefit from the presence of a GAL. The events that caused the child to be placed in the system and possibly out of home are most evident at this time. Treatment needs, evaluations, independent investigations, alternative permanent placement options, and a good foster care selection to prevent multiple placements should all be considered at the onset of a case. Developing a plan with a good foundation to meet the child's needs must be done immediately.

Examples of current standards under consideration for revision include the following:

1. The current standard reads: *“Personally meeting with and observing the child at home or in placement.”*

This standard is problematic because it is without specific timelines. There has been cases where an attorney may wait months into the case before visiting with the child or will see the child on the first day the case is filed in the temporary receiving home. Many times the child has been in several different foster placements without one visit. Also, if the child is subsequently moved, a GAL may not conduct another visit to confirm this placement is appropriate and meets the needs of the child. This inadequate representation is technically in compliance with the current CJD 97-02. The standard could be revised to require the attorney meet with and observe the child within 30 days of the appointment and, if and when the child is moved, the attorney is required to meet again with the child within 30 days of the new placement.

2. The current standard reads: “*Conduct an independent investigation.*”

The standard is somewhat problematic because there is no time requirement specifying when an investigation should be initiated. An investigation six months into the case is unlikely to have any impact because the case is moving in a direction that is hard to change. The standard could be revised to specify timelines to ensure that the investigation commences within 30 days (OCR recognizes investigations are ongoing). Independent investigation completed by the GAL is the safeguard that the “system” is not further harming the child and makes certain that the best services are provided to the child.

Source: Appears as Appendix B to OCR 2002 Report

The following Appendices are currently unavailable online:

Appendix	B
Appendix	E
Appendix	F
Appendix	G
Appendix	H
Appendix	I
Appendix	J
Appendix	K

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February 20, 2003