

**GUARDIAN AD LITEM PRACTICES
IN THE COMMONWEALTH OF
KENTUCKY**

**RESPONSIBILITIES AND OVERSIGHT SHOULD BE
DEFINED**

SEPTEMBER 1998 – PERFORMANCE AUDIT



**EDWARD B. HATCHETT, JR.
AUDITOR OF PUBLIC ACCOUNTS**

The Auditor Of Public Accounts Ensures That Public Resources Are Protected, Accurately Valued, Properly Accounted For, And Effectively Employed To Raise The Quality Of Life Of Kentuckians.



EDWARD B. HATCHETT, JR.
AUDITOR OF PUBLIC ACCOUNTS

September 2, 1998

To the People of Kentucky

The Honorable Paul E. Patton, Governor
The Honorable Robert F. Stephens, Chief Justice
The Honorable Larry Saunders, President of the Senate
The Honorable Jody Richards, Speaker of the House of Representatives
John McCarty, Secretary, Cabinet for Finance and Administration
Paul Isaacs, Director, Administrative Office of the Courts

Re: Performance Audit of Guardian Ad Litem Practices in the Commonwealth of Kentucky, APA-98-P-3

Ladies and Gentlemen:

We present our report on Guardian Ad Litem Practices in the Commonwealth of Kentucky, which focuses on those attorneys appointed by the court and paid by the state to represent the interests of children in the approximately 10,000 dependency, neglect, and abuse petitions filed each year in the courts of Kentucky. While in excess of \$2 million is now spent on these services annually, our performance audit found that Kentucky could be more effective in monitoring the duties of, and payments to, guardians ad litem.

Our audit reviews the performance of the judicial and executive branches of the Commonwealth in their joint legal and fiscal administration and oversight of guardians ad litem in Kentucky. Our report makes recommendations which, if implemented, will result in more efficient and effective coordination of duties and oversight.

We appreciate the cooperation offered to our staff during the performance of this audit by personnel of the Finance and Administration Cabinet and Kentucky's Court of Justice. We will appreciate your advising this office of any actions taken to implement our recommendations, or the reasons for not implementing them. We will be happy to discuss with you at any time this audit or its recommendations.

Respectfully submitted,

Edward B. Hatchett, Jr.
Auditor of Public Accounts

c: Bonnie Howell, Deputy Secretary, Finance and Administration Cabinet
Rex Hunt, Deputy Secretary, Finance and Administration Cabinet
Karen Powell, General Counsel, Finance and Administration Cabinet

Executive Summary

In Kentucky, guardians ad litem are private attorneys appointed by a court to represent a child's best interests. We found that guardians ad litem, judges, and family service workers all have different perceptions of the actual duties performed by guardians ad litem. Key participants in juvenile proceedings question whether all guardians ad litem perform the requisite independent research or adequately investigate their cases. Additionally, guardian ad litem representation usually ends at the disposition hearing. Therefore, if the child is committed to the custody of the Cabinet for Families and Children, there is no legal advocate for the child's safe and permanent placement. Guardian ad litem training on these issues was provided by judges in only one county examined.

The administration of guardians ad litem is inconsistent throughout the state and lacks effective oversight. We found that local court practices vary in determining fees for guardians ad litem, appointing well-qualified guardians ad litem, using standardized orders for the appointment and payment of guardians ad litem, and appointing counsel for parents. No single agency has the responsibility of ensuring guardians ad litem are performing adequately and that necessary training and support needs are met.

These inconsistencies, lack of oversight, and inadequate representation stem from various conditions. One is that neither the General Assembly nor the courts have clearly defined guardian ad litem duties or given oversight responsibility to a specific agency or organization. Another obstacle is that Kentucky's statutes established guardian ad litem fees in 1986 at \$250 for cases in district court and \$500 for cases in circuit court. These fees may not provide an incentive for performing the necessary duties in lengthy, complicated cases.

We make recommendations in this report to the Supreme Court of Kentucky, the Administrative Office of the Courts, and General Assembly that we feel will increase the awareness of the duties and expectations of a guardian ad litem and provide accountability and consistency of guardian ad litem activities. These recommendations include:

- The Supreme Court should consider assigning an office in the Administrative Office of the Courts with the responsibility for oversight of guardians ad litem and for promoting consistency in qualifications, selection, duties, training, and compensation.
- The Supreme Court should consider adopting court rules on the duties of guardians ad litem based on the recommendations of the American Bar Association, the National Council of Juvenile and Family Court Judges, and federal legislation.
- The General Assembly should consider switching the appropriated budget line item for guardians ad litem from the Executive Branch to the Judicial Branch.

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Abbreviations

ABA	American Bar Association
AOC	Administrative Office of the Courts of Kentucky
ASFA	Adoption and Safe Families Act of 1997
Cabinet	Cabinet for Families and Children
CAPTA	Child Abuse Prevention and Treatment Act of 1974, Amended 1996
CASA	Court Appointed Special Advocate
DPA	Department of Public Advocacy
DSS	Department of Social Services
FAC	Finance and Administration Cabinet
KBA	Kentucky Bar Association
KRS	Kentucky Revised Statute

Definitions

Adjudication Hearing	The stage of the proceedings in which the court determines whether allegations of dependency, neglect, or abuse are sustained by the evidence and, if so, are legally sufficient to support state intervention on behalf of the child.
Disposition Hearing	The stage of the proceedings in which, after finding that the child is dependent, neglected, or abused, the court determines who shall have custody and control of the child.
Dispositional Review Hearing	The hearing to determine the future status and adequacy of the permanency plan of a child placed in the custody of the Cabinet. Kentucky recently passed legislation requiring this hearing to be conducted by a judge of the district court no later than twelve months after the child is considered to have entered foster care, and annually thereafter if custody continues.
Juvenile Dependency Neglect and Abuse	Any interested person can file a petition in the juvenile session of district court alleging that a child is dependent, neglected, or abused. A dependent child is one that is under improper care not due to an intentional act of the parent or custodian. A neglected or abused child is one whose health and welfare is harmed or threatened when his parents or custodians inflict, or allows the infliction of, a physical or emotional injury.
Order for Attorney Fees	This is a preprinted AOC form numbered AOC-JV-45 that is used by guardians ad litem to request attorney fees. A completed form includes the date appointed, date of disposition, name of child or parent represented, and the statute that authorizes the payment of fees. This form is sent to the FAC in order to process the payment.
Permanency Planning	The process of determining the proper permanent placement of a child. Kentucky's statutes define permanence as a relationship between a child and adult intended to last a lifetime, providing commitment, and continuity in the child's relationships and a sense of belonging.

Introduction

Guardians Ad Litem in the United States

Since the passage of the federal CAPTA in 1974, most states have provided representation to children involved in civil neglect and abuse judicial proceedings. CAPTA requires states to appoint a guardian ad litem for maltreated children as one condition for receiving federal grant funds authorized by the act. The legislation, prior to its amendment, did not clearly define how this representation should be provided, who could serve as a guardian ad litem, or the role of the guardian ad litem in the proceedings. Therefore, when the states enacted legislation requiring guardian ad litem representation, the legislation was similarly broad.

Methods for providing guardian ad litem representation have evolved since the passage of CAPTA. In the late 1970s, courts in Florida and Washington began appointing trained volunteers, either alone or paired with an attorney, to represent children. Because of the success of these appointments, the federal government began including the establishment of the CASA program as a priority area in their grant programs. Other methods to provide guardian ad litem representation include the use of public defenders, legal aid attorneys, and social workers. A national study published by the U.S. Department of Health and Human Services found that no single method of representation was superior. The study concluded that the optimal approach may be a guardian ad litem who possesses or has access to the combined resources of independent attorneys, trained volunteers, and social workers.¹

These responsibilities were added to end current practices where the guardian ad litem has had virtually no contact with the child, while proceeding to make unfounded recommendations to the court.

On October 3, 1996, an amendment to CAPTA was passed that affected guardians ad litem in two ways. First, the law was changed to say the guardian ad litem “may be an attorney or a court appointed special advocate (or both).” According to the House of Representatives’ *Congressional Record*,² the language was amended in order to provide states with more flexibility. Second, the role of the guardian ad litem was defined for the first time to include obtaining a “first-hand” clear understanding of “the situation” and “the needs of the child” and that recommendations should be made to the court concerning “the best interests of the child.” The congressman introducing the bill explained that the added language strengthens the requirement that these representatives know and actively advocate the best interests of the child. These responsibilities were added to end circumstances in which a guardian ad litem makes recommendations to a court without having had adequate contact with the child.

To ensure more information is gathered concerning guardians ad litem, states are to report to the federal government the number of children for whom a guardian ad litem was appointed and the average number of out-of-court contacts between the guardian ad litem and child. While the states are only required to report this information to the maximum extent practicable, it indicates that the federal government expects states to ensure that the guardian ad litem has out-of-court involvement with the child. This report is required of states, including Kentucky, that receive federal grant money.

¹ "Final Report on the Validation and Effectiveness Study of Legal Representation Through Guardian Ad Litem", U.S. Department of Health and Human Services, 1993.

² Congressional Record, U.S. House of Representatives, September 25, 1996.

Private Attorneys Used as Guardians Ad Litem in Kentucky

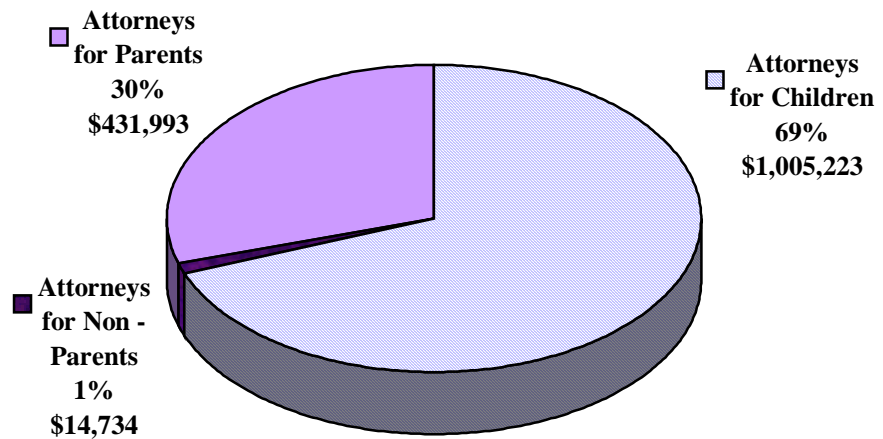
In Kentucky, private attorneys are designated to provide guardian ad litem representation in juvenile dependency, neglect, and abuse civil proceedings. KRS 387.305 defines a guardian ad litem as “a regular, practicing attorney of the court.” Kentucky’s Unified Juvenile Code, as set forth in KRS Chapters 600 – 645, contains state laws regarding the use of guardians ad litem in juvenile dependency, neglect, and abuse proceedings. The Kentucky Rules of Civil Procedure also apply to these civil proceedings.

Under the amended CAPTA, states must now certify that the requirements of CAPTA are being met or will be met by June 30, 1999 in order to receive federal assistance money. This statement, signed by Governor Paul Patton on April 6, 1997, certifies that in Kentucky a guardian ad litem is appointed, obtains first-hand a clear understanding of the child’s situation and needs, and makes recommendations to the court concerning the child’s best interests.

Expenditures for Guardian Ad Litem Fees Are Increasing

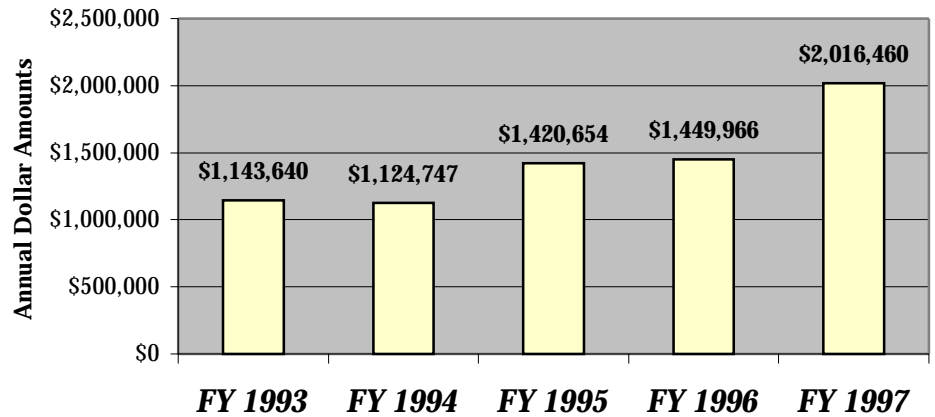
The FAC has the responsibility of paying guardian ad litem fees in juvenile dependency, neglect, and abuse proceedings. In addition, FAC is responsible for paying the fees of attorneys appointed to represent indigent parents or custodians in these proceedings. According to KRS 620.100, the fees shall not exceed \$500 in circuit court and \$250 in district court. The fees are paid pursuant to a court order signed by the judge in the case and submitted to FAC by the clerk of the court. The following graphs illustrate the expenses incurred by FAC.

Figure 1: Breakdown of FAC's Attorney Expenses for Juvenile Dependency, Neglect, and Abuse Cases
Fiscal Year 1996



Source: Finance and Administration Cabinet’s Guardian Ad Litem Payment Database

Figure 2: FAC's Annual Attorney Expenses for Juvenile Dependency, Neglect, and Abuse Cases



Source: Finance and Administration Cabinet's Accounting System: Code 01-39-760-NCAO.

Between 1993 and 1996, the average payment to a guardian ad litem or an attorney representing a parent or custodian increased \$8.34, from \$196.89 to \$205.23, while the number of payments increased from 5,831 to 8,249. Appendix VI illustrates the changes in the number of payments and the average payment per county, while Appendix VII contains the breakdown of expenses by county.

The Role of Guardians Ad Litem

Our report focuses on guardians ad litem appointed by the court to represent the interests of a child in dependency, neglect, and abuse cases, as opposed to attorneys representing parents or custodians in these cases. During FY 1996, there were 10,673 petitions of dependency, neglect, and abuse filed in Kentucky's district courts.³ A petition results in a hearing for temporary removal. According to KRS 620.130, when the court is petitioned to remove or continue the removal of a child from the custody of the parent, the court must first consider if the child may be reasonably protected by alternatives less restrictive than removal. If the court determines that further proceedings are required, a guardian ad litem is appointed to represent the child.

The proceedings that follow are the adjudication and disposition hearings (defined in the Contents section of the report). If the child is placed in the custody of the Cabinet, a dispositional review (permanency) hearing is to be scheduled no later than twelve months after the child is considered to have entered foster care, and annually thereafter if custody continues. This is a simplified view of the court proceedings; see Appendix IX for more detailed information on the required court proceedings, the guardian ad litem role, examples of our observations of court proceedings, and a description of pilot court improvement projects.

³ AOC reported there were 8,761 petitions, which does not include an estimated 1,912 petitions in Jefferson County's Family Court. Jefferson's Family Court chose not to use AOC's Sustain network because it operated slowly due to Jefferson County's large caseload. However, their own computer system crashed during 1996, so the number of petitions in FY 1996 was based on an estimate.

To better understand the role of a guardian ad litem, we also define the roles of other parties in these proceedings. Table 1 on page 5 attempts to do this, but it is not meant to be a complete list of the parties' roles.

Audit Objectives

The Auditor of Public Accounts was asked by FAC to perform a review of Kentucky's guardian ad litem practices. This request was prompted by rapidly increasing guardian ad litem expenses in recent years, and because FAC had no oversight authority or ability to determine what services were being provided for the funds expended. FAC also requested that we investigate what other states are doing to provide guardian ad litem services.

Our fieldwork included a review of documentation and case records in a sample of six counties judgmentally selected on the basis of the number of payments per guardian ad litem and the average payment per case. The counties reviewed were: Anderson, Hardin, Jefferson, Knott, Madison, and Warren. In each of these counties, we interviewed court personnel that work with guardians ad litem. We also conducted interviews with personnel in the Cabinet's Division of Family Services, AOC, and KBA. To obtain a broader understanding of practices across the state, we conducted a survey of participants in the child welfare system from 71 additional counties with a significant number of guardian ad litem payments. Respondents included 39 family service workers, 57 court clerks, 37 guardians ad litem, 34 district court judges, and 9 CASA volunteers. We did not attempt to project the results of our sample to the entire population of child welfare system participants. In addition to obtaining an understanding of Kentucky's guardian ad litem program, we reviewed national studies and other states' practices. Our work was designed to answer the following questions:

- Are the responsibilities and training requirements of Kentucky guardians ad litem consistent with national standards and federal legislation?
- Are guardian ad litem activities administered so as to ensure quality representation?

Appendix I contains a complete discussion of the scope and methodology of this audit. We conducted our audit in accordance with generally accepted government auditing standards.

Table 1: The Role of Major Parties in the Child Welfare System

PARTY	ROLE IN COURT PROCEEDINGS
Family Service Workers	They investigate reports of alleged dependency, neglect, or abuse. Based on the investigations, a decision is made on whether the child is in danger and court involvement is necessary. If they decide the child is in danger, a petition is filed and the family service worker involved in the investigation becomes a witness in the case. If the court orders removal of the child, the worker is to provide services to the child and parent designed to promote the protection of the child and the return of the child safely to the home as soon as possible. For each child committed to the Cabinet, a case permanency plan will be filed with the court and a copy sent to the AOC Foster Care Review Board Program no later than 30 days after the order of commitment. Source: Unified Juvenile Code
Guardians Ad Litem	According to <u>Black v. Wiedeman</u> , Ky., 254 S.W.2d 344 (1953), the guardian ad litem's obligation is to stand in the infant's place and determine what his rights are and what his interests and defense demand. In a special sense, he is the representative of the court to protect the minor.
CASA Volunteers	CASA volunteers are lay people from the community who are assigned by a district judge to represent the best interests of children. At the time of the audit fieldwork, there were only 11 established CASA programs in Kentucky. According to KRS 620.525, CASA volunteers shall monitor the case by observing the child and interviewing the parties involved. In Jefferson County the CASA volunteers are usually only assigned one or two cases so the more complicated cases are given priority for assignment.
District Judges	District judges preside over the juvenile session of district court. The juvenile session handles all cases involving persons under the age of 18, including dependency, neglect, and abuse proceedings. Therefore, the district judges must determine if the child is dependent, neglected, or abused and adjudicate what is in the best interest of the child. This decision is based on the recommendations of family service workers, guardians ad litem, and if available, a CASA volunteer. If the child is committed to the Cabinet, the judge must also conduct dispositional review hearings.
Circuit Judges	Circuit judges preside over actions terminating parental rights, adoption cases, and appeals from the decisions of district court. These cases are decided with the assistance of family service workers and guardians ad litem.
Attorneys for the Parents or Custodians	These attorneys, whether private or appointed by the court, must pursue the goals of the parent and advocate for their rights. The Kentucky Rules of Professional Conduct (SCR 3.130) govern the attorneys' actions.
County Attorneys and Commonwealth's Attorneys	Pursuant to KRS 69.210, the county attorney initiates civil proceedings when a petition is filed alleging dependency, neglect, and abuse in district court. The office of the Commonwealth's Attorney prosecutes any resulting felony criminal proceedings in circuit court.

Are the Responsibilities and Training Requirements of Kentucky Guardians Ad Litem Consistent with National Standards and Federal Legislation?

Summary

While Kentucky has procedures for appointing guardians ad litem to represent children in abuse and neglect judicial proceedings, the federal requirement that the guardian ad litem obtain a first-hand understanding of the child's situation is not being followed in all cases. Furthermore, Kentucky has not promulgated in legislation or court rules the responsibilities and training requirements recommended in national standards and enacted by several other states. One reason Kentucky has not defined specific duties and training for guardians ad litem is because specialties are not recognized in the practice of law. Of equal concern is that attorneys do not believe they are adequately reimbursed for the guardian ad litem duties they currently perform, and certainly not for the duties expected of them by national standards.

The discussion that follows summarizes the findings from our fieldwork and survey, which contain the views of Kentucky judges, attorneys, and social workers. It will outline the federal legislation with which Kentucky must comply, recommended national standards, and the practices of other states with regard to the responsibilities and training requirements of guardians ad litem. We have recommended that the Judicial Branch develop duties and training guidelines for guardians ad litem in the state, as well as provide a recommendation to the General Assembly regarding the appropriate reimbursement of attorneys participating in dependency, neglect, and abuse cases.

Guardian Ad Litem Role In Court Proceedings Is Critical

Because there are no uniform standards and responsibilities, we determined that the quality of guardian ad litem representation depends on how the individual attorneys and judges perceive the role of the guardian ad litem. We observed instances in which the judge reached a decision without hearing the guardian ad litem's recommendation. We also observed instances in which the guardian ad litem invoked important issues and concerns before the judge. There were guardians ad litem who only talked to the child briefly in a corner of a crowded courtroom with the parents watching, and there were some who had interviewed the child in-depth prior to the hearing. It also appeared that the judge's expectations of the guardian ad litem often dictated the representation of the child. Judges who expected more of the guardians ad litem received more thorough, well-conceived recommendations.

Guardian Ad Litem Duties Not Defined and Training Not Required in Kentucky

Kentucky law only broadly defines the duties of the guardian ad litem. KRS 387.305 states that the duty of a guardian ad litem is "to advocate for the client's best interest in the proceeding through which the guardian ad litem is appointed." The only other specific definition of a guardian ad litem is found in Kentucky case law, Black v. Wiedeman, *supra*. (See Table 1 on page 5.)

The General Assembly and the courts elected to designate private attorneys as guardians ad litem on a case by case basis instead of designating attorneys under contract with the state for all cases in a particular district. However, neither the General Assembly nor the courts have mandated specific or uniform standards and responsibilities for these attorneys. A training curriculum for guardians ad

Chapter 1**Are the Responsibilities and Training Requirements of Kentucky Guardians Ad Litem Consistent with National Standards and Federal Legislation?**

litem has not been developed despite the fact that various national organizations consider training a prerequisite before an attorney represents a child. The Kentucky Rules of Professional Conduct, which govern attorneys, are broadly designed to cover a wide range of legal issues,⁴ and attorneys are not accustomed to having their responsibilities specifically defined for a certain type of case. For that reason, additional training has not been required for practitioners in a particular area of law.

Guardians Ad Litem Unclear as to Their Duties

In five of the six counties we examined, neither the responsibilities expected of the guardians ad litem nor the actual duties performed could be conclusively determined. Each person interviewed had a different opinion of the responsibilities of a guardian ad litem. In addition, the courts' case files provided no evidence of actual services performed or the number of out-of-court contacts with the child. Jefferson County was the only county that had developed local rules outlining the duties and responsibilities of the guardian ad litem. (Appendix VIII contains Jefferson County's local court rules.)

We surveyed participants in the child welfare system to determine the duties performed by guardians ad litem. Specific duties were listed. Attorneys, the Cabinet's family service workers, and the district court judges were asked if the guardians ad litem provide these services. The following table illustrates the percentage of affirmative responses for each duty:

Table 2: **Duties Provided by Guardians Ad Litem, as Identified by Key Participants in Kentucky's Child Welfare System**

Duties Performed	Percentage of Respondents Who Stated the Duties Were Provided by Guardians Ad Litem		
	Attorneys (37 responding)	Family Service Workers (39 responding)	Judges (34 responding)
Attend court proceedings	100%	90%	100%
Interview child out of courtroom	97%	51%	97%
Visit home and interview parents	54%	0%	50%
Monitor compliance with court orders	68%	21%	62%
Represent children in permanency planning	27%	13%	50%

Source: APA Conducted Survey

While the parties agreed that guardians ad litem should, and in fact, do attend the court proceedings, there was an absence of consensus regarding the other duties. Even though attorneys and judges responded that guardians ad litem should, and in fact, do interview the child outside of the courtroom, only 51% of the family service workers responding agreed that this service was performed. Affirmative responses regarding the duties of home visits, monitoring compliance with court orders, and permanency planning varied among the parties.

⁴ Attorneys in Kentucky are governed by the Kentucky Rules of Professional Conduct as adopted by the Kentucky Supreme Court. The rules are broad so as to cover various legal issues and client types. SCR 3.130, Rule 1.14, Client under a disability, addresses the representation of a minor. It says that the "lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client." The rule illustrates to what extent the laws do not outline specific attorney responsibilities towards their clients.

Chapter 1

Are the Responsibilities and Training Requirements of Kentucky Guardians Ad Litem Consistent with National Standards and Federal Legislation?

Guardians Ad Litem Are Not Representing Children in Permanency Planning

Based on the information in the table above and other responses, it is evident that guardians ad litem are not involved in permanency planning. Of the 37 attorneys that responded to our survey, only 2 (5%) responded that their representation ended with permanent placement of the child. The majority, 24 of those responding (65%), indicated that the guardian ad litem's duties terminated at final disposition. At final disposition, one of the alternatives available to the court is commitment of the child to the Cabinet (KRS 620.140). Permanent placement of the child—either by adoption, return to the family, or other disposition—may occur months or years later.

According to the Cabinet's Annual Report on Committed Children for FY 1996, a total of 4,909 children were subject to an order of commitment to the Cabinet, which is an increase of 168 children from FY 1995. Of the 4,909 children committed, 3,540 (72%) were committed because the child was dependent, neglected, or abused. The estimated average length of these commitments is 2.6 years. Foster care, where the majority of children in the Cabinet's custody are placed, cost the state \$48.3 million in state and federal funds for FY 1996.

Kentucky's statutes make no mention of the guardian ad litem's role after the disposition hearing. There are no required duties of the guardian ad litem if the child is committed to the Cabinet or removed from the home. There is also no guarantee that the same attorney will represent the child at the dispositional (permanency) hearings required 12 months after removal. When the attorneys were asked if they monitored the child's placement, 62% said that they did not. Of the 39 family service workers responding, 49% said the guardian ad litem was invited to attend permanency planning meetings, but that the guardian ad litem did not attend these meetings. Therefore, a guardian ad litem made little or no contribution to the permanency goals of the Cabinet for many of those 3,540 children. Of the 4,909 committed to the Cabinet on a non-temporary or non-emergency basis, the permanency planning goals were as indicated in Table 3 below:

Table 3: **Permanency Planning Goals for Children Committed to the Cabinet in FY 1996**

Permanency Planning Goal	Number of Children
Return to Parent	2,427
Relative Placement	331
Independent Living	493
Adoption	1,266
Permanent Substitute Care	361
Unreported Goal	31
Total	4,909

Source: June 24, 1997 Annual Report on Committed Children as prepared by the Cabinet for Families and Children for the Legislative Research Commission in accordance with KRS 194.360.

Chapter 1**Are the Responsibilities and Training Requirements of Kentucky Guardians Ad Litem Consistent with National Standards and Federal Legislation?**

Independent Investigation Is Not Performed By All Guardians Ad Litem

Discrepancies were discovered concerning whether guardians ad litem perform a “first-hand” investigation of the child’s situation in order to make their recommendation to the courts. When asked if they agreed or disagreed with the statement “Guardians ad litem adequately investigate their cases”, 15% of the judges and 33% of the family service workers disagreed. An additional 26% of the judges and 31% of the family service workers responded that they were not sure. One family service worker stated that there are attorneys who present the Cabinet’s recommendations and findings as their own. Therefore, the judges may not be aware that the guardian ad litem did not do the investigation independently. This may account for the fact that 84% of the attorneys and 94% of the judges replied that the guardian ad litem recommendations were based on independent research, while only 49% of the family service workers believed this to be the case. (See Table 4 below.)

Table 4: Basis of Guardian Ad Litem Recommendations Concerning the Child’s Situation, as Identified by Key Participants in Kentucky’s Child Welfare System

Basis of Recommendation	Percentage of Respondents Who Stated Guardians Ad Litem Base Their Recommendations on This Source of Information		
	Attorneys (37 responding)	Family Service Workers (39 responding)	Judges (34 responding)
Independent Research and Interviews	84%	49%	94%
DSS Report	89%	82%	82%
CASA Volunteer’s Report	19%	10%	24%
Other Information	35%	31%	21%

Source: APA Conducted Survey

There were hearings during which the guardians ad litem appeared familiar with the children they represented; however, other hearings produced concern that a “first-hand” understanding of the situation did not exist. In one county, the majority of the attorneys who were serving as guardians ad litem usually only spoke to the children briefly in the courtroom before the hearing. In another county, the judge asked a child if he had discussed the case with his guardian ad litem. The child replied that he had not, and the hearing was postponed so that the child and guardian ad litem could discuss the case. Family service workers and a CASA supervisor stated that the majority of the guardians ad litem did not talk to the children outside of the courtroom.

Guardian Ad Litem Training Is Not Provided by the Courts

Jefferson County’s Family Court is the only court providing a training curriculum for guardians ad litem. Jefferson County’s guidelines for guardians ad litem, adopted in local court rules, address the need for continuing education by recommending at least 8 hours annually. Kenton County has a Guardian Ad Litem and Appointed Counsel Committee that organizes training seminars; however, the judges do not specifically encourage attendance. In the counties where we conducted fieldwork, three attorneys who serve as guardians ad litem said they had attended some relevant training they selected themselves, while two attorneys stated that they had not attended any specified training on the subject. All of the attorneys interviewed, except one who was unsure, said they thought training would be beneficial to new lawyers in these cases.

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The majority of the respondents to our survey either acknowledge the absence of guardian ad litem training or were not sure that guardians ad litem are adequately trained. When asked if they agreed or disagreed with the statement “Guardians ad litem are adequately trained,” 24% of the attorneys and judges, along with 23% of the family service workers, disagreed. An additional 27% of the attorneys, 29% of the judges, and 49% of the family service workers responded that they were not sure.

While private attorneys serving as guardians ad litem do not receive specific training, this is not the case for staff attorneys with DPA or the Cabinet’s family service workers. Attorneys for the DPA received 18 hours of training on juvenile law in 1997. According to an attorney in the DPA Juvenile Division, representing kids requires different skills than adult representation. The Cabinet’s family service workers are also involved in juvenile court proceedings. These workers are required to attend 21 days of training in the first year of employment. After this initial training, the Cabinet’s goal is to provide or arrange 40 hours of training for workers each year.

The ABA and the National Council of Juvenile and Family Court Judges have stated that juvenile neglect and abuse cases are unique and they have defined the duties for attorneys that serve as guardians ad litem. Because children are unable to judge the quality of representation provided to them and are unlikely to petition for a change of attorney, the courts are responsible for ensuring that adequate representation and vigorous advocacy for the child’s best interests are provided. The ABA has recommended that the appropriate state administrative office of the courts provide these educational programs. On February 1, 1997, the ABA President issued a formal challenge to state and local bar leaders to improve the legal representation provided to all parties in child, youth, and family proceedings.

Nationally, the judicial and legal communities have established guardian ad litem standards and guidelines to be used by the states’ court systems and attorneys. If adopted, these standards would provide a basis on which to assert that children are provided quality representation as required by federal legislation. Other states, by statute and case law, have developed specific language similar to the recommendations of the ABA and national studies. This language is designed to inform guardians ad litem of their role and expectations in advocating for the best interest of the child. Kentucky’s Attorney General issued a guide to assist guardians ad litem, but its existence is not well known. The following section provides an overview of these criteria while more information is found in Appendices II, III, and V of this report.

At the federal level, there are two laws that affect guardians ad litem and require a state’s compliance. These are the amended CAPTA and the ASFA.

CAPTA specifies that the guardian ad litem is to be appointed to represent children in civil neglect and abuse judicial proceedings. CAPTA clarified that the guardian ad litem has the duty of obtaining a “first-hand” clear understanding of the situation and “the needs of the child” and that recommendations should be made based on this understanding. Kentucky has certified that these requirements

Guidelines Exist for Guardians Ad Litem on Standards and Duties

Federal Legislation Requires State Compliance

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are currently being met even though our statutes do not address the defined duties.

The ASFA, signed by the President on November 19, 1997, requires that permanency hearings be held 12 months after a child enters foster care. The ASFA's goal is to reduce the amount of time a child spends in the judicial and foster care systems. According to this law, states must initiate termination of parental rights proceedings for any child who has been in foster care for 15 of the previous 22 months. Kentucky has adopted this AFSA legislation through the passage of House Bill 142 and its signing by the Governor on March 17, 1998.

National Legal Organizations Recommend Specific Duties and Training for Attorneys Serving as Guardians Ad Litem

The ABA's Standards of Practice for Lawyers Representing a Child in Abuse and Neglect Cases defines duties of the attorney. The duties of guardians ad litem as recommended in this publication include the following:

- Inform other parties and their representatives that the guardian ad litem is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;
- Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;
- Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process; and
- Identify appropriate family and professional resources for the child.

The ABA recommends that the trial judge ensure that the child's attorney has had sufficient training in child advocacy and is familiar with these ABA standards. The appropriate state administrative office of the courts should provide educational programs, live or on tape, on the role of a child's attorney.

In August 1995, the ABA endorsed the publication, Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases, produced by the National Council of Juvenile and Family Court Judges (NCJFCJ). The Conference of Chief Justices has also encouraged the use of this publication through a resolution adopted at their annual meeting in 1995. Guardian ad litem duties as recommended in this publication include:

- Actively participate in every critical stage of the proceedings, including, but not limited to, hearings on adjudication, disposition, periodic case review, permanency planning, termination of parental rights, and adoption.
- If the child has been removed from the home, determine what contacts the agency has since made with the parents and the child and what efforts were made to reunify the family prior to the preliminary protective hearing.
- Conduct a full interview with the client to determine what involvement, if any, the child welfare agency has had with the parent or child, what progress the parents and child have made, and what services the client (parent or age-appropriate child) believes would be helpful.
- Review the agency's file and any pertinent law enforcement agency reports to evaluate the case and to ensure that the agency has complied with its own procedures and regulations. Obtain or subpoena necessary records, such as school reports, medical records, and case records.

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- Stay in contact with clients, writing letters and making telephone calls when necessary and using tickler files. Continue to remain in contact with the agency and monitor case progress between court hearings.

The resource guidelines publication also states that before appointment, the attorneys should be trained in or familiar with: 1) the structure and functioning of the child welfare agency and court systems; 2) legislation and case law on abuse and neglect, foster care, termination of parental rights, and adoption of children with special needs; and 3) the causes and available treatment for child abuse and neglect.

The complete listing of the duties and training requirements recommended by the ABA, NCJFCJ, and the National Court Appointed Special Advocate (CASA) Association are included in Appendix II.

National Study on Guardians Ad Litem Developed Core Principles of a Child Advocate

A national study was performed under a contract with the U.S. Department of Health and Human Services that provides additional guidance on the duties of guardians ad litem. A Technical Expert Group empaneled by the study developed what they considered core principles inherent in the function of a child advocate, regardless of the whether those advocates were attorneys, court appointed special advocates, volunteers, or others. These principles are listed below, while Appendix III contains additional information from the study.

1. **Advocate for the child** – This advocacy role extends beyond the confines of what is narrowly construed to be the role as purely one of legal representation for the child.
2. **Client-centered orientation** – The focus of guardian ad litem activity should be on identifying the concrete legal and nonlegal needs of children and on actively and vigorously seeking to meet them.
3. **Continuity of representation** – The guardian ad litem must remain continuously involved with the child, from the initial emergency hearing to the time when the court no longer has jurisdiction over the child (e.g., the child is adopted, emancipated, or reaches the age of majority). The court, social service agency, or other participants should contact the guardian ad litem if changes are made in the case.
4. **Accountability** – There must be an established mechanism to ensure that the guardian ad litem is held accountable for his or her actions on behalf of the child. Guardians ad litem may be reluctant to adopt these principles and implement recommended activities unless the court or other body holds them directly accountable.
5. **Independence** – The guardian ad litem should act independently of the child welfare agency and the court, but they should be encouraged by these bodies to advocate for the child.

Guardians ad litem may be reluctant to adopt these principles and implement recommended activities unless the court or other body holds them directly accountable.

Other States Define Guardian Ad Litem Duties and Require Training

Other states have explicitly defined the duties of guardians ad litem in their statutes and court rules. Eight states out of the 13 that we contacted had more defined guardian ad litem duties than Kentucky. The guardian ad litem duties in these eight states are included in Appendix V. The following excerpt is from Missouri's state statutes (211.462), "Be an advocate for the child during the dispositional hearing and aid in securing a permanent placement plan for the child."

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States are also beginning to require initial training and continuing education of a guardian ad litem. Of the 13 states we contacted, 4 states have established training requirements in their statutes or court rules for attorneys that serve as guardians ad litem, and 2 states require or recommend training in their contracts with attorneys serving as guardians ad litem. (See Appendix IV for more information on other states practices.)

Kentucky's Guide for Guardians Ad Litem Recommends Specific Permanency Planning Duties Yet Is Seldom Used

Kentucky's Attorney General issued a guide to assist guardians ad litem, but it does not carry the weight of state law or court rules. The guide is titled Legal Representation of Kentucky's Children: A guide for the Guardian ad litem.⁵ This guide was released in 1992, but only two people we interviewed were aware of its existence. It contains practical suggestions and guidelines for properly representing children. The guide also recommends several areas in which the attorney should receive training prior to serving as a guardian ad litem.

The guardian ad litem should ensure that the Cabinet's efforts stay focused on outcomes for the child rather than process.

The Attorney General's guide specifically states that the guardian ad litem has a role in permanency planning and recommends specific duties. The guide instructs the guardian ad litem to attend the six-month case reviews conducted by the Cabinet in order to scrutinize the Cabinet's efforts to move the child toward their permanency goal. The guardian ad litem should ensure that the Cabinet's efforts stay focused on outcomes for the child rather than process. If the child's needs are not being met in their current placement, a motion should be filed to review or terminate the commitment or compel the custodian to comply with existing court orders. The guardian ad litem should attend the dispositional (permanency) hearing because the purpose of this hearing is to determine the child's permanency goal.

Kentucky Studies in Recent Years Document Guardian Ad Litem Weaknesses

Studies performed by other agencies in Kentucky have noted attorney weaknesses in the areas of interviewing the child and independently researching cases. These studies have also recommended solutions to correct these weaknesses, but no changes have occurred. One official at AOC stated that everyone knows there is a problem, but no one has accepted the responsibility of correcting the situation.

The currently active Kentucky Court Improvement evaluation team consists of various personnel from AOC. The team issued its "First Year Assessment and Recommendations" in February 1996. This report documented concerns of some guardians ad litem that their colleagues too often accepted caseworker's recommendations "without question." Other guardians ad litem expressed views that there is a high reliance on the family service workers.

Kentucky Youth Advocates, a private, non-profit organization, issued a report in September 1991 titled "Turning Promise into Practice" which is an analysis of Kentucky's services to abused and neglected children. The criticisms cited of

⁵ Kentucky's compliance with the CAPTA requirements entitled it to receive approximately \$475,000 in federal money during fiscal year 1997. The money received can be spent in nine areas of child welfare, so states are not required to spend any of the money on providing guardian ad litem services. In 1991, a portion of the state's federal money was used to fund the development of a training program for guardians ad litem by the Kentucky Attorney General. The result was a publication entitled Legal Representation of Kentucky's Children: A guide for the Guardian ad litem.

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guardians ad litem were that they have no involvement with the child or family prior to court hearings, they receive little or no training, and the attorneys only provide a level of services consistent with the reimbursement they receive. The report recommends that a training curriculum be developed to certify guardians ad litem and a tiered payment structure be used to financially reward the certified guardians ad litem. The report also recommended that the Kentucky Supreme Court review and outline the roles and responsibilities of a guardian ad litem.

Another study titled "Above and Beyond" was produced in September 1995 by the Adult Protective Services and Child Protective Services Policy Review workgroup within the Cabinet. This study repeated verbatim the findings of the Kentucky Youth Advocates' publication. Their recommendations were that the KBA should provide continuing legal education for guardians ad litem and ensure that attorneys are aware of their responsibilities, and that the General Assembly appropriate funds for a training incentive program for guardians ad litem who receive guardian ad litem training.

Attorneys Express Concerns Over Recommended Duties and Inadequate Reimbursement

Attorneys have expressed concerns related to defining guardian ad litem duties and requiring training. One of these concerns is that defining specific duties may require a guardian ad litem to perform activities that are unnecessary in a particular case, thus increasing exposure to liability. Some states have overcome this concern by providing guardians ad litem immunity from liability based in part on the guardian ad litem's role of representing the child as a service to and at the request of the Court. Another concern is that requiring training in order to practice in one area of law may set a precedent in other areas of law.

A comment heard repeatedly from attorneys representing children was that the current maximum fees do not provide adequate reimbursement for the duties they are expected to fulfill. There is concern that guardians ad litem are not paid a rate comparable to other court appointed attorneys. Attorneys and judges said that an hourly rate with no maximum limit would more fairly reimburse them for the time spent on these cases. It should be noted that the statutes established the present fee structure in 1986 (effective July 1, 1987) without a clause adjusting these fees for inflation or a mechanism for higher payments in lengthy, complicated cases. The statutes also provide the same amount of fees for guardians ad litem representing children as for attorneys representing parents or custodians. This equality of pay should be reconsidered since a guardian ad litem has the more extensive duties when representing a child.

State government recommends a rate of \$40 per hour for private, sole practitioner attorneys serving under a personal service contract. Attorneys working under a child support enforcement program administration contract also receive an hourly fee of \$40. Furthermore, according to KRS 31.170, attorneys contracted to perform public defender work for the DPA receive \$35 per hour for in court time and \$25 for out of court time. However, none of these attorneys has a set limit on the number of hours they may charge per case.

Guardians ad litem, who documented their time in the case files we reviewed, spent an average of 4.7 hours per case. If the maximum fee of \$250 for district court representation was awarded for these cases, the average rate of

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reimbursement would have been \$53 per hour. However, it should be noted that the 4.7 hours of attorney time does not take into consideration the time necessary to carry out the nationally recommended duties, responsibilities, and training with which Kentucky guardians ad litem currently are not required to comply.

The determination of whether additional funds should be allocated to guardian ad litem reimbursement is a policy question for the General Assembly. Once the expected duties of guardians ad litem are defined and implemented, attorney workloads should be monitored by the Supreme Court through the AOC. Recommendations for statutory changes and appropriations for guardian ad litem fees should be made to the legislature at that time.

Any study of the fees paid for guardian ad litem and parent/custodian representation should also look at different options for procuring those services. The U.S. Department of Health and Human Services study on guardians ad litem (included as Appendix III) studied three methods for procuring guardian ad litem services: by private attorney, staff attorney, or through CASA programs. Supporting a statewide volunteer CASA program is an option for states to provide the needed services using less resources. However, the study cautions that legal resources must be available to the volunteers in order to provide quality representation. Other states have rate mechanisms that include an hourly rate and maximum such as in Alabama where attorneys are paid a fee of \$20 per hour out of court and \$40 in court not to exceed \$1,000 per case. (See Appendix IV for more examples of other states' payment systems.)

Recommendations

Kentucky is not able to support the assertion that the requirements of federal legislation are currently being met in all cases. Key participants in juvenile proceedings are not convinced that guardians ad litem consistently perform independent research or adequately investigate the cases. More importantly, a large number of the respondents do not consider continuously representing the child until permanent placement to be a responsibility of the guardian ad litem, despite the fact that national legal organizations and the National CASA program consider this to be a fundamental duty of guardians ad litem.

While defining the duties of a guardian ad litem and establishing training requirements may change the broad nature of current court rules, these actions are needed to improve the current status of unclear duties and a lack of necessary training. Without clear roles, important services may not be provided. The protection of Kentucky's children merits these fundamental changes.

In Kentucky, the guardian ad litem is a private attorney governed by the Kentucky Supreme Court and serving as a representative of the court. Therefore, the Supreme Court must provide leadership in defining guardian ad litem duties and establishing training requirements. Accordingly, we recommend the following:

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- 1.1:** The Kentucky Supreme Court consider adopting written court rules on the duties of guardians ad litem. These duties should:
- Be based on the recommendations of the ABA and the National Council of Juvenile and Family Court Judges and ensure that the state complies with federal legislation; and
 - Define the guardian ad litem role as advocating for the child's best interests until the child achieves a permanent placement.
- 1.2:** The Kentucky Supreme Court consider adopting written court rules outlining minimal training requirements for guardians ad litem. Training should be provided by the courts and supported by the district and circuit judges as a basis for appointing guardians ad litem.
- 1.3:** The AOC consider compiling the number of hours of representation provided by attorneys for children and parents/custodians and provide data to FAC and the General Assembly regarding the reasonableness of fees paid for that representation.
- 1.4:** The General Assembly consider reviewing information provided by AOC and FAC regarding the number of hours of representation provided by attorneys for children and parents/custodians and, as deemed appropriate, revising the method of procurement and fees paid for that representation.

**Response to Agency
Comments**

We provided a draft copy of our report to representatives of the Judicial Branch, the Administrative Office of the Courts, Finance and Administration Cabinet, and Cabinet for Families and Children. Representative of the Supreme Court and Administration Office of the Courts generally agreed with all the recommendations noted above.

The complete text of the official comments of the Judicial Branch and the Finance and Administration Cabinet are included as Appendix XII.

Are Guardian Ad Litem Activities Administered Effectively so as to Ensure Quality Representation?

Summary

Inconsistencies exist among Kentucky's judicial districts in the administration of payments to and appointment of guardians ad litem. Legal representation of dependent, neglected, and abused children is not uniform and lacks proper oversight. As a result of the absence of oversight responsibility, the effectiveness of guardians ad litem across the state to "represent the best interests" of children may be diminished. Ensuring effective oversight of guardians ad litem is difficult because responsibilities are divided between FAC, local judges, and AOC. Information systems which track child welfare cases and the appointment and payment of guardians ad litem are spread among FAC, AOC, and the Cabinet's Department of Social Services. We noted that efforts to improve overall juvenile court administrative practices are part of several pilot projects being undertaken by AOC.

In order to eliminate the risk of inconsistent guardian ad litem administration, as well as ensure dissemination of clear guidance regarding duties and training requirements, we are recommending that AOC be responsible for all guardian ad litem administrative oversight. In addition, we have made recommendations designed to eliminate inconsistencies in the administration of the program.

Inconsistencies Exist in Administrative Practices

Administrative practices were inconsistent or lacking in the following areas:

- *Judges' oversight in guardian ad litem fee determination.* Judges' determinations of fees ranged from always awarding the maximum fee to requiring affidavits of hours worked and basing fees on set hourly rates.
- *Guardian ad litem appointment process and evaluation of guardian ad litem qualifications.* Appointment of guardians ad litem ranged from an application process to the selection of attorneys from a pool of those willing to serve as a guardian ad litem.
- *Use and completeness of standardized court orders.* Standard orders appointing guardians ad litem were not used and the Orders for Attorney Fees were incomplete in some counties.
- *Payment of attorney fees in juvenile delinquency cases.* One of the six counties we visited had incorrectly ordered FAC to pay attorneys for juvenile delinquency representation.
- *Documenting the indigence of parents or custodians.* None of the cases reviewed held any documentation or affidavit of indigence for parents or custodians.
- *Appointment of counsel for parents or custodians.* Judges differed in standard practices for appointing attorneys for parents, ranging from always appointing attorneys for every parent and custodian (even for absent parents who cannot be located) to appointing just one attorney for the parents.
- *Database information tracking guardian ad litem case information and payment information.* The state does not have a computer system that contains complete and accurate information to track guardian ad litem and child welfare cases.

The sections that follow discuss these different practices; recommendations begin on page 27.

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**Guardian Ad Litem Fees
Inconsistent Across the State**

We found the method used by judges to determine appropriate attorney's fees varied in the six counties we examined. In two of the six counties, the judges did not require any time records to support the Order for Attorney's Fees. The district judges in these counties said they awarded the \$250 maximum amount regardless of the amount of time spent on a case. According to these judges, the fee of \$250 was so low that requiring extra paperwork would be too burdensome. Some cases may be resolved in one hearing, while others may linger in the court system for months, so they feel the fees even out in the long run. One of these judges said that if the state had an hourly rate with no maximum she would require time records, but as long as there was a maximum amount, she would not require the attorneys to document their time.

In two other counties, some guardians ad litem submitted time records with the Order for Attorney's Fees but others did not. The judges in these counties signed the Order for Attorney's Fees, approving the attorney's requested fee, regardless of whether time records were presented for review.

Only two counties of the six we examined had judges who consistently required an affidavit of time spent on the case. One of these counties had a judge that applied an hourly rate to the time records to determine the amount to award. He awarded \$50 per hour, not to exceed the \$250 maximum for district court.

In Jefferson County's Family Court, judges require a monthly affidavit listing the cases remanded and the requested fee for the month. According to their local court rules, this monthly amount is limited to \$1,325 per month for guardians ad litem, as opposed to attorneys that represent parents and custodians who have no monthly total fee limit. Each case listed includes the activities and the related time spent, the amount per hour the attorney normally charges, and the total amount they are requesting for each case (which cannot exceed the statutory limit of \$250). The court, in order to control costs, established these additional procedures. Jefferson County was the only county that had different methods of awarding fees to the guardian ad litem and to the attorney who represents parents or custodians.

Based on the survey we sent to various parties in 71 counties, 60% of the court clerks responded that the attorney attaches an affidavit of time records with the Order for Attorney's Fees, while 70% of the attorneys responded that the affidavit of time records was attached. We also surveyed district judges to determine the methods used to award the guardian ad litem fees; 76% responded that the amount awarded was based on time and only 18% responded that they usually award \$250. Given that we did not find time records in 52 out of 115 case files, the survey responses do not represent the findings from our fieldwork. Furthermore, according to the FAC database, 51% of the payments in FY 1996 were \$250 exactly.

To further evaluate fee payments, we reviewed whether multiple payments were being made for the same petition either on the basis of multiple hearings or multiple children being represented. From our fieldwork, we found that the majority of case files reviewed had only one payment made to the attorney for each petition. From our interviews, it was apparent that judges and attorneys believe that the maximum fee applies to a specific petition and not each

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individual hearing. Our survey results indicate that additional payments after disposition only resulted if a new petition was filed. We found in a small number of instances that the judge awarded attorneys additional payments if the case was redocketed for court review at a later date. However, this did not appear to be the norm.

With regard to the court rule stating that the maximum fee should not be exceeded regardless of the number of persons represented,⁶ our fieldwork only found one attorney who violated this rule. However, our survey of court clerks indicated that multiple payments for multiple children listed in the same petition may be occurring. Our survey asked the court clerks to identify the payment method when an attorney represented more than one child in a case. Of the clerks responding, 74% stated that a motion for one fee was made for all children involved, 19% responded that the attorneys made motions for separate fees, and 7% said they have attorneys who do both. Therefore, this may be an issue that should be addressed through policy notices to ensure consistent application of the rule by judges and attorneys.

There are judicial districts that have established methods for regulating guardian ad litem fees, while other districts have elected to pay the maximum amount in all cases. We therefore recommend that the Supreme Court provide guidance to judges on determining the proper fee. Such guidance need not bind judges throughout the state to one rate or one method of fee determination, but it should address the following: 1) when time records are needed; 2) what duties are expected to be performed in order to receive the maximum fee; and 3) whether all judicial districts should have local court rules in place concerning fee determination. (Refer to Chapter 1 for our discussion on guardian ad litem fees.)

Attorney Appointment Should Be Based on Qualifications

Of the six counties examined, Jefferson County was the only one that required an application documenting the qualifications of an attorney prior to the appointment as a guardian ad litem. Since the statutes do not give any specific guidelines on this matter, each judge has established his or her own methods.

With the exception of Jefferson County, the courts we visited did not request a guardian ad litem application listing the attorney's experience or qualifications in representing dependent, neglected, and abused children. One judge used a private law firm to appoint the attorneys from a rotating roster; in four of the counties, the judge selected the attorneys for appointment from those attorneys who normally serve as a guardian ad litem or as an attorney for parents. Jefferson County had three assigned guardians ad litem for each of the nine family court divisions. The guardians ad litem were selected on the basis of a submitted application. The attorneys for the parents were selected from a list of interested

⁶ CR 17.03 (5) The court shall allow the guardian ad litem a reasonable fee for services, to be taxed as costs. Fees allowed to counsel for children, indigent parents or non-parental custodians of children in dependency, abuse or neglect cases, and to counsel for children or indigent parents in parental rights termination cases, under the Juvenile Code, shall not exceed the amounts specified in KRS 620.100 or KRS 625.080. Counsel fee awards shall not exceed the statutory maximum regardless of the number of persons represented in a proceeding by the counsel.

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attorneys. Jefferson County was the only county that had different procedures for the guardians ad litem and the attorneys for parents.

The ABA's Standards of Practice for Lawyers Representing a Child in Abuse and Neglect Cases states that:

Where the court makes individual appointment of counsel, unless impractical, before making the appointment, the court should determine that the lawyer has been trained in representation of children and skilled in litigation (or is working under the supervision of a lawyer who is skilled in litigation). Whenever possible, the trial judge should ensure that the child's attorney has had sufficient training in child advocacy and is familiar with these Standards.

The ABA document goes on to say, "The Abuse and Neglect Standards reject the concept of ad hoc appointments of counsel that are made without regard to prior training or practice." The National Council of Juvenile and Family Court Judges also states in its resource guide that "Before becoming involved in an abuse and neglect case, attorneys should have the opportunity to assist more experienced attorneys in their jurisdiction." This guide was adopted by resolution in August of 1995, not only by the ABA, but also the Conference of Chief Justices.⁷

By not adequately reviewing qualifications of guardians ad litem, Kentucky's judiciary is not following guidelines of the ABA and other organizations. In addition, adequate representation is at risk.

In accordance with national standards of the legal profession, we recommend that the Supreme Court consider requiring judges to evaluate an attorney's qualifications and experience prior to appointing the attorney as a guardian ad litem. The attorney should possess the qualifications and experience needed to provide quality guardian ad litem representation (i.e., experience and training in child welfare, child advocacy, and permanency planning).

**Standardized Use of Orders
Would Improve Guardian Ad
Litem Administration**

The documentation included in the case files regarding the guardians ad litem was not consistent. We found that Orders for Attorney Fees were not complete in some counties. We also found that Jefferson County was the only county of the six we examined that had created a standard order for appointing guardians ad litem.

The payment process in each of the counties we visited begins when the attorney submits an "Order for Attorney Fees" to the judge for written approval. Once approved, the court clerk then files a copy of the order in the appropriate case file; this order is then sent to FAC for payment. FAC reviews the order for allowability according to the applicable statutes and enters the information for payment. Therefore, the completeness of this order is necessary for proper monitoring and the retention of accurate information.

⁷ Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases; published by the National Council of Juvenile and Family Court Judges, dated August 1995.

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In one county, the majority of the orders for attorney fees lacked case number trailers, names of parties represented, and the dates of appointment and disposition. We found that one attorney in this county received additional payments from FAC for the same case due to the incompleteness of these orders. When interviewed, the judge in that county stated she did not monitor the payments, assuming that Frankfort will catch any duplicate payments. Another county did not use the case number trailers that identify the petition. The incompleteness and inconsistent use of the standard Order for Attorney Fees makes it difficult for FAC to monitor the number of payments paid on behalf of the children and to screen for duplicative payments associated with a specific petition.

The Jefferson County order of appointment contains language that defines the duties of the guardian ad litem and gives the attorney access to the child and necessary medical, educational, and psychological records. In other counties, only a note on the docket sheet indicated who was appointed or a form was used that contained no language to give the guardian ad litem access to necessary records or define responsibilities. The ABA recommends that the order of appointment authorize the attorney access to the child and to all privileged information so that a further release is not necessary.

The moment of origin of the order of appointment would seem the most appropriate time to ensure the guardian ad litem has access to necessary records and is aware of the required duties. A comprehensive standard order of appointment removes the need for additional motions and valuable court time to access needed records. Furthermore, it is an appropriate time to make the guardian ad litem aware of specific duties and responsibilities.

One way to better manage the appointment and payment processes would be to streamline the forms used by AOC in order to include the maximum amount of information on one form. The Order for Attorney Fees should be revised to include a section for the attorney to list the activities performed and the corresponding time spent on each activity. The status of the child at the time of the order for payment could also be indicated. This information may lead to better tracking associated with ensuring the child reaches a permanent placement and could facilitate federal reporting requirements.

The order of appointment should contain language that will give the guardian ad litem access to necessary records and list the duties expected from the court. This form could be distributed to the guardian ad litem when appointed and the Order for Attorney Fees could be completed when work is performed. All guardians ad litem should complete this form in order to receive payment.

Representation in Juvenile
Delinquency Cases Paid
Inappropriately

We found that one county completed several Orders for Attorney Fees indicating cases were juvenile dependency, neglect, and abuse-related, when in fact, they were juvenile delinquency cases. Juvenile delinquency cases are criminal proceedings in which the DPA and not a guardian ad litem represents an indigent person. Therefore, in this county, funds appropriated for dependent, neglected, and abused children were being ordered by the judge to pay for the defense of juvenile delinquents. Of the 15 files reviewed, 13 were for juvenile delinquency

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cases (totaling \$2,270 in state legal fees) and were inappropriately paid from guardian ad litem resources.

To ascertain whether this occurred in other counties, we polled a group of attorneys and judges, asking: "In juvenile delinquency cases, who is appointed to represent the child?" Ten out of 37 attorneys and 5 out of 34 judges responded that guardians ad litem were appointed. Since we would expect no guardians ad litem to be appointed for these cases, FAC has been incurring an expense for attorney services that should be paid from DPA funds instead of from funds designated to support the guardian ad litem portion of the child welfare system. Therefore, we recommend that judges and court clerks be informed by AOC of the proper procedures regarding guardian ad litem fees and juvenile delinquency representation.

**Indigence of the Parent or
Custodian Not Documented**

According to KRS 620.100, the court shall appoint separate counsel for the parent or nonparent who exercises custodial control or supervision if this party is not able to afford counsel pursuant to KRS Chapter 31. KRS 31.120 requires the needy person certify in an affidavit of indigency the material factors relating to his ability to pay, and the courts must determine to what extent the person is able to pay an attorney.⁸ The fees for separate counsel for the parent or custodian are paid in the same manner as counsel for the child.

In our fieldwork, there were 65 cases out of 115 reviewed (57%) in which an attorney for the parent or custodian was appointed by the court; none had any type of documentation or affidavit of indigency on file to establish the fact of indigency. In interviews with the district judges, three of the six stated that they did not complete affidavits of indigency. The three remaining judges said they determined indigence in these cases as they would in criminal cases. Of the 34 judges and 57 court clerks who responded to our survey, 44% of the judges believed that an affidavit was used to establish the parent's or custodian's indigence, while only 28% of the court clerks responded that an affidavit was used.

According to the DPA, from the 73 counties in which the DPA contracts for attorney services, the DPA was able to recoup approximately 21% of its costs from the defendants. On the other hand, FAC staff was not aware of any money being recouped by FAC. An analysis of the FAC database indicated that in FY 1996, 31%, or \$446,728, of the total \$1,451,951 expensed for juvenile cases was paid to attorneys for the parents or custodians. If 21% of this expense had been

⁸ KRS 31.120 (2) - In determining whether a person is a needy person and in determining the extent of his, and, in the case of an unemancipated minor under KRS 31.100(3)(c), his custodial parent's or guardian's inability to pay, the court concerned shall consider such factors as income, property owned, outstanding obligations, and the number and ages of his dependents. Release on bail, or any other method of release provided in KRS Chapter 431, shall not necessarily prevent him from being a needy person. In each case, the person, and, if an unemancipated minor under KRS 31.100(3)(c) and (d), his custodial parent or guardian, subject to the penalties for perjury, shall certify by affidavit of indigency which shall be compiled by the pretrial release officer, as provided under KRS Chapter 431 and Supreme Court Rules or orders promulgated pursuant thereto, the material factors relating to his ability to pay in the form the Supreme Court prescribes.

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recouped as in public defense criminal cases, the state would have received an additional \$93,813 in FY 1996.

We recommend that AOC provide guidance to the courts regarding the documentation of indigency in juvenile dependency, neglect, and abuse cases. This guidance should designate the person responsible for completing the documentation and the process to recoup payments from the parent or custodian.

Appointment of Counsel for Parent or Custodian Is Inconsistent

In the six judicial districts we visited, judges had dissimilar policies on appointing separate counsel for parental or custodial parties in accordance with Kentucky's Unified Juvenile Code.

In one county examined, the judge appoints an attorney for both the mother and father in the vast majority of cases. Separate counsel is also appointed for absent parents who cannot be located and who may have never seen the child. This may result in a \$250 award to an attorney for minimal representation, if the judge approves a maximum fee. In other counties, a defined policy had not been established; the decision appeared to be made on a case-by-case basis at the judge's discretion. In Jefferson County, one judge assigned the responsibility of locating the absent parent to the child's guardian ad litem, thus eliminating the cost of appointing another attorney.

While the decision to appoint counsel must ultimately be left to the judge's discretion based on the circumstances of the case, uniform court rules or administrative procedures would help to ensure that only necessary appointments are made. We therefore recommend that the Supreme Court instruct the courts on the appropriate situations for appointing additional counsel in a uniform manner.

Data Systems Do Not Meet State's Information System Objective

No single computer system in the state contains complete and accurate guardian ad litem case and payment information. The AOC's SUSTAIN computer system stores case information, but the information concerning guardians ad litem is not required, so its completeness depends upon the clerk's inputting the information. The FAC database contains the payment information, but the only case information available is that which is included on the Order for Attorney Fees, and our review found these to be incomplete. The Cabinet's Department for Social Services has "The Worker's Information SysTem", nicknamed TWIST, a case management system used by workers in the areas of child welfare, adult services, and aging. This system is set up so the family service worker can enter information concerning the investigation of a case and any resulting court activities. The FAC database does not link or interface with the TWIST database or the AOC system. This results in duplicate and incorrect information, as well as wasted resources on data entry personnel and information technology resources.

While specific system development requirements are not mandated by statute or regulation, the principles of the Commonwealth of Kentucky Strategic Information Technology Plan (SITP) state that the primary role of information technology is to support the business objectives of the Commonwealth and support and enable agencies in their efforts to provide services to the citizens. In general, the Kentucky Information Resources Management Commission found

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that opportunities for cross-organizational initiatives among agencies are not being exploited. The Commission recommends agencies develop partnerships and share information and technology.

The database maintained by FAC is used to pay the attorneys and document their income for reporting purposes; it is not used to support the objective of ensuring children are receiving quality representation. This is partly due to the fact that FAC was given the responsibility to pay the fees but not the responsibility of ensuring quality guardian ad litem representation. The information in the FAC database comes from the information supplied by the attorney and approved by the judge. The database was found to contain incorrect and incomplete case numbers, incorrect and missing names, and incomplete dates of appointment and disposition. Therefore, the system cannot be used to track or monitor the number of payments by case number or petition, the length of time the guardian ad litem was appointed, the time spent on the case, the status of the children being represented, or the number of payments for adoption or termination of parental rights hearings.

The systems discussed above do not track whether a guardian ad litem is appointed to represent children in all dependency, neglect, and abuse cases. The CAPTA requires states to report the number of children for whom a guardian ad litem was appointed and the average number of out-of-court contacts between the guardian ad litem and children. While the law only requires that states report this information to the maximum extent practicable, Kentucky has no mechanism in place to monitor this data.

The AOC and FAC should work together to create a system for verifying the case information as reported by the attorneys before fees are paid. This system should relate the fee to a case and trailer number so that a duplicate payment is not allowed unless the required approval is given. The system should facilitate analytical and summary reports for review of and by judges and attorneys. It would also be beneficial if TWIST were to interface with AOC's information system. This would prevent the family service worker from having to input the court information, which can be retrieved from AOC. These systems should be able to communicate with each other to reduce the duplication of effort by the workers in each area. Given that the court's information system is the responsibility of the judicial branch and AOC, we believe the tracking of such information would best be accomplished by AOC.

Kentucky Is at Risk of Not Representing the Best Interests of Children

Recently enacted federal and state legislation compounds the need to improve our guardian ad litem system, making the representation of children more than an ad hoc appointment of a private attorney. The goal of recent legislation is to speed up permanency hearings for the nearly 5,000 Kentucky children committed to the Cabinet that may spend months, sometimes years, in foster care. Each permanency hearing will require a guardian ad litem for the child and possibly attorneys for the parent or custodian of the child. Therefore, even more vigilance will be needed to ensure that guardians ad litem are performing the necessary duties with regard to the representation of children and that attorney fees do not increase unreasonably. Without proper oversight, the state is at risk of not

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complying with the federal requirement of appointing a guardian ad litem to represent children and obtain a first-hand understanding of the child's situation.

Effect of Lack of Oversight

Our concern regarding adequate guardian ad litem oversight is supported by the fact that in our survey, 41% of the judges (14 out of 34) either did not believe or were not sure that guardians ad litem adequately investigate cases. In addition, 18 of 34 judges either did not believe or were not sure the attorneys were adequately trained. Judges who preside over these cases daily are certainly in the best position to comment on guardians ad litem. An attorney with AOC said the agency regularly receives calls from attorneys appointed as guardians ad litem asking what they are supposed to do. Unfortunately, AOC does not have any materials to give them.

These inconsistencies and this lack of monitoring are symptoms of a process that has little organization or support services. Guardian ad litem expenses are increasing, and without the proper controls in place they could be increasing without children receiving quality representation. An oversight agency could monitor the administration of these services, the qualification of service providers, and have a performance objective to constantly improve children's representation. An oversight agency could also assist judges with their responsibility of ensuring that cases get through the court system in a timely manner.

**National Trend Is Moving
Toward Some Form of Central
Oversight and/or Coordination
of Guardians Ad Litem**

At least seventeen states have developed statewide guardian ad litem programs to address the issues noted throughout this report. The duties of the state administrators focus on recruitment, maintaining a list of qualified guardians ad litem, supervision and evaluation of guardians ad litem, and recordkeeping for the guardian ad litem program. The program administration in ten states is provided by the state court system, while the public defender's office or independent agencies provide the administration in other states. Appendix IV provides an overview of the administration of guardian ad litem programs in several states.

The national study of guardians ad litem published by the U.S. Department of Health and Human Services (discussed in Chapter 1) encourages states to institute a statewide guardian ad litem program. The study encourages the guardian ad litem program to have a state administrative person or office responsible for coordinating guardian ad litem functions. This person or office could insure that quality standards exist in the guardian ad litem program.

**Supreme Court and General
Assembly Should Consider
Making AOC Responsible for
the Oversight of Guardians Ad
Litem**

We recommend that during the next legislative session the General Assembly consider switching the appropriated Executive Branch budget line item for guardians ad litem to the Judicial Branch. We also recommend that the Supreme Court assign an office within AOC the responsibility for oversight of guardians ad litem and improving the quality of children's representation. The mission of the office would be to promote the consistency of guardian ad litem qualifications, selection, duties, training requirements, and compensation. The office's responsibilities could include the following:

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- Maintain a list of qualified attorneys throughout the state. Qualifications would be based on established training and experience requirements in accordance with the ABA guidelines.
- Provide the needed training for the attorneys and ensure that it is available in the different regions in the state. Maintain a listing of the training received for each attorney that is listed as a guardian ad litem.
- Work with the local courts and provide them with guidance in selecting attorneys for these cases. Assist them in recruiting attorneys.
- Deal with complaints regarding guardians ad litem. This may mean substantiating complaints, discontinuing the courts' use of a particular attorney as a guardian ad litem, or referring the attorney to the KBA for consideration as a possible disciplinary matter.
- Provide new attorneys with an orientation package. Maintain a library of related resource material the guardian ad litem can request, or make this information accessible on the Internet.
- Monitor compliance with national standards and court rules on an ongoing basis and through periodic audits or program reviews.
- Evaluate the impact of guardians ad litem in decreasing the time children stay in foster care and in speeding up permanency placement.
- Create forms that will allow AOC to track the fees ordered to be paid to guardians ad litem and review the services provided by guardians ad litem for completeness and reasonableness.
- Create a system for reconciling the fees with the case information contained in AOC's information system.

Even though the Judicial Branch is not the only organization that could provide the needed administration of guardians ad litem, we are recommending the administration be provided by the court system for the following reasons:

- In 1993, the Family Preservation and Support Act created the State Court Improvement Program, which was a grant program to help state courts focus on their role in proceedings related to children who enter the courts as a result of dependency, neglect, or abuse. In 1994, the AOC initiated the State Court Improvement project. AOC completed a thorough assessment of child placement proceedings, which included the area of guardians ad litem, and is now in the process of implementing reforms based on the findings of the assessment. Therefore, AOC already has the necessary background and knowledge regarding guardians ad litem.
- AOC has also been awarded an Adoptions Opportunities Grant from the U.S. Department of Health and Human Services that is geared toward improving Kentucky's permanency planning and reducing the amount of time the child spends in foster care. With this money, AOC is planning a training conference for 200 guardians ad litem and has begun permanency planning pilot projects in Jefferson, Laurel, and Knox counties.
- AOC has the resources and databases to monitor the cases and communicate with the courts. It has an Internet Home Page which can provide the attorneys with updates and literature on the subject of child welfare.

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- Currently, courts have the authority to select and appoint the guardian ad litem and decide a reasonable fee for their services. Therefore, since AOC trains and provides support to these courts and judges, it would be the logical agency to extend services to guardians ad litem.
- Kentucky's Foster Care Review Board is a program of the AOC. For each child placed in custody of the Cabinet, the Cabinet is to file a case permanency plan for the child with the court and send a copy to AOC's Foster Care Review Board no later than 30 days after the effective date of the order (KRS 620.230). Local foster care review boards submit recommendations to the courts on whether there is a permanency plan, if the plan is progressing, and its appropriateness (KRS 620.290). Since the Foster Care Review Board is currently working with the courts to improve permanency planning, it would be beneficial for this program to involve guardians ad litem.
- FAC is not staffed or otherwise involved in permanency planning or juvenile dependency, abuse, and neglect matters. Moving responsibility to AOC provides a synergy for more effectively employing guardians ad litem and more efficiently maximizing the limited resources spent on guardian ad litem fees.

During our exit conference with representatives of the Judicial Branch, serious concerns were raised regarding the Judicial Branch paying for guardian ad litem services. These representatives are concerned that this function is, constitutionally, the responsibility of the Executive Branch, while the training and defining of roles for guardians ad litem are appropriate functions of the Judicial Branch. Part of this concern is that the Judicial Branch does not have access to the contingent liability fund from which guardian ad litem payments are made. The FAC has access to this fund, which enables them to pay court orders imposed on the Commonwealth of Kentucky. Another concern was having AOC regulate attorneys and judges with regard to proper representation of dependent, neglected, and abused children.

While these concerns are valid, they can be overcome in order for AOC to take full responsibility of the guardian ad litem program. Although Kentucky's Judicial Branch does not pay any attorney fees for court appointed services or public defenders, there are states that have established these functions under their Judicial Branch. In both the Commonwealths of Virginia and Massachusetts, the General Assembly has appropriated specific budget line items to the Judicial Branch for payment of guardian ad litem fees as well as public defenders. Because the payments are ordered by the legislature, increases in funding from the states' general funds are not difficult to obtain. In addition, periodic reviews of the program as arranged by AOC would serve as an effective monitoring tool and provide AOC with the means to target training efforts. The AOC reviews would be more efficient and cost effective than the efforts of FAC to monitor the process from a separate branch of government.

Recommendations

In order to improve the administration of guardians ad litem, ensure payments to guardians ad litem are in accordance with applicable statutes and court rules, and ensure effective, competent advocacy of Kentucky's dependent, neglected, and abused children, we recommend that:

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- 2.1:** The Supreme Court consider issuing rules, orders, or administrative procedures designed to provide guidance to judges regarding the determination of fees in dependent, neglect, and abuse cases. They should address the following: 1) when time records are needed; 2) what duties are expected to be performed in order to receive the maximum fee; and 3) whether all judicial districts should have local court rules in place concerning fee determination.
- 2.2:** The Supreme Court consider adopting a rule requiring judges to evaluate an attorney's qualifications and experience in child welfare cases prior to appointment as a guardian ad litem.
- 2.3:** The AOC consider streamlining the paperwork for guardians ad litem. An order of appointment should contain language providing access to all necessary records and outline the duties of the guardian ad litem. The Order for Attorney Fees should document the activities performed and time spent on those activities, and the placement status of the child at the time fees are requested.
- 2.4:** The Supreme Court consider requiring appointments be made and guardian ad litem payments be requested using the standard court orders developed by AOC.
- 2.5:** The AOC consider providing guidance to court clerks and judges regarding proper procedures for payment of court appointed counsel in juvenile delinquency cases as opposed to juvenile dependency, neglect, and abuse cases.
- 2.6:** The AOC consider providing guidance to the courts regarding the documentation of indigency prior to appointment of publicly funded counsel.
- 2.7:** The AOC consider instructing the courts on the appropriate situations for appointing counsel for indigent parents or custodians as opposed to routine appointments for all parties.
- 2.8:** The AOC consider working with FAC and the Cabinet to collect and electronically share data necessary to track appointment and payment of guardians ad litem by case and provide the reporting information requested by federal legislation.
- 2.9:** The Supreme Court consider assigning an office within AOC the responsibility for oversight of the guardian ad litem program and the mission to promote consistency in guardian ad litem qualifications, selection, duties, training requirements, and compensation.
- 2.10:** The General Assembly consider switching the appropriated Executive Branch budget line item for guardians ad litem to the Judicial Branch.

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2.11: The General Assembly consider revising Kentucky Revised Statutes to delineate the responsibilities of the Executive and Judicial Branches of government with regard to the oversight, monitoring, and payment of Guardians ad litem.

**Response to Agency
Comments**

Representatives of the Judicial Branch generally agreed with all the recommendations noted above with the exception of recommendation 2.10. The Judicial Branch contends that payment of guardians ad litem is a function of the Executive Branch, and to require the Judicial Branch to assume the payment function would violate the doctrine of separation of powers.

We added language in the report to note the concerns of the Judicial Branch. We note that other states have centralized both the oversight and payment of guardians ad litem within the Judicial Branch without adverse consequences. The General Assembly has the responsibility of allocating sufficient funding for payment of guardians ad litem, whether that allocation is to the Executive or Judicial Branches. Given the additional administrative and coordinating effort that must be undertaken when one program is administered in two branches of government, we believe centralization would help improve the program and the representation of children.

The complete text of the official comments of the Judicial Branch and the Finance and Administration Cabinet are included as Appendix XII.

Scope

The Auditor of Public Accounts was asked by FAC to review what guardian ad litem services FAC has been paying for and provide recommendations to improve the system. FAC also asked that we research how other states administer guardian ad litem programs. To do this, we performed fieldwork in six county court systems and interviewed various court personnel and related parties in those counties. The counties examined were Anderson, Hardin, Jefferson, Knott, Madison, and Warren. Based on our findings from this fieldwork, we sent survey questionnaires to various parties covering an additional 71 counties. We also researched what other states are doing to provide guardian ad litem services and the cost thereof. Our fieldwork in these areas was conducted from August, 1997 through December, 1997 in accordance with generally accepted government auditing standards.

We narrowed the scope of our report to the guardians ad litem designated in juvenile dependency, neglect, and abuse cases. FAC also pays expenses of guardians ad litem in mental inquest cases, but this was only a small portion of the expenses compared to the fees paid for guardians ad litem in dependency, neglect, and abuse cases. In field and survey work, our analysis was limited primarily to district court cases. Only 4 percent of the payments contained in the FAC database were documented as circuit court proceedings. Circuit court proceedings involve actions the terminating parental rights and approving adoptions; these case files are sealed by the court and not available for review.

Methodology

We analyzed the database containing FAC payments to attorneys for dependency, neglect, and abuse proceedings and mental inquest proceedings using ACL software. We then confirmed the aggregate payments per the FAC database to the State's financial accounting system.

To perform the fieldwork of the six county court systems, we selected a judgmental sample of case files. The basis for the sample was the information contained in the FAC database. Each county's population consisted of guardian ad litem payments made during FY 1996 by FAC. From these payments, judgmental samples of payments were selected for each county and the corresponding case files were reviewed.

All information contained in the case files was reviewed to determine what guardian ad litem services were documented and the administrative procedures performed. The findings were documented in each county in order to compare and contrast the documentation and administrative activities in each county. Also, court personnel and other participants were interviewed to determine the services provided and the system of appointing and monitoring guardians ad litem. A district court judge and the court clerk responsible for juvenile cases were interviewed in each county, along with an attorney, family service worker, and a CASA volunteer, if applicable.

To distribute the survey questionnaire, we first created a list of the number of guardian ad litem payments each county in Kentucky had received from FAC. The source of this information was the FAC database queried using Microsoft Access software. From this list we selected the counties with 10 or more payments. The logic in only sending the surveys to these counties was that they

would be more familiar with guardians ad litem. After excluding the 6 counties where we did our fieldwork, we had a list of 71 counties to survey.

We determined that we wanted the viewpoints of the following participants in juvenile dependency, neglect, and abuse proceedings: attorneys that served as guardians ad litem; CASA volunteers (in the counties applicable); court clerks; family service workers; and judges. Therefore, a survey questionnaire for each of these roles was developed.

To select the attorneys for our survey, a listing of the attorneys paid for each county was used. We selected one attorney for the child from each of the 71 counties. Of the 71 attorneys selected, 37 responded to our survey. We determined that the total number of attorneys receiving payments from FAC in FY 1996 was 776 attorneys.

Sandy Fellows of the McCracken County CASA Project supplied the CASA addresses of the 11 local CASA programs' executive directors. Not counting Jefferson County (which we had already interviewed), the surveys were sent to 10 executive directors, covering approximately 12 counties, with instructions to have a volunteer complete the survey. We received 9 responses; however, some were from volunteers in the same CASA program because executive directors distributed the survey to more than one volunteer.

Sara Dent, AOC Staff Attorney, reviewed the content of the surveys for court clerks and judges and sent us mailing labels for the circuit clerks and the district court judges. There are 120 circuit clerks in the state, one per county. We sent the survey to the clerks of the 71 selected counties and asked them to have the clerk responsible for juvenile files complete the survey; 57 responded. Of the 125 district court judges in the state, we selected 58 district judges that presided over the 71 counties selected. If these counties had more than one district judge, the judge with the most activity in the FAC database was selected; 34 responded.

Dennis Corrigan, Family Services Director within the Cabinet, provided a listing of the local offices and their supervisors. Each county has a family service office, so a survey was sent to 71 office supervisors asking them to have a family service worker complete the survey; 39 responded.

To obtain an understanding of what other states are doing to provide guardian ad litem services and the cost of these services, we talked to officials in 13 states. Phone interviews were performed with various officials involved in the guardian ad litem process. The information received from these states is documented in Appendix IV.

Other interviews conducted within state government included officials from the following agencies: AOC, DSS, and the Legislative Research Commission. With regard to the following organizations, we either searched out state and national literature on this topic or contacted representatives of their organization: Kentucky Youth Advocates, KBA, ABA, National Council of Family Court Judges, and the U.S. Department of Health and Human Services.

National Organizations' Guidelines for Guardians Ad Litem

Appendix II

American Bar Association

Standards of Practice For
Lawyers Representing a Child in
Abuse and Neglect Cases;
Approved by the American Bar
Association House of Delegates,
February 5, 1996.

Basic Obligations (Standard B-1)

The child's attorney should:

1. Obtain copies of pleadings and relevant notices;
2. Participate in depositions, discovery, pretrial conferences, and hearings;
3. Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;
4. Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;
5. Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;
6. Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and
7. Identify appropriate family and professional resources for the child.

Content of Lawyer Training (Standard I-2)

The appropriate state administrative office of the trial [alternatively, juvenile/family] courts should provide educational programs, live or on tape, on the role of a child's attorney. At a minimum, the requisite training should include:

1. Information about relevant federal and state laws and agency regulations;
2. Information about relevant court decisions and court rules;
3. Overview of the court process and key personnel in child-related litigation;
4. Description of applicable guidelines and standards for representation;
5. Focus on the child development needs and abilities;
6. 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;
7. Information concerning family dynamics and dysfunction, including substance abuse, and the use of kinship care;
8. 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
9. Provision of written material (e.g., representation manuals, checklists, sample forms), including listings of useful material available from other sources.

National Council of Juvenile and Family Court Judges

Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases; published by the National Council of Juvenile and Family Court Judges, dated August 1995.

The American Bar Association encouraged support and implementation of this publication under a resolution adopted by the ABA House of Delegates August 9, 1995.

The Conference of Chief Justices encouraged the use of this publication through a resolution adopted at their annual meeting August 3, 1995.

Responsibilities:

After attorneys are assigned to an abuse and neglect case, they should:

- Actively participate in every critical stage of the proceedings, including, but not limited to, hearings on adjudication, disposition, periodic case review, permanency planning, termination of parental rights, and adoption.
- Thoroughly investigate the case at every stage of the proceedings.
- If the child has been removed from the home, determine what contacts the agency has since made with the parents and the child, and what efforts were made to reunify the family prior to the preliminary protective hearing.
- Conduct a full interview with the client to determine what involvement, if any, the child welfare agency has had with the parent or child; what progress the parents and child have made; and what services the client (parent or age-appropriate child) believes would be helpful.
- Prior to all court proceedings, interview key witnesses, including child welfare agency personnel, key service providers, and other representatives with knowledge of the case.
- Review all documents submitted to the court.
- Review the agency's file and any pertinent law enforcement agency reports to evaluate the case and to ensure that the agency has complied with its own procedures and regulations.
- Obtain or subpoena necessary records, such as school reports, medical records and case records.
- When necessary, arrange for independent evaluations of children or parents.
- Stay in contact with clients, writing letters, and making telephone calls when necessary and using tickler files.
- Continue to remain in contact with the agency and monitor case progress between court hearings.

Training Requirements:

Before becoming involved in an abuse and neglect case, attorneys should have the opportunity to assist more experienced attorneys in their jurisdiction. They should also be trained in or familiar with:

- Legislation and case law on abuse and neglect, foster care, termination of parental rights, and adoption of children with special needs.
- The causes and available treatment for child abuse and neglect.
- The child welfare and family preservation services available in the community and the problems they are designed to address.
- The structure and functioning of the child welfare agency and court systems, the services for which the agency will routinely pay, and the services for which the agency either refuses to pay or is prohibited by state law or regulation from paying.
- Local experts who can provide attorneys with consultation and testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in the home.

**National Court
Appointed Special
Advocate (CASA)
Association**

Standards for Court Appointed
Special Advocate (CASA)
Programs Affiliated With the
National CASA Association;
Approved by National CASA
Association Board of Directors,
March 1997.

(Responsibility) Requirement (VIII.E.)

The roles and responsibilities of the CASA volunteer are clearly communicated through written policies, job descriptions, and training, and are reinforced through the supervisory process.

The Implementation Guidelines continue to assist CASA programs with this requirement by stating that a CASA program should ensure that the volunteer has a written job description with responsibilities outlined. These responsibilities may include:

- Reviewing records;
- Interviewing appropriate parties involved in the case, including the child;
- Determining if a permanent plan has been created for the child and whether appropriate services, including reasonable efforts, are being provided to the child and family;
- Submitting a signed written report with recommendations to the court on what placement and services are best for the child;
- Attending court hearings; and
- Maintaining complete records about the case, including appointments, interviews, and information gathered about the child and the child's life circumstances.

(Training) Requirement (VIII.C.)

The CASA program plans and implements a training and development program for volunteers to improve their knowledge, skills, and abilities and provides information about the backgrounds and needs of the children served by the program. The training consists of at least 30 hours of pre-service training and 12 hours of in-service training per year.

The Implementation Guidelines outline that the 30 hours of pre-service training take place before a volunteer is assigned to a case and that it includes:

- Roles and responsibilities of a CASA volunteer;
- Juvenile court process;
- The dynamics of human behavior associated with child abuse and neglect;
- Relevant state and federal laws;
- Confidentiality and recordkeeping practices;
- Child development;
- Child abuse and neglect;
- Permanency planning and resources;
- Communication and information gathering;
- Advocacy;
- The special needs of the children served, differences in cultural and socioeconomic norms, values, and heritage; and
- Identification of personal and institutional bias or discrimination as it relates to the children and families being served.

U.S. Department of Health and Human Services

Study on Guardians Ad Litem

Appendix III

Study of Legal Representation Through Guardian Ad Litem

In October of 1989, the Office of Human Development Services (now merged within the Administration for Children and Families) contracted with CSR, Incorporated, to conduct a two-phase study of the issues. The two phases were summed up in the report titled Final Report on the Validation and Effectiveness Study of Legal Representation Through Guardian Ad Litem, published by the U.S. Department of Health and Human Services through Contract No. 10549-1727 in November 1993.

Findings Regarding the Five Major Roles of Guardians Ad Litem

The study's findings regarding guardian ad litem performances in the five major roles identified in Phase I, included the following:

1. **Fact-finder and Investigator** – The technical expert group (TEG) recommended that guidelines be set up to help guardians ad litem prioritize investigation activities. They recommended that such guidelines put the highest priority on meeting with and/or observing the child, visiting the parent's home, visiting the child's home, contacting the child's caseworker, reading the petition, and reviewing the agency case record. One of the findings in this area was that almost 30% of private attorneys had no type of contact with their clients.
2. **Legal Representative** – The study and the TEG members recommend that any child that appears before the court should be represented by either an attorney or another person equally qualified, and that an attorney be present at all hearings. The TEG recommended that all case-related disagreements, including placement issues, be made known to the court. In the event that the guardian ad litem's opinion concerning the best interests of the child differs from the child's opinion, the guardian ad litem should present both opinions to the court. Some findings include:
 - 94.5% of private attorneys and 91% of staff attorneys attended all of the hearings. For CASAs, the number was lower which could reflect a delay in appointing a CASA guardian ad litem.
 - Caseworkers rated the staff attorneys' legal representation as very effective in 63.5% of the cases, rated private attorneys very effective in 58.7% of the cases, and rated CASAs very effective in 49.6% of the cases.
3. **Mediator and Negotiator** – This is considered an important guardian ad litem function because an agreement reached outside the courtroom could conserve time and energy. Staff attorneys were found to be the most likely to attempt to initiate negotiations (84.8%), followed by private attorneys (62.7%), and CASAs (38.4%).
4. **Case Monitor** – The data in this area indicated a need for clear role definitions and lines of communication between the guardian ad litem and caseworker to ensure monitoring activities are performed as necessary. CASAs reported spending significantly more time performing such activities than did the attorney guardians ad litem. Specific findings included the following:

- Over one-half of all private attorneys and 40% of the staff attorneys reported that they did not contact the child at all on matters other than those pertaining to the hearings. CASAs reported no contact in only 5.5% of their cases.
 - Monitoring was reported to be an inapplicable service by 27.9% of private attorneys, 13% of staff attorneys, and 7.6% of CASAs.
5. **Resource Broker** – Ambiguity exists as to whether the guardian ad litem should act as facilitators of service provision for the child and family members. Some TEG members held the opinion that brokering services was a responsibility of the caseworker that should be shared by the guardian ad litem. Approximately 33.8% of the guardians ad litem indicated that the activity was inapplicable to their overall function in a case.

Recommendations Regarding
Different Models for
Procurement of Child
Advocate Services

The report then offered recommendations for each of the models for procuring child advocate services based on their findings.

1. **Private Attorney Model**

- Private attorneys should be provided with additional resources to support their legal representation.
- Governments using the private attorney model should increase the number of hours authorized for payment to enable private attorneys to perform the full range of guardian ad litem functions necessary to adequately represent the best interests of the child.
- Private attorneys and staff attorneys should receive more focused training in all aspects of guardian ad litem representation.
- Private attorney programs should implement an organizational and support structure comparable to that used in staff attorney and CASA programs.

2. **Staff Attorney Model**

- Staff attorney caseloads should be reduced.
- Private and staff attorneys should receive more focused training in all aspects of guardian ad litem representation.
- There should be more input from caseworkers and judges in formal reviews of staff attorneys' performance.

3. **CASA Model**

- The timeliness of CASA appointments to cases needs to be improved. In one-half of the counties studied, CASAs routinely were not appointed prior to the dispositional hearing.
- CASAs should be accompanied by and represented by an attorney in all courtroom proceedings and negotiations.
- CASA training should emphasize the need for the guardian ad litem to participate in all courtroom proceedings.

Guardian Ad Litem Practices in Various States

Source: Telephone Interviews with Guardians Ad Litem and Court Officials

	Kentucky	Alabama	Arizona	Florida	Indiana
Who serves as the guardian ad litem?	Private attorneys.	Private attorneys.	CASA volunteers or private attorneys.	CASA volunteers; however, attorneys can be appointed as additional counsel.	CASA volunteers or private attorneys.
Are the duties and responsibilities defined in state law?	No.	No.	No. However, the statutes do state they are to ensure appropriate case planning and services are provided.	Yes. See Appendix V, page 43.	No. However, the Indiana Code does give them good faith immunity and considers them officers of the court.
What are the guardian ad litem training requirements?	No training required per state law; however, one judicial district requires 8 hours of continuing training each year.	No training required statewide or locally.	The local CASA programs require training to meet the National CASA standards, but attorneys have no training requirements.	CASA volunteers receive a minimum 24 hours initial training. Ongoing training varies with judicial districts. The attorneys used have no training requirements.	No training requirement per the state law. CASA programs have a voluntary CASA certification program that requires 40 hours of initial training and 4 hours annually. Attorneys do not have a certification program.
Is there a statewide oversight agency?	No oversight agency. The Finance and Administration Cabinet (FAC) has been given the responsibility of paying the fees.	No oversight agency.	No oversight agency for attorneys used as guardians ad litem. The Arizona CASA Program, under the Administrative Office of the Courts, provides oversight to the local CASA programs. They provide funding and technical assistance, distribute a statewide recruiting newsletter, and monitor the local programs for compliance.	The Office of the State Courts Administrator provides policy and technical support to the local CASA programs. Other administrative functions have been decentralized to the local CASA programs.	The guardian ad litem/CASA office under Indiana's Division of State Court Administration distributes state funds to the local programs and coordinates local and regional training. This office also administers a voluntary certification program that evaluates local programs against established standards. This certification helps the local programs raise program funds.
What is the source of funds and annual expense?	The FAC is funded by the legislature to pay guardian ad litem expenses. The expense in FY 1997 was \$2,016,460.	The source of the funds is Alabama's Fair Trial Tax Fund.	The attorneys are paid from local funds if they are used. The legislature appropriates 30% of the unclaimed lottery winnings to the state CASA program, which was \$1.5 million in FY 1997.	The legislature appropriates the Office of the State Courts Administrator the funds to allocate to the judicial districts. The budget for FY 1997 was \$5.4 million.	The legislature appropriated \$525,000 to the guardian ad litem/CASA office to distribute to the 92 local programs. They give a minimum of \$2,000 per county with more given based on caseload and need. The counties must match the awarded funds locally.

Source: Telephone Interviews with Guardians Ad Litem and Court Officials

	Kentucky	Alabama	Arizona	Florida	Indiana
What is the number of new petitions per year?	The numbers available from AOC show 4,128 petitions involving neglect and abuse and 4,626 dependency petitions were filed in FY 1997.	This information is not tracked.	There were 2,014 new petitions filed in FY 1997.	New petitions filed in FY 1997 were 6,000.	There were 1,226 abuse petitions and 3,603 neglect petitions filed in FY 1997.
What is the guardian ad litem payment method?	Attorneys are to receive reasonable fees not to exceed \$250 for cases disposed in district court and not to exceed \$500 for cases disposed in circuit court. The guardian ad litem submits an Order for Attorney Fees to the judge for their approval. This Order is then sent to FAC for payment.	Attorneys are paid \$20/hour out of court and \$40/hour in court, but not to exceed \$1,000.	No established method of paying attorney guardians ad litem. The state CASA program distributes the funds to the local CASA programs based on caseload. To receive the money, the local program submits a program plan and annual report of expenditures.	The funds are paid to the judicial districts for CASA staff salaries and expenses. The judicial district donates building space and office equipment. No funds are appropriated to pay attorneys or volunteers.	The attorneys are paid locally from the county budget. The volunteers are not paid, but the CASA program is supported through county and local funds.
Who monitors the guardians ad litem?	No formal monitoring is done except by the judge in the case.	No formal monitoring except the judges approving the fees for payment.	The local CASA programs provide the monitoring of the volunteers, but the attorneys would only be monitored by the judge in the case.	The districts' CASA directors and supervisors monitor the volunteers' performance, but the attorneys are not monitored.	The local CASA program has supervisors to monitor CASA volunteers, but the attorneys used are only monitored by the judge.
How is counsel for indigent parents provided?	Private attorneys are appointed and paid in the same manner as the guardian ad litem.	Private attorneys are paid at the same rate as the guardian ad litem and from the same fund.	Each county provides counsel to indigent parents differently; no statewide procedure.	Indigent parents go unrepresented unless they are able to get a pro bono attorney or an attorney through a legal aid organization.	Indigent parents are not represented unless they are able to get an attorney through a legal services program or an attorney to take the case pro bono. A public defender is appointed for indigent parents in a termination of parental rights case.

Source: Telephone Interviews with Guardians Ad Litem and Court Officials

	Iowa	Massachusetts	Minnesota	Missouri	New Jersey
Who serves as the guardian ad litem?	Staff attorneys with the Office of the Public Defender (OPD), private attorneys, or CASA volunteers (but there is always an attorney representing the case in court).	There are guardian ad litem investigators (police background), guardian ad litem evaluators (psychology, social work background), and guardian ad litem "next friends" (attorneys).	Private attorneys, non-attorneys with social work experience, or CASA volunteers.	A private attorney or CASA volunteer.	Staff attorneys, referred to as "law guardians," assisted by staff investigators.
Are the duties and responsibilities defined in state law?	Yes. See Appendix V, page 43.	No.	Yes. See Appendix V, pages 43 and 44.	Yes. See Appendix V, page 45.	No.
What are the guardian ad litem training requirements?	The attorneys have no training requirements, but the CASA volunteers must adhere to the National CASA training requirements.	It is up to the judge to determine if the guardian ad litem is qualified; there are no formal training requirements.	Supreme Court rules require 40 hours of initial training and 8 hours annually of continuing education in child welfare topics for attorneys that serve as a guardian ad litem.	The Supreme Court adopted standards September 16, 1997 that require 12 hours initial training and 6 hours annual training.	There are no training requirements. To be hired, the attorneys and investigators must have a background in representing children. They attempt to have internal training sessions.
Is there a statewide oversight agency?	The OPD provides oversight to the staff attorneys, but they only pay the bills for the private attorneys contracting with them. CASA volunteers have a statewide program organized under the Office of State Court Administrator.	No oversight agency. The Administrative Office of the Trial Court only pays the bills signed by the judges. The persons wanting to serve in the different categories of guardian ad litem write the judge explaining their qualifications and expressing interest in being appointed in these cases.	No state oversight agency, but each judicial district is to appoint one or more guardian ad litem program coordinators to select, appoint, and evaluate the guardian ad litem. To meet the training requirements, the Minnesota Supreme Court State Court Administration is developing a training curriculum for guardians ad litem.	No oversight agency. The Missouri Bar Association is developing a training curriculum to meet the requirements.	The Law Guardian Division is within the Office of the Public Defender. This office hires the attorneys and investigators, assigns them to judicial districts, and establishes policy for representing children. The director handles any complaints concerning staff.
What is the source of funds and annual expense?	The guardian ad litem fees are not separated from indigent case fees, so the expense could not be determined. The state CASA budget was \$597,717 in FY 1997.	The Administrative Office of the Trial Court pays the guardian ad litem expenses. The expense in FY 1997 was approximately \$5 million.	Local budgets fund the guardian ad litem and coordinator fees; the statewide total guardian ad litem expense is not tracked.	The local courts fund the guardian ad litem fees; the statewide total guardian ad litem expense is not tracked.	The legislature funds the Office of the Public Defender. The budget for FY 1997 was approximately \$2 million. This pays the salaries for 17 attorneys and 17 investigators in 8 regional offices.

Source: Telephone Interviews with Guardians Ad Litem and Court Officials

	Iowa	Massachusetts	Minnesota	Missouri	New Jersey
What is the number of new petitions per year?	For calendar year 1996, there were 3,744 new petitions filed for "Children in Need of Assistance" cases.	Caseload or the number of petitions is not tracked by the Administrative Office of the Trial Court	The most recent number calculated for new petitions was 4,259.	The caseload was not known.	In FY 1997, there were 3,000 new petitions requiring 11,500 court appearances.
What is the guardian ad litem payment method?	The OPD's staff attorney salaries usually start at \$32,000/year but private attorneys are paid \$45/hour and must submit their time spent on the cases. The OPD approves and pays the bills of attorneys contracting with them, but, if the local courts contract with a private attorney, the judge approves the bill and submits it to the OPD for payment.	The guardian ad litem/investigator is paid \$30/hour for up to 20 hours; the guardian ad litem/next friend is paid \$50/hour; and the guardian ad litem/evaluator is paid \$50/hour. There is no ceiling for the number of hours the next friend or evaluator can charge. The guardian ad litem submits the bill of time spent to the judge, the judge signs it and submits it to the Administrative Office of the Trial Court for payment.	Varies within the judicial districts since there are no statutory amounts. The fees for paid guardians ad litem could range from \$7 to \$50/hour. The volunteers are not paid.	Each court administers the payments differently. Some courts pay the guardian ad litem \$50 to \$70/hour, while others are not paid at all. When the Department of Family Services is the plaintiff in a termination of parental rights case, the department pays the guardian ad litem fees.	All attorneys and investigators are state employees receiving a salary, travel expense, and other benefits. The salaries range from \$35,000 to \$75,000 for attorneys and \$24,000 to \$50,000 for investigators. The law guardians have no jurisdiction in termination cases, so private attorneys must represent the children in these cases, usually for free.
Who monitors the guardians ad litem?	No formal monitoring is performed on the attorneys under contract or on an as needed basis. The staff attorneys are subject to performance evaluations. Local supervisors monitor CASA volunteers.	No formal monitoring is done except by the judge in the case.	The guardian ad litem coordinators will be monitoring the guardians ad litem performance so that the guardian ad litem is independent of the judge. The guardian ad litem coordinator will recruit, select, supervise, reimburse, evaluate, and coordinate training for guardians ad litem.	The local judges are the only ones monitoring the attorneys' performance; however, the local CASA supervisors monitor the volunteers work.	All of the attorneys report to a supervisor that stresses permanency planning, but it is not tracked. Since the attorneys and investigators are state employees, they have semiannual performance evaluations.
How is counsel for indigent parents provided?	The OPD contracts with private attorneys to provide counsel to indigent parents. They are paid in the same manner as attorneys representing children. Staff attorneys only represent children.	The Committee for Public Counsel provides counsel to indigent parents.	Counsel for an indigent parent is provided and paid for locally; no statewide procedure.	Counsel for an indigent parent is provided and paid for locally; no statewide procedure.	To prevent a conflict of interest, the indigent parents are assigned to private attorneys paid by the Office of the Public Defender. They receive \$15/hour out of court and \$22.50/hour in court.

Source: Telephone Interviews with Guardians Ad Litem and Court Officials

	New Mexico	North Carolina	Utah	Virginia
Who serves as the guardian ad litem?	Contract and private attorneys.	They use the “paired” model, with contracted attorneys handling the legal duties and the CASA volunteer doing the interviews and investigations.	Staff attorneys.	Private attorneys qualified and paid through the Office of the Executive Secretary, of the Supreme Court.
Are the duties and responsibilities defined in state law?	Yes. See Appendix V, page 46.	Yes. See Appendix V, page 47.	Yes. See Appendix V, pages 48 and 49.	Yes See Appendix V, page 49.
What are the guardian ad litem training requirements?	No statewide training requirement;; however, the standard recommended contract requires the attorney to participate in 12 hours of training each year.	Training for attorneys is recommended, but not required, according to the terms of the contract the attorney has with the guardian ad litem Division.	The Office of guardian ad litem’s training program requires 30 hours of initial training and 1 ½ days of ongoing training per quarter year.	State code requires 7 hours of approved legal education and a demonstration of familiarity of the juvenile court system to be included on the list of qualified guardians ad litem. To remain on the list, 6 hours of continuing education biennially is required.
Is there a statewide oversight agency?	New Mexico’s Administrative Office of the Courts (AOC) developed the standard contract which they recommend the 13 judicial districts use. Currently, 9 of the 13 districts contract with attorneys. The office also distributes state funds to the judicial districts based on a historical formula.	The guardian ad litem Division, under the Administrative Office of the Courts, sets the standards for the 3,500 volunteers and 100 attorneys, contracts with the attorneys and monitors the contracts, and evaluates the state employees’ performances.	State statutes provide for an Office of guardian ad litem and Director to staff attorneys, provide training programs, update guardian ad litem manual, and monitor and evaluate the 30 full-time attorneys. The office also administers a state CASA program with 400 CASA volunteers.	The Office of the Executive Secretary of the Supreme Court sets the attorney qualifications, maintains the list of qualified attorneys and updates the list quarterly, and pays the attorney fees.
What is the source of funds and annual expense?	The state legislature appropriates the funds to AOC and a historical formula is used to allocate the money to each of the 13 judicial districts. FY 1997 expenses were \$552,759 for children and \$209,550 for the representation of indigent parents.	The legislature appropriates state funds to the guardian ad litem Division. The budget for FY 1997 was \$5 million, but only \$1 million could be spent to contract with attorneys.	The guardian ad litem office is funded through the legislature, but it functions through the Judicial Branch. FY 1997 annual expense was \$2.2 million.	The legislature appropriated the funds to the Office of the Executive Secretary of the Supreme Court to pay the attorney fees approved for payment by the presiding judge. The expense for FY 1997 was \$4,761,589 for guardians ad litem and \$3,121,145 was paid to court appointed counsel for indigent parents.

Source: Telephone Interviews with Guardians Ad Litem and Court Officials

	New Mexico	North Carolina	Utah	Virginia
What is the number of new petitions per year?	Information is not tracked by the AOC.	The number of new petitions in FY 1997 was 2,874.	The caseload for FY 1997 was approximately 3,000 cases, which is 100 cases per attorney.	The Office of the Executive Secretary of the Supreme Court does not track the number of cases or petitions.
What is the guardian ad litem payment method?	AOC recommends contracting with the attorneys for an annual salary, but this is only done in 9 of the 13 judicial districts. Some attorneys work pro bono on an as needed basis, while others are typically paid \$600/case and \$60 for each periodic judicial review.	The guardian ad litem Division contracts with 100 attorneys at a flat rate that does not depend on the number of children they represent. Since they only have \$1 million to spend, this has been a juggling act to determine how much to spend on each attorney.	Salaries range from \$30,000 - \$50,000 for full-time staff attorneys. If a conflict arises, another attorney is used and paid on an hourly basis, not based on statute, but based on the budget of the guardian ad litem office.	Attorneys are paid \$45/hour out of court and \$65/hour in court, with no ceiling. To receive payment, the guardian ad litem completes a timesheet that lists the activities performed and the time spent. The judge reviews, signs, and submits the timesheet to the Office of the Executive Secretary of the Supreme Court for payment.
Who monitors the guardians ad litem?	Monitoring of performance is done at the local level by the judge or the person contracting with the attorney, not by AOC.	The contract defines the attorney's expectations and when it is time to renew the attorney's contract. The guardian ad litem Division evaluates to determine if the attorney has met the expectations.	The guardian ad litem office director monitors and evaluates the performance of the 30 attorneys and 400 volunteers.	No formal monitoring except the judge approving the billing. The attorney can charge the time spent attending permanency planning meetings, if approved by the judge.
How is counsel for indigent parents provided?	Attorneys for indigent parents paid by funds allocated to the judicial districts by the AOC and are contracted or paid in the same manner as the attorneys for children. FY 1997 expense was \$209,550.	Private attorneys ask to be put on a list to represent indigent parents. The attorney is paid \$50/hour with no ceiling. This money is paid by the State Controller office from money appropriated to pay for indigent defense.	Attorneys from the Public Defenders Office represent indigent parents. It is left up to the local courts to ensure this service is provided.	Indigent parents are represented by private court appointed attorneys for \$100/case.

Guardian Ad Litem Duties in Other States

Source: Telephone Interviews with Guardians Ad Litem and Court Officials

State	Outlined Duties per the State Statutes or Other Authoritative Sources
<p>Florida</p>	<p>Florida Statutes, Section 39.465 - The guardian ad litem has the following responsibilities:</p> <ol style="list-style-type: none"> 1. To investigate the allegations of the petition and any subsequent matters arising in the case and, unless excused by the court, to file a written report. This report must include a statement of the wishes of the child and the recommendations of the guardian ad litem and must be provided to all parties and the court at least 48 hours before the disposition hearing. 2. To be present at all court hearings unless excused by the court. 3. To represent the interests of the child until jurisdiction of the court over the child terminates or until excused by the court. 4. To perform such other duties and undertake such other responsibilities as the court may direct.
<p>Iowa</p>	<p>Iowa Code 232.2, Subsection 22 - Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the duties of a guardian ad litem with respect to a child shall include the following:</p> <ol style="list-style-type: none"> 1. Conducting in-person interviews with the child and each parent, guardian, or other person having custody of the child. 2. Visiting the home, residence, or both home and residence of the child and any prospective home or residence of the child. 3. Interviewing any person providing medical, social, educational, or other services to the child. 4. Obtaining first-hand knowledge, if possible, of the facts, circumstances, and parties involved in the matter in which the person is appointed guardian ad litem. 5. Attending any hearings in the matter in which the person is appointed as the guardian ad litem.
<p>Minnesota</p>	<p>Minnesota Statutes 518.165, Subdivision 2a - A guardian ad litem shall carry out the following responsibilities:</p> <ol style="list-style-type: none"> 1. Conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child’s wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case. 2. Advocate for the child’s best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary. 3. Maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law, to promote cooperative solutions that are in the best interests of the child. 4. Monitor the child’s best interests throughout the judicial proceeding. 5. Present written reports on the child’s best interests that include conclusions and recommendations and the facts upon which they are based.

Source: Telephone Interviews with Guardians Ad Litem and Court Officials

State	Outlined Duties per the State Statutes or Other Authoritative Sources
Minnesota (continued)	<p>Minnesota Supreme Court Rules, effective January 1, 1999 - Consistent with the responsibilities set forth in Minnesota Statutes, other applicable statutes, and rules of court, and the appointment order entered in every family court and juvenile court case in which a guardian ad litem is appointed, the guardian ad litem shall perform the responsibilities set forth:</p> <ol style="list-style-type: none"> 1. The guardian ad litem shall advocate for the best interests of the child. 2. The guardian ad litem shall exercise independent judgement, gather information, participate as appropriate in negotiations, and monitor the case, which activities must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case. 3. The guardian ad litem shall, as appropriate to the case, make written and/or oral reports to the court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based. 4. The guardian ad litem shall complete work in a timely manner and advocate for timely court reviews and judicial intervention, if necessary. 5. The guardian ad litem shall be knowledgeable about community resources for placement, treatment, and other necessary services. 6. The guardian ad litem shall maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law, to promote cooperative solutions that are in the best interests of the child. 7. The guardian ad litem shall, during service as a guardian ad litem, keep all records, notes, or other information confidential and in safe storage. At the conclusion of service, the guardian ad litem shall keep or destroy the notes and records in accordance with the requirements of the guardian ad litem program. 8. The guardian ad litem shall complete continuing education requirements and seek advice as necessary from the program coordinator or, if the program coordinator is not available, from another guardian ad litem. 9. The guardian ad litem shall treat all individuals with dignity and respect while carrying out her or his responsibilities. 10. The guardian ad litem shall be knowledgeable about and appreciative of the child's religious background and racial or ethnic heritage, and sensitive to the issues of cultural and socioeconomic diversity, and in all cases governed by the Indian Child Welfare Act of the Minnesota Indian Family Heritage Preservation Act shall apply the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties. 11. The guardian ad litem shall use the guardian ad litem appointment and authority appropriately to advocate for the best interests of the child, avoid any impropriety or appearance of impropriety, and not use the position for personal gain. 12. The guardian ad litem shall comply with all state and federal laws regarding the reporting of child abuse and/or neglect. 13. The guardian ad litem shall inform individuals contacted in a particular case about the role of the guardian ad litem in the case. 14. The guardian ad litem shall ensure that the appropriate appointment and discharge documents are timely filed with the court.

Source: Telephone Interviews with Guardians Ad Litem and Court Officials

State	Outlined Duties per the State Statutes or Other Authoritative Sources
Missouri	<p>Missouri Statutes 211.462 - The guardian ad litem shall, during all stages of the proceedings:</p> <ol style="list-style-type: none"> 1. Be the legal representative of the child, and may examine, cross-examine, subpoena witnesses, and offer testimony. The guardian ad litem may also initiate an appeal of any disposition that he determines to be adverse to the best interests of the child. 2. Be an advocate for the child during the dispositional hearing and aid in securing a permanent placement plan for the child. To ascertain the child's wishes, feelings, attachments, and attitudes, he shall conduct all necessary interviews with persons, other than the parent, having contact with or knowledge of the child and, if appropriate, with the child. 3. Protect the rights, interest, and welfare of a minor or incompetent parent by exercising the powers and duties enumerated in earlier subsections. <p>The Supreme Court of Missouri also adopted <i>Standards for Guardians Ad litem in Missouri Juvenile and Family Court Matters</i> on September 16, 1997. This includes 16 standards relating to the appointment, independence, recommendations, and training of guardians ad litem. The following are the standards that relate to guardian ad litem duties:</p> <ul style="list-style-type: none"> • Standard 4.0 – If the court appoints a court appointed special advocate volunteer, the services of a lawyer shall be obtained by the volunteer program supporting the volunteer when the volunteer has need for legal advice and assistance. • Standard 8.0 – The guardian ad litem will review the progress of a child's case through the court process and advocate for timely hearings. • Standard 9.0 – The guardian ad litem will explain, when appropriate, the court process and the role of the guardian ad litem to the child. The guardian ad litem will assure that the child is informed of the purpose of each court proceeding. The guardian ad litem will assure the child that the child's opinions and feelings will be made known to the court even when not consistent with the recommendations of the guardian ad litem. • Standard 10.0 – The guardian ad litem shall participate in the development and negotiation of any plans, orders and staffing that affect the best interests of the child. • Standard 11.0 – The guardian ad litem shall appear at all court proceedings to represent the child's best interests. In the event any new developments or significant changes in the child's circumstances occur during the pendency of the court process, the guardian ad litem may cause appropriate pleadings to be filed. • Standard 14.0 – The guardian ad litem shall present recommendations to the court on the basis of the evidence presented and provide reasons in support of these recommendations. When authorized by law, the guardian ad litem may offer evidence to the court. If the guardian ad litem testifies, the guardian ad litem shall be duly sworn as a witness and be subject to cross-examination.

Source: Telephone Interviews with Guardians Ad Litem and Court Officials

State	Outlined Duties per the State Statutes or Other Authoritative Sources
New Mexico	<p data-bbox="342 300 1459 363">New Mexico Statute 32A-1-7 - When a child's circumstances render the following duties and responsibilities reasonable and appropriate, the guardian ad litem shall:</p> <ol data-bbox="342 401 1459 968" style="list-style-type: none"> 1. Meet with and interview the child prior to custody hearings, adjudicatory hearings, dispositional hearings, judicial reviews, and any other hearings scheduled in accordance with the provisions of the Children's Code. 2. Present the child's declared position to court. 3. Communicate with health care, mental health care, and other professionals involved with the child's case. 4. Review medical and psychological reports relating to the child and the respondents. 5. Contact the child prior to any proposed change in the child's placement. 6. Contact the child after changes in the child's placement. 7. Attend local substitute care review board hearings concerning the child and, if unable to attend the hearings, forward to the board a letter setting forth the child's status during the period since the last local substitute care review board review and include an assessment of the department's permanency and treatment plans. 8. Report to the court on the child's adjustment to placement, the department's and respondent's compliance with prior court orders and treatment plans, and the child's degree of participation during visitations. 9. Represent and protect the cultural needs of the child. <p data-bbox="342 1003 1459 1098">The Guardian Ad Litem Model Contract recommended by New Mexico's state court system, includes 6 additional duties that, as required by best practice, the guardian ad litem shall:</p> <ol data-bbox="342 1136 1459 1535" style="list-style-type: none"> 1. Work toward reducing delays and ensure that the Court recognizes the need to speedily promote permanency for the child. 2. Counsel the child, in a developmentally appropriate manner, concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process. 3. Personally observe the child's interaction with parents, or with whomever the child may be reunited, when reunification is anticipated. 4. Personally observe each and every residence at which the child is placed promptly after the child is placed at the residence to determine and facilitate the safety and well-being of the child. 5. Contact the child when apprised of emergencies or significant events impacting the child. 6. Cooperate with any Court Appointed Special Advocate (CASA).

Source: Telephone Interviews with Guardians Ad Litem and Court Officials

State	Outlined Duties per the State Statutes or Other Authoritative Sources
North Carolina	<p>North Carolina uses the “paired” model, with attorneys serving as the legal advocate and the volunteer guardian ad litem doing the investigations and interviews. The contract used to employ an attorney’s services requires that the legal services provided are consistent with the Guardian Ad Litem Policy Manual that contains the “Work Standards for Guardian Ad Litem Attorneys.” According to these standards, the Child’s Legal Advocate is responsible for the following:</p> <ol style="list-style-type: none"> 1. Demonstrates knowledge and expertise in the area of Juvenile Law. 2. Performs legal research on disputed legal questions and prepares in advance for court presentation of case. 3. Advocates for the best interests of the child in courtroom proceedings in partnership with the guardian ad litem and in conjunction with guardian ad litem recommendations. Any expressed wishes of the child shall be communicated to the court. 4. Attends all hearings through disposition and every contested hearing until the case is closed. 5. Advocates and furthers the legal interest of the child by: <ul style="list-style-type: none"> • Interviewing witnesses to prepare them for court; including child when appropriate. • Identifying and securing evidence to be introduced. • Ensuring that subpoenas are issued in a timely manner. • Reviewing court orders for accuracy and taking appropriate action when corrections are required. • Requesting the release of guardian ad litem and Attorney Advocate at the close of a case and ensuring court orders reflect that release. • Preparing motions for reappointment in cases for good cause. • Ensuring that guardian ad litem involvement is appropriate, i.e., abuse, neglect, and dependency cases only. 6. Files motions for review and schedules hearings as needed after consulting with staff and volunteer on particulars of the matter. 7. In a timely manner, files TPR petitions determined with guardian ad litem to be in the best interest of the child. 8. Discusses case issues with guardian ad litem and other parties to determine areas of agreement/disagreement and the legal limits within which a settlement can be reached. The attorneys shall not enter into a settlement with other parties without agreement from the volunteer. 9. Advocate for interventions that are designed to ensure that court involvement will cease when no longer necessary. 10. With the guardian ad litem, facilitates agreements among parties when possible and serves as mediator when appropriate. 11. Files appeals after consulting with and receiving approval from the Guardian Ad Litem Services Division Administrator.

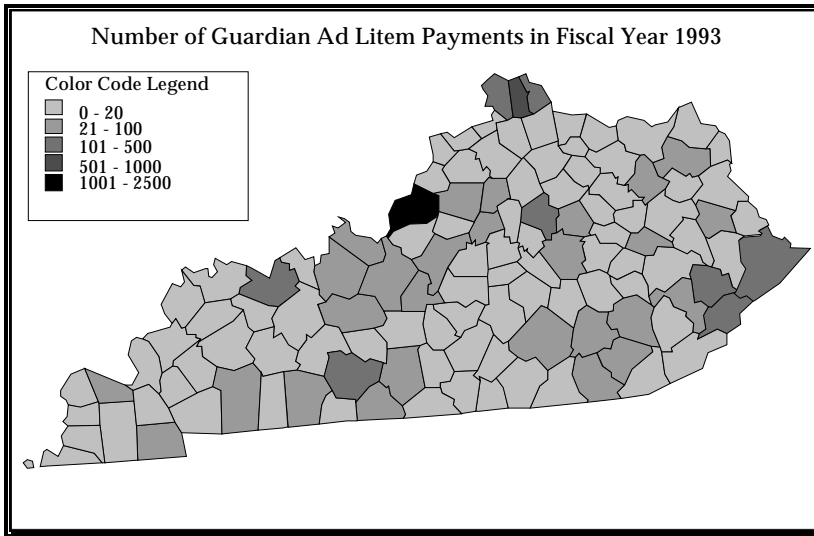
Source: Telephone Interviews with Guardians Ad Litem and Court Officials

State	Outlined Duties per the State Statutes or Other Authoritative Sources
Utah	<p>Utah Code Section 78-3a-912 - An attorney guardian ad litem shall:</p> <ol style="list-style-type: none"> 1. Represent the best interests of the minor in all proceedings. 2. Be trained in applicable statutory, regulatory, and case law, and in accordance with the United States Department of Justice National Court Appointed Special Advocate Association guidelines, prior to representing any minor before the court. 3. Conduct or supervise an independent investigation in order to obtain first-hand, a clear understanding of the situation and needs of the child. 4. Personally or through a trained volunteer, paralegal, or other trained staff, determine the extent of contact the minor or his family has had with the Division of Child and Family Services (Division). 5. Personally or through a trained volunteer, paralegal, or other trained staff, assess whether kinship placements have been adequately explored and investigated by the Division, and make recommendations to the court regarding the best interests of a child in kinship placements. 6. Personally or through a trained volunteer, paralegal, or other trained staff, assess whether there are alternatives to continued removal of the minor, including in-home services or removal of the perpetrator. 7. Personally or through a trained volunteer, paralegal, or other trained staff, review the Division's records regarding the minor and his family, and all other necessary and relevant records pertaining to the minor, including medical, psychological, and school records. 8. Personally meet with the minor, personally interview the minor if the minor is old enough to communicate, determine the minor's goals and concerns regarding placement, and personally assess or supervise an assessment of the appropriateness and safety of the minor's environment in each placement. 9. File written motions, responses, or objections at all stages of a proceeding when necessary to protect the best interests of a minor. 10. Either personally or through a trained volunteer, paralegal, or other trained staff, conduct interviews, if appropriate and permitted by the Rules of Professional Conduct, with the minor's parents, foster parents, caseworkers, therapists, counselors, school personnel, mental health professionals, where applicable, and, if any injuries or abuse have occurred or are alleged, review photographs, available video or audio tape of interviews with the minor, and contact appropriate health care facilities and health care providers. 11. Either personally or through a trained volunteer, paralegal, or other trained staff, identify appropriate community resources and advocate for those resources, when appropriate, to protect the best interests of the minor. 12. Personally attend all court hearings and participate in all telephone conferences with the court unless the court waives that appearance or participation. 13. Personally or through a trained volunteer, paralegal, or other trained staff, attend all administrative and foster care citizen review board hearings pertaining to the minor's case. 14. Prepare for hearings. 15. Present witnesses and exhibits when necessary to protect the best interest of the minor. 16. Participate in all appeals unless excused by order of the court. 17. Calculate the schedule for administrative or foster care citizen review board hearings and other hearings required by state and federal law and regulation, and notify the Division if those hearings are not held in accordance with those requirements. 18. Conduct interviews with potential witnesses and review relevant exhibits and reports.

Source: Telephone Interviews with Guardians Ad Litem and Court Officials

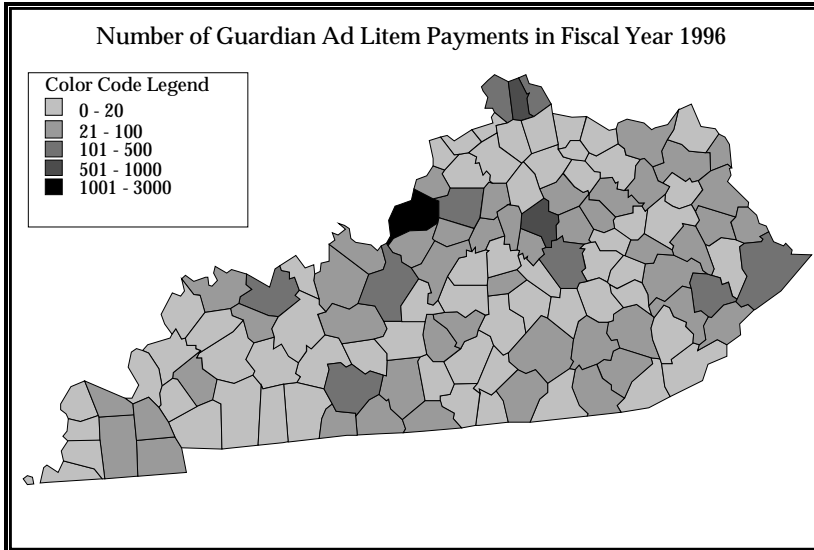
State	Outlined Duties per the State Statutes or Other Authoritative Sources
Utah (continued)	<ol style="list-style-type: none"> 19. Make clear and specific recommendations to the court concerning the best interest of the minor at every stage of the proceeding, including all placement decisions, and ask that clear and specific orders be entered for the provision of services, treatment provided, and for the evaluation, assessment, and protection of the minor and his family. 20. Be familiar with local experts who can provide consultation and testimony regarding the reasonableness and appropriateness of efforts made by the Division to maintain a minor in his home or to reunify a minor with his parent. 21. To the extent possible, and unless it would be detrimental to the minor, personally or through a trained volunteer, paralegal, or other trained staff, keep the minor advised of the status of his case, all court and administrative proceedings, discussions, and proposals made by other parties, court action, and psychiatric, medical, or other treatment or diagnostic services that are to be provided to the minor. 22. Review proposed orders for, and as requested by the court, prepare proposed orders with clear and specific directions regarding services, treatment, and evaluation, assessment, and protection of the minor and his family. 23. Personally or through a trained volunteer, paralegal, or other trained staff, monitor implementation of a minor's treatment plan and any dispositional orders to determine whether services ordered by the court are actually provided, are provided in a timely manner, and attempt to assess whether they are accomplishing their intended goal. 24. Inform the court promptly, orally, or in writing, if: <ul style="list-style-type: none"> • Court ordered services are not being made available to the minor and his family; • The minor's family fails to take advantage of court ordered services; • Court ordered services are not achieving their purpose; • The Division fails to hold administrative hearings or reviews as required by state and federal law and regulation; or • Any violation of orders, new developments, or changes has occurred that justify a review of the case.
Virginia	<p>According to the Order for Appointment of Guardian Ad Litem, developed by the Office of the Executive Secretary of the Supreme Court of Virginia, the guardian ad litem is to perform the following duties:</p> <ol style="list-style-type: none"> 1. Represent the child in accordance with Rule 8:6 of the <i>Rules of the Supreme Court of Virginia</i>. 2. Advise the Court relative to the following: the results of the guardian ad litem's investigation of the case; the guardian ad litem's recommendation as to any testing necessary to make an effective disposition of the case; the guardian ad litem's recommendation as to placement of the child and disposition of the case; the results of guardian ad litem's monitoring of the child's welfare and of the parties' compliance with the Court's Orders; the guardian ad litem's recommendation as to the services to be made available to the child and family or household members. 3. File appropriate petitions, motions, and other pleadings and appeals on behalf of the child. 4. The guardian ad litem is authorized to appear at the Family Assessment and Planning Team and at panel review hearings conducted by the local department of social services pursuant to Virginia Code 63.1-56.2.

Kentucky's Increase in Expenditures from FY 1993 to FY 1996



Analysis of the Number of Guardian Ad Litem Payments by County

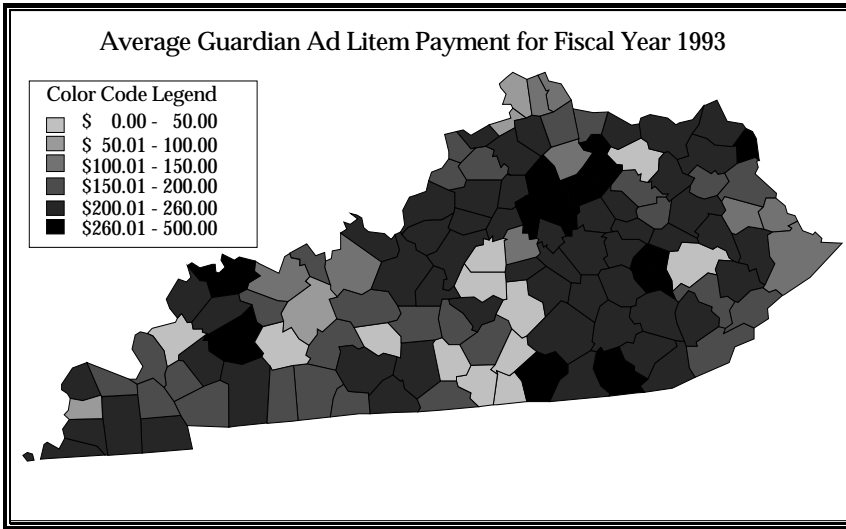
In FY 1993, 83 counties had 0 to 20 payments (12 with 0). Twenty-seven counties had 21 to 100 payments and 8 had 101 to 500 payments. Kenton County was the only county in the 501-1,000 range with 629 payments. Only Jefferson County was in the 2,001-2,500 range with 2,127 payments. The total number of payments for this year was 5,831.



In FY 1996, 61 counties had 0 to 20 payments (3 with 0). Forty-seven counties had 21 to 100 payments and 9 had 101 to 500 payments. There were 2 counties in the 501-1,000 range: Kenton County with 729 and Fayette County with 556 payments. Only Jefferson County was in the 2,001-3,000 range with 2,598 payments. The total number of payments for this year was 8,249.

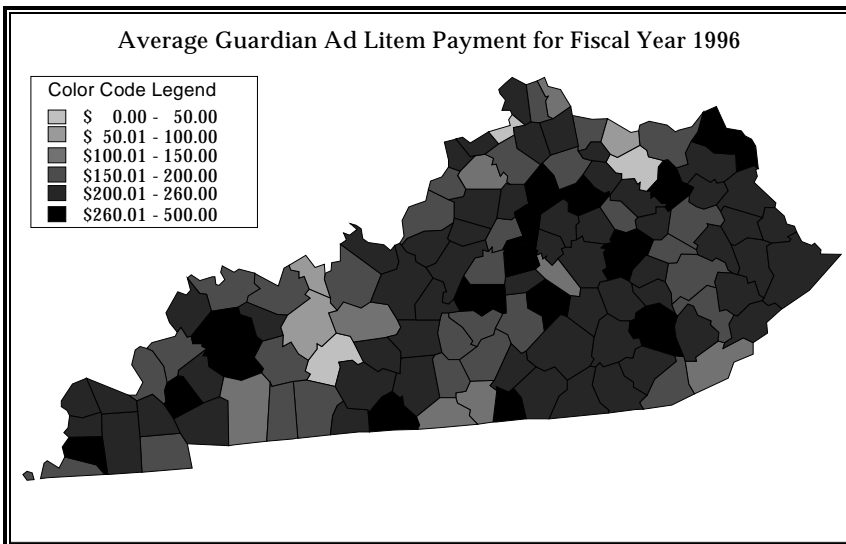
The number of payments increased 41.5% between FY 1993 and FY 1996. In 67 counties the number of payments increased above this percent.

Source: Finance and Administration Cabinet's Guardian Ad Litem Payment Database



Analysis of the Average Guardian Ad Litem Payment by County

In FY 1993, there were 12 counties with no payments and 4 with average payments between \$50.01 and \$100.00. There were 9 counties in the \$100.01 - \$150.00 range, 28 in the \$150.01 - \$200.00 range, and 54 between \$200.01 and \$260.00. Thirteen counties had averages greater than \$260.00, with the highest in Wayne County at \$416.67. The average payment for the year was \$196.89.



In FY 1996, there were only 3 counties with no payments and 3 with average payments between \$50.01 and \$100.00. There were 8 counties in the \$100.01 - \$150.00 range, 30 were in the \$150.01 - \$200.00 range, and 58 were between \$200.01 and \$260.00. Eighteen counties had averages greater than \$260.00. The average payment for the year was \$205.23.

The amount of average payments increased only 4.2% between FY 1993 and FY 1996, with 54 counties average payments increasing above this percent.

Source: Finance and Administration Cabinet's Guardian Ad Litem Payment Database

Kentucky's Expenditures by County - FY 1996

Appendix VII

Source: Finance and Administration Cabinet's Guardian Ad Litem Payment Database

COUNTY	Children	Parents	Non-Parents	Total Custodians	Total Cost	% of Custodian Costs to Total
JEFFERSON	\$326,704.48	\$100,944.88	\$3,677.65	\$104,622.53	\$431,327.01	24.26%
FAYETTE	\$49,206.75	\$61,080.50	\$1,500.00	\$62,580.50	\$111,787.25	55.98%
KENTON	\$66,109.40	\$44,902.50	\$997.50	\$45,900.00	\$112,009.40	40.98%
WARREN	\$55,052.50	\$37,700.00	\$2,500.00	\$40,200.00	\$95,252.50	42.20%
HARDIN	\$35,800.00	\$9,975.00	\$500.00	\$10,475.00	\$46,275.00	22.64%
MONTGOMERY	\$5,066.25	\$6,892.50	\$2,541.75	\$9,434.25	\$14,500.50	65.06%
DAVISS	\$21,117.75	\$9,000.40	\$250.00	\$9,250.40	\$30,368.15	30.46%
PIKE	\$15,400.00	\$7,100.00	\$500.00	\$7,600.00	\$23,000.00	33.04%
MADISON	\$15,950.00	\$7,105.00	\$0.00	\$7,105.00	\$23,055.00	30.82%
KNOTT	\$8,500.00	\$6,500.00	\$0.00	\$6,500.00	\$15,000.00	43.33%
CAMPBELL	\$23,912.91	\$6,246.88	\$75.00	\$6,321.88	\$30,234.79	20.91%
LETCHER	\$11,960.00	\$5,520.00	\$0.00	\$5,520.00	\$17,480.00	31.58%
KNOX	\$10,420.00	\$5,331.25	\$0.00	\$5,331.25	\$15,751.25	33.85%
CARTER	\$6,675.00	\$5,100.00	\$0.00	\$5,100.00	\$11,775.00	43.31%
ROWAN	\$3,868.70	\$4,676.50	\$0.00	\$4,676.50	\$8,545.20	54.73%
BOYD	\$6,446.00	\$4,500.00	\$0.00	\$4,500.00	\$10,946.00	41.11%
BATH	\$2,762.50	\$4,251.25	\$238.75	\$4,490.00	\$7,252.50	61.91%
ALLEN	\$3,615.00	\$4,195.00	\$203.50	\$4,398.50	\$8,013.50	54.89%
TAYLOR	\$3,230.00	\$3,900.00	\$250.00	\$4,150.00	\$7,380.00	56.23%
CLARK	\$1,425.00	\$3,975.00	\$0.00	\$3,975.00	\$5,400.00	73.61%
MCCRACKEN	\$9,098.00	\$3,600.00	\$250.00	\$3,850.00	\$12,948.00	29.73%
JOHNSON	\$3,735.00	\$3,797.50	\$0.00	\$3,797.50	\$7,532.50	50.41%
BARREN	\$3,615.00	\$3,300.00	\$0.00	\$3,300.00	\$6,915.00	47.72%
LAWRENCE	\$1,760.00	\$3,285.00	\$0.00	\$3,285.00	\$5,045.00	65.11%
BOONE	\$20,110.00	\$3,000.00	\$0.00	\$3,000.00	\$23,110.00	12.98%
PERRY	\$6,025.00	\$2,935.00	\$0.00	\$2,935.00	\$8,960.00	32.76%
GRAVES	\$3,928.50	\$2,761.00	\$0.00	\$2,761.00	\$6,689.50	41.27%
WHITLEY	\$6,000.00	\$2,500.00	\$250.00	\$2,750.00	\$8,750.00	31.43%
GREEN	\$3,925.00	\$2,565.00	\$0.00	\$2,565.00	\$6,490.00	39.52%
FRANKLIN	\$10,328.50	\$2,518.75	\$0.00	\$2,518.75	\$12,847.25	19.61%
MAGOFFIN	\$6,650.00	\$2,500.00	\$0.00	\$2,500.00	\$9,150.00	27.32%
SIMPSON	\$3,182.00	\$2,400.00	\$0.00	\$2,400.00	\$5,582.00	43.00%
CLAY	\$13,500.00	\$2,000.00	\$250.00	\$2,250.00	\$15,750.00	14.29%
WOLFE	\$2,872.50	\$2,200.00	\$0.00	\$2,200.00	\$5,072.50	43.37%
HART	\$1,544.00	\$2,150.00	\$0.00	\$2,150.00	\$3,694.00	58.20%
MARTIN	\$2,010.00	\$2,030.00	\$0.00	\$2,030.00	\$4,040.00	50.25%
WOODFORD	\$3,996.50	\$1,750.00	\$250.00	\$2,000.00	\$5,996.50	33.35%
BOURBON	\$3,750.00	\$1,900.00	\$0.00	\$1,900.00	\$5,650.00	33.63%
NELSON	\$3,597.50	\$1,875.00	\$0.00	\$1,875.00	\$5,472.50	34.26%

Source: Finance and Administration Cabinet's
Guardian Ad Litem Payment Database

COUNTY	Children	Parents	Non-Parents	Total Custodians	Total Cost	% of Custodian Costs to Total
LARUE	\$1,000.00	\$1,750.00	\$0.00	\$1,750.00	\$2,750.00	63.64%
MEADE	\$11,507.50	\$1,710.00	\$0.00	\$1,710.00	\$13,217.50	12.94%
OLDHAM	\$3,072.00	\$1,640.40	\$0.00	\$1,640.40	\$4,712.40	34.81%
GRAYSON	\$4,373.00	\$1,607.00	\$0.00	\$1,607.00	\$5,980.00	26.87%
PULASKI	\$6,950.00	\$1,575.00	\$0.00	\$1,575.00	\$8,525.00	18.48%
SCOTT	\$2,575.00	\$1,500.00	\$0.00	\$1,500.00	\$4,075.00	36.81%
BRECKINRIDGE	\$6,092.50	\$1,500.00	\$0.00	\$1,500.00	\$7,592.50	19.76%
WAYNE	\$3,231.25	\$1,475.00	\$0.00	\$1,475.00	\$4,706.25	31.34%
BREATHITT	\$4,939.25	\$1,260.00	\$0.00	\$1,260.00	\$6,199.25	20.33%
GREENUP	\$500.00	\$1,250.00	\$0.00	\$1,250.00	\$1,750.00	71.43%
ELLIOTT	\$1,350.00	\$1,250.00	\$0.00	\$1,250.00	\$2,600.00	48.08%
LEWIS	\$3,492.50	\$1,165.50	\$0.00	\$1,165.50	\$4,658.00	25.02%
MCLEAN	\$6,220.50	\$1,162.50	\$0.00	\$1,162.50	\$7,383.00	15.75%
MERCER	\$1,606.25	\$1,075.00	\$0.00	\$1,075.00	\$2,681.25	40.09%
POWELL	\$3,740.00	\$1,075.00	\$0.00	\$1,075.00	\$4,815.00	22.33%
CHRISTIAN	\$783.75	\$1,074.55	\$0.00	\$1,074.55	\$1,858.30	57.82%
ROBERTSON	\$750.00	\$1,058.75	\$0.00	\$1,058.75	\$1,808.75	58.53%
LAUREL	\$13,110.84	\$1,056.87	\$0.00	\$1,056.87	\$14,167.71	7.46%
LINCOLN	\$1,150.00	\$1,000.00	\$0.00	\$1,000.00	\$2,150.00	46.51%
LEE	\$1,500.00	\$1,000.00	\$0.00	\$1,000.00	\$2,500.00	40.00%
OWSLEY	\$2,250.00	\$750.00	\$250.00	\$1,000.00	\$3,250.00	30.77%
ROCKCASTLE	\$2,310.25	\$1,000.00	\$0.00	\$1,000.00	\$3,310.25	30.21%
SHELBY	\$31,167.50	\$1,000.00	\$0.00	\$1,000.00	\$32,167.50	3.11%
HOPKINS	\$1,940.50	\$980.75	\$0.00	\$980.75	\$2,921.25	33.57%
CALLOWAY	\$8,037.00	\$950.00	\$0.00	\$950.00	\$8,987.00	10.57%
TRIGG	\$1,950.00	\$855.00	\$0.00	\$855.00	\$2,805.00	30.48%
MORGAN	\$950.00	\$780.00	\$0.00	\$780.00	\$1,730.00	45.09%
ADAIR	\$780.00	\$750.00	\$0.00	\$750.00	\$1,530.00	49.02%
NICHOLAS	\$1,000.00	\$750.00	\$0.00	\$750.00	\$1,750.00	42.86%
MCCREARY	\$2,000.00	\$750.00	\$0.00	\$750.00	\$2,750.00	27.27%
CALDWELL	\$4,071.38	\$500.00	\$250.00	\$750.00	\$4,821.38	15.56%
BULLITT	\$17,743.75	\$750.00	\$0.00	\$750.00	\$18,493.75	4.06%
HENDERSON	\$7,223.50	\$727.50	\$0.00	\$727.50	\$7,951.00	9.15%
JESSAMINE	\$5,238.77	\$668.00	\$0.00	\$668.00	\$5,906.77	11.31%
BELL	\$920.00	\$575.00	\$0.00	\$575.00	\$1,495.00	38.46%
LYON	\$750.00	\$500.00	\$0.00	\$500.00	\$1,250.00	40.00%
MARION	\$1,100.00	\$500.00	\$0.00	\$500.00	\$1,600.00	31.25%
GARRARD	\$786.75	\$425.00	\$0.00	\$425.00	\$1,211.75	35.07%
WASHINGTON	\$97.50	\$417.50	\$0.00	\$417.50	\$515.00	81.07%

Source: Finance and Administration Cabinet's
Guardian Ad Litem Payment Database

COUNTY	Children	Parents	Non-Parents	Total Custodians	Total Cost	% of Custodian Costs to Total
HARRISON	\$777.50	\$416.75	\$0.00	\$416.75	\$1,194.25	34.90%
LIVINGSTON	\$750.00	\$355.00	\$0.00	\$355.00	\$1,105.00	32.13%
METCALFE	\$0.00	\$350.00	\$0.00	\$350.00	\$350.00	100.00%
BRACKEN	\$1,050.00	\$339.00	\$0.00	\$339.00	\$1,389.00	24.41%
HARLAN	\$50.00	\$300.00	\$0.00	\$300.00	\$350.00	85.71%
FLOYD	\$0.00	\$250.00	\$0.00	\$250.00	\$250.00	100.00%
MENIFEE	\$0.00	\$250.00	\$0.00	\$250.00	\$250.00	100.00%
FULTON	\$925.00	\$250.00	\$0.00	\$250.00	\$1,175.00	21.28%
JACKSON	\$2,250.00	\$250.00	\$0.00	\$250.00	\$2,500.00	10.00%
LESLIE	\$3,500.00	\$250.00	\$0.00	\$250.00	\$3,750.00	6.67%
MARSHALL	\$3,835.18	\$250.00	\$0.00	\$250.00	\$4,085.18	6.12%
UNION	\$0.00	\$224.50	\$0.00	\$224.50	\$224.50	100.00%
LOGAN	\$1,705.00	\$190.00	\$0.00	\$190.00	\$1,895.00	10.03%
CASEY	\$650.00	\$150.00	\$0.00	\$150.00	\$800.00	18.75%
PENDLETON	\$666.50	\$150.00	\$0.00	\$150.00	\$816.50	18.37%
HENRY	\$1,676.25	\$85.00	\$0.00	\$85.00	\$1,761.25	4.83%
MASON	\$450.75	\$80.00	\$0.00	\$80.00	\$530.75	15.07%
BOYLE	\$7,041.25	\$75.00	\$0.00	\$75.00	\$7,116.25	1.05%
ANDERSON	\$5,580.00	\$0.00	\$0.00	\$0.00	\$5,580.00	0.00%
BALLARD	\$1,000.00	\$0.00	\$0.00	\$0.00	\$1,000.00	0.00%
CARLISLE	\$1,225.00	\$0.00	\$0.00	\$0.00	\$1,225.00	0.00%
CARROLL	\$1,000.00	\$0.00	\$0.00	\$0.00	\$1,000.00	0.00%
CLINTON	\$1,250.00	\$0.00	\$0.00	\$0.00	\$1,250.00	0.00%
CRITTENDEN	\$250.00	\$0.00	\$0.00	\$0.00	\$250.00	0.00%
CUMBERLAND	\$1,375.00	\$0.00	\$0.00	\$0.00	\$1,375.00	0.00%
EDMONSON	\$250.00	\$0.00	\$0.00	\$0.00	\$250.00	0.00%
ESTILL	\$750.00	\$0.00	\$0.00	\$0.00	\$750.00	0.00%
GRANT	\$1,300.00	\$0.00	\$0.00	\$0.00	\$1,300.00	0.00%
HANCOCK	\$75.00	\$0.00	\$0.00	\$0.00	\$75.00	0.00%
MONROE	\$3,065.00	\$0.00	\$0.00	\$0.00	\$3,065.00	0.00%
MUHLENBURG	\$176.40	\$0.00	\$0.00	\$0.00	\$176.40	0.00%
OWEN	\$875.80	\$0.00	\$0.00	\$0.00	\$875.80	0.00%
SPENCER	\$7,692.50	\$0.00	\$0.00	\$0.00	\$7,692.50	0.00%
TODD	\$1,670.00	\$0.00	\$0.00	\$0.00	\$1,670.00	0.00%
TRIMBLE	\$750.00	\$0.00	\$0.00	\$0.00	\$750.00	0.00%
WEBSTER	\$500.00	\$0.00	\$0.00	\$0.00	\$500.00	0.00%
TOTALS	\$1,005,223.11	\$431,993.48	\$14,734.15	\$446,727.63	\$1,451,950.74	30.77%

Jefferson County Court Rules Regarding Guardians Ad Litem

Appendix VIII

Section 712, Part A, within the Rules of Court Practice and Procedure of the Jefferson Family Court, refers to Guardians *Ad Litem*. This rule states that the Family Court has adopted guidelines for attorneys representing children, which reflect the expectations of the court. These guidelines are available on request at the Family Court Administrator's Office. This appendix contains excerpts from these guidelines.

FAMILY COURT

APPLICATION TO SERVE AS CHILDREN'S GUARDIAN AD LITEM IN DEPENDENCY PROCEEDINGS PURSUANT TO KRS 620.010, ET SEQ.

In order to consistently and economically meet the standards set out by the Jefferson County Family Court for Guardian Ad Litem ("GAL") representation of abused, dependency, and/or neglected children, three Guardians Ad Litem are assigned to each of the nine divisions of Family Court who, on rotation, will exclusively handle all dependency representation for the respective division.

An assignment system of three (3) GAL attorneys to each of the divisions provides consistent and high-quality representation to children. This expedites case proceedings and ensures uniform oversight of protection offered to children. Assignment to each court's dependency docket reduces the time spent in court per case while maximizing attorney time available for investigation, home visits and other services.

Applicants must be a member in good standing with the Kentucky Bar Association and must agree, if selected, to not make campaign contributions to any sitting Family Court Judge.

Applicants will be appointed by the Family Court Judges. Applications include a copy of the Memorandum of Understanding for Participation in Children's Guardian Ad Litem Initiative. Applications are available from the Family Court Administrator's Office, Hall of Justice, 2nd Floor, Louisville, Kentucky, 40202.

MEMORANDUM OF UNDERSTANDING
FOR PARTICIPATION IN CHILDREN'S
GUARDIAN AD LITEM INITIATIVE
JEFFERSON FAMILY COURT

SELECTION OF GUARDIANS AD LITEM
FOR THE REPRESENTATION AND PROTECTION
OF ABUSED, NEGLECTED AND DEPENDENT CHILDREN

- I. The undersigned attorney ("the undersigned") has read the "Notice and Request for Applicants to Serve as Guardians ad Litem in Dependency proceedings pursuant to KRS 620.010, et seq." and understands the purpose and design of this Guardian ad Litem Initiative (hereinafter "Project").
- II. The undersigned understands that, under the Project, three attorneys will be selected for each of the two new Family Court divisions of Jefferson County to exclusively handle all Guardian ad Litem representation of children in Dependency proceedings, pursuant to KRS 620.010, et seq., before the Jefferson Family Court, Jefferson County, Kentucky by an equal rotation of appointments to represent children (except where a conflict may exist or the judge finds special circumstances that warrant appointment of another attorney to handle a particular child). In consideration for being so selected, each such attorney agrees that the maximum fee that such attorney will bill the Commonwealth of Kentucky in any one month period is one thousand three hundred twenty-five dollars (\$1,325.00). Further, the undersigned, as per CR 17 and KRS 620.100, will not bill for a particular case a fee in excess of that set forth in KRS 620.100 AND agrees to participate in any annual audit and/or survey done in connection with the administration of appointments and payments under this Project.
- III. The undersigned understands that the obligations of the Guardian ad Litem in Dependency proceedings are more involved than those of counsel engaged in the straightforward representation of a party. The undersigned has read and understand the duties and obligations of a Guardian ad Litem, as set forth on the attached Order of Appointment, and agrees, if selected, as a participating attorney to comply with all duties and obligations as set forth in the attached Order. The undersigned understands that these obligations are in addition to those set out under the laws of the Commonwealth of Kentucky, the Kentucky Rules of Civil Procedure, the Rules of the Supreme Court of Kentucky, the Rules of Practice of Jefferson Family Court, and of the United States for the Guardian ad Litem representation of children.
- IV. The undersigned certifies by the signature below that the undersigned is a member of good standing with the Kentucky Bar Association; the undersigned hereby agrees upon request to release to the judges of the Jefferson Family Court and grant

full access to any and all files regarding any disciplinary action by the Kentucky Bar Association involving the undersigned; the undersigned further agrees that if selected, the undersigned will not make campaign contributions to any sitting Jefferson Family Court Judge.

- V. The undersigned further agrees to actively participate in coordination with the other selected attorneys in training development, practice development and project management, and to regularly attend meetings of all selected attorneys. The undersigned understands it would be desirable as well to collect case data and time-billing information. The undersigned understands that it would be desirable to have available for use in handling these cases an IBM-compatible personal computer with a minimum of 640K Random Access Memory, a hard drive, and up-to-date work processing software.
- VI. The undersigned agrees that, in the event there are qualified applicants in excess of the GAL positions available, if not selected, the undersigned will be placed on an alternate list from which vacant GAL positions will be filled.

Signature

Name (PRINT)

Telephone

Street Address

Date

City, State, Zip

JEFFERSON FAMILY COURT
DIVISION

CASE NO. _____
IN THE INTEREST OF CHILD/CHILDREN

ORDER APPOINTING GUARDIAN AD LITEM

*** **

Good cause appearing, IT IS ORDERED that pursuant to KRS 620.100, 625.041 or 625.080 that _____

_____ a practicing attorney of this Court, be and is hereby appointed guardian ad litem to protect the interest of child/children until the disposition of the case or unless sooner discharged by the Court subject to the "Duties of a Guardian Ad Litem" set forth on the reverse side of this Order and incorporated herein.

IT IS ALSO ORDERED that the said guardian ad litem shall serve effective immediately and shall receive reasonable fees and costs.

IT IS FURTHER ORDERED that the guardian ad litem shall:

1. Be allowed access to the child by the caretaker of the child whether caretakers are individuals, authorized agencies or health care providers;
2. Have, upon presentation of this Order to any agency, hospital, organization, school, individual or office, including, but not limited to the Clerk of this Court, human services and/or child caring agencies, public or private institutions and/or facilities, medical and mental health professionals, law enforcement agencies and the Attorney General, the authority to inspect and receive copies of any records, notes and electronic recordings concerning the child that are relevant to the proceedings filed under this chapter without the consent of the child or individuals and authorized agencies who have control of the child;
3. Hold any information received from any such source as confidential, and shall not disclose the same except to the Court and where allowed by the Court, to other parties to this case and where provided by law;
4. Be given notice of all hearings and proceedings including, but not limited to, administrative, family, civil, criminal, grand juries or appellate; and all conferences including, but not limited to, multi-disciplinary team meetings, individual educational program meetings or inter-agency cluster meetings involving the child and shall protect the best interest of the child therein, unless otherwise ordered by the Court;
5. Appear at all hearings, court proceedings and monitor or attend case planning conferences to protect the best interest of the child unless otherwise directed by the Court; and
6. Have party status in any agreement or plan entered into on behalf of the child.

MARY L. COREY, JUDGE

Court Date: _____

Time: _____

Family Court #: _____

DATE

THE DUTIES OF A GUARDIAN AD LITEM (GAL)

The guardian ad litem (GAL) is a full participant in the court proceeding and is the only party whose sole duty is to protect the child's needs and interests. The GAL assumes the role of an advocate for the child's interests and in no way represents the petitioner (usually an agency) or the respondents (usually the parents or custodians). A GAL is appointed because of the child's immaturity and lack of judgment. Therefore, the GAL stands in the child's shoes and exercises substitute judgment for the child.

In fulfilling this child-centered role, the GAL performs ten important and interrelated duties. The GAL:

1. Acts as an independent fact finder (or investigator) whose task it is to review all relevant records and interview the child, parents, social workers, teachers and other persons to ascertain the facts and circumstances of the child's situation;
2. Ascertains the interests of the child taking into account the child's age, maturity, culture and ethnicity including maintaining a trusting meaningful relationship with the child via face-to-face contact;
3. Seeks cooperative resolutions to the child's situation within the scope of the child's interest and welfare;
4. Provides information through testimony or report with recommendations to the Court to assure that all relevant facts are before the Court;
5. Appears at all hearings to represent the child's interest, providing testimony when required;
6. Explains the court proceedings to the child in language and terms that the child can understand;
7. Asks that clear and specific orders are entered for the evaluation, assessment, services and treatment of the child and the child's family;
8. Monitors implementation of service plans and dispositional orders to determine whether services ordered by the Court are actually provided, are provided in a timely manner, and are accomplishing their desired goal;
9. Informs the Court promptly in writing or orally if the services are not being made available to the child and/or families, if the family fails to take advantage of such services, or if such services are not achieving their purpose and brings to the Court's attention any violation of orders, or new developments requiring the Court's attention; and
10. Advocates for the child's best interests in mental health, educational, family court, juvenile justice, criminal justice and other community systems.

APPLICATION FOR FAMILY COURT
CHILDREN'S GUARDIAN AD LITEM INITIATIVE

NAME: _____ TELEPHONE: _____

OFFICE ADDRESS: _____ ZIP: _____

YEAR ADMITTED TO BAR: _____

NUMBER YEARS ACTIVE PRACTICE IN KENTUCKY: _____

1. Please briefly describe your qualifications to serve as a Guardian ad Litem representing abused, neglected or dependent children in Jefferson County:

2. Please briefly describe why you wish to serve as a Guardian ad Litem representing abused, neglected, or dependent children in Jefferson County:

For the following questions, the terms "cases" and "actions" refer to actions pursuant to KRS 620.010; custody matters; termination of parental rights proceedings; other civil actions adjudicating the rights of infants/children; and, criminal prosecutions arising from charges of child abuse or child neglect:

3. Have you acted as a Guardian ad Litem for a dependent, abused or neglected child in at least 5 cases? ____ Y ____ N
4. Have you acted as counsel for a parent in a Dependency action in at least 5 cases? ____ Y ____ N
5. Have you acted as a Guardian ad Litem or counsel in actions that were adjudicated after trial? ____ Y ____ N
6. Have you acted as a Guardian ad Litem or counsel in an action as appellate counsel? ____ Y ____ N
7. Have you read and understood the "Notice and Request for Applicants to Serve as Guardians ad Litem in Dependency Proceedings? ____ Y ____ N

8. Have you ever been disciplined or sanctioned by the Kentucky Bar Association or a bar association of any state: ____ Y
____ N (If yes, please explain on a separate sheet)
9. Have you ever attended any training specifically dealing with issues regarding abused, neglected or dependent children?
____ Y ____ N (If yes, please describe on a separate sheet)
10. Have you written or co-authored any articles, training materials or books regarding the legal representation or care of abused, neglected or dependent children? ____ Y ____ N
(If yes, please describe on a separate sheet)
11. Have you ever visited the Home of the Innocents or a foster care home? ____ Y ____ N (If yes, please describe the occasion on a separate sheet)
12. Please briefly describe how you view the role of Guardian ad Litem:

13. Please describe the goal and purpose of family reunification:

14. Please describe the goal and purpose of the foster care system:

15. Please describe how you see GAL practice ideally operating in Jefferson Family Court:

Please attach a writing sample preferably dealing with a case or action as set forth above.

16. Please attach references from two social workers, two foster parents, and two children you have represented.

Additional Information on Court Proceedings and the Role of the Guardian Ad Litem

Court Proceedings

These proceedings usually begin when the Cabinet’s Division of Family Services files a court petition alleging dependency, neglect, or abuse of a child or children. However, other parties such as police officers, neighbors, or family members, can file a petition with the court clerk on behalf of the child. Once the petition is filed, the matter is within the jurisdiction of the court. An emergency custody order should be issued by the court, even if a petition has yet to be filed, if there are reasonable grounds to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and the parents or custodians are unable or unwilling to protect the child. A petition needs to be filed within 72 hours of taking a child into emergency custody. The court proceedings that follow for emergency and non-emergency situations are outlined in the charts below.

Dependency, Neglect, and Abuse Proceedings - Emergency

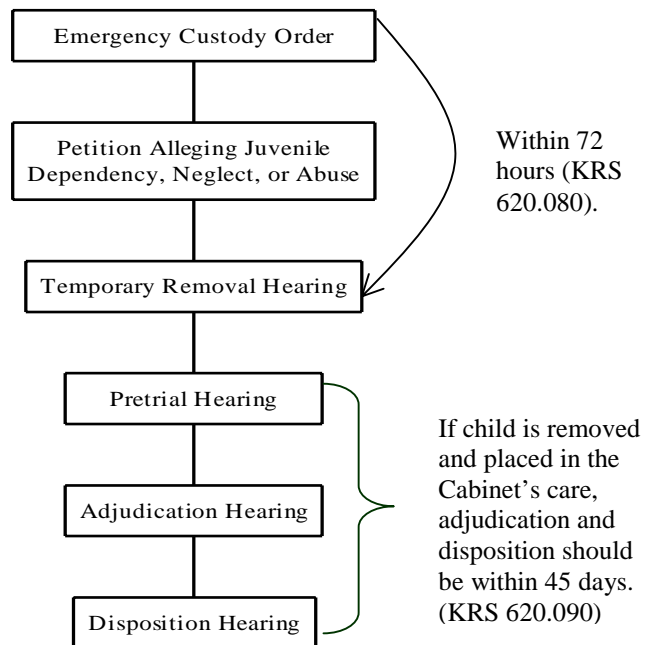


Figure 3

Dependency, Neglect, and Abuse Proceedings - Non-Emergency

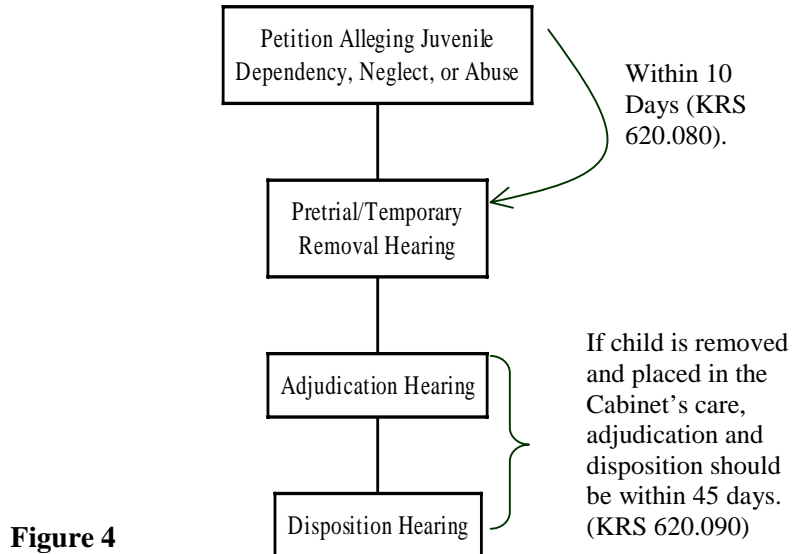


Figure 4

The adjudication and disposition hearings are where the roles of the guardian ad litem and family service workers are the most significant. During the adjudication hearing, the judge determines the facts in the case and concludes whether the allegations of the petition are supported by the evidence. The guardian ad litem should be prepared to present evidence and represent the best interests of the child. The family service workers are usually witnesses at the hearing since they performed the investigation that substantiated the report that led to the petition. The judge decides whether dependency, neglect, or abuse has occurred using the facts presented during the adjudication hearing.

After the adjudication, a disposition hearing is required. At these hearings, the family service workers present their offices' written, and sometimes oral, recommendation. This recommendation contains the background information as to why the case came before the court, the current situation and concerns, and the proposed course of action to resolve the problem within the family. The recommendation will address the placement of the child and services needed for the family. The guardian ad litem will state their recommendations verbally, on the record. According to the amended CAPTA, the guardian ad litem recommendation should be made to the court concerning "the best interests of the child." These recommendations are used by the judge to determine the proper placement of the child. KRS 620.140 lists four dispositional alternatives available to the judge: 1) informal adjustment; 2) issuance of protective orders; 3) removal of child to the custody of an adult relative; and 4) committed to the custody of the Cabinet for an indeterminate period of time not to exceed the age of 18.

If the child is committed to the custody of the Cabinet, the district court judge is to conduct a dispositional review hearing no later than twelve months after the child entered foster care, and annually thereafter if the Cabinet's custody continues.

During the period the child is in the care of the Cabinet, efforts should be undertaken to either provide a safe environment in the parent's or custodian's home or develop other permanent placement options.

**Illustrative Proceedings and
Our Observations**

The following examples of hearings observed in our fieldwork illustrate the role of the guardian ad litem. One case involved an 18-month old child removed from his mother because of her addiction to crack cocaine. She had neglected the child and put him at risk. This was a disposition hearing to determine if the child should be returned to the mother or committed to the Cabinet. The Cabinet's recommendation was to return the child to the mother since the mother had complied with the drug program she was ordered to attend. The guardian ad litem expressed her concern that the mother was not ready to take on the responsibility of being a mother and staying away from drugs. She asked that the judge order the Cabinet to monitor the mother's attendance of the drug rehabilitation classes and inform the court of any missed classes or associated problems. The judge ordered the monitoring and returned the child to the mother's custody.

In another case we observed, a disposition hearing was held to decide the placement of an infant with health problems. In addition to having limited English language skills, the mother had a speech impediment making it difficult for her to communicate. Her child was in a foster home because the mother was unable to deal with the child's special health care needs. The Cabinet recommended that any visitation with the mother be limited since she could not understand how to care for her child. The guardian ad litem disagreed with the Cabinet. She said the mother did have trouble communicating but was capable of taking care of her child once provided the needed training. She said the child's health problems were treatable and that she had observed the mother with her child and believed her to be a caring, loving mother. She recommended that the mother continue visitations with the child until the mother was more comfortable and experienced in caring for the child. The judge agreed with the guardian ad litem and visitation with the mother was established. A review hearing was scheduled to determine progress.



*Guardian ad litem and family court judge discuss court proceedings.
Hall of Justice, Jefferson County; September 1997.*

Pilot Programs for Juvenile and Family Courts in Kentucky

Juvenile court is a division of district court that deals solely with juvenile matters. District court hears cases on juvenile matters, city and county ordinances, misdemeanors, traffic offenses, probate of wills, felony preliminary hearings, and civil cases involving \$4,000 or less. In less populated areas, a district may encompass more than one county, and have only one judge that travels between them to hear cases. Circuit court has jurisdiction over cases involving capital offenses and felonies, divorces, adoptions, terminations of parental rights, land dispute title problems, and contested probate of wills. One judge may serve more than one county within a circuit. Some circuits contain only one county but have several judges, depending on population and caseload.

The 1988 General Assembly adopted House Concurrent Resolution Number 30 which established the Family Court Feasibility Task Force. The Task Force's final report acknowledged various concerns including that the establishment of a court devoted to and specializing in family law might promote continuity of judicial decision-making and foster the development of expertise in the management and disposal of family law cases. This report resulted in funds being provided to the judicial branch to establish a Family Court Pilot Project. Under the leadership of Chief Justice Robert F. Stephens, Jefferson County was designated as the first Family Court Pilot Project in the Commonwealth of Kentucky. The Jefferson Family Court began hearing cases in April 1991. The goals of the Family Court Pilot Project include the following:

- To provide protection and assistance for children and families;
- To promote the principle of "One Judge, One Staff, One Family" by assigning the same judge, with as few exceptions as reasonably possible, to hear all matters involving a particular family;
- To promote the use of non-adversarial approaches when appropriate; and
- To expedite divorce and termination of parental rights when appropriate.

The family court was designed with the circuit judges being sworn as Special District Court Judges and district judges also being sworn in as Special Circuit Court Judges. With this set up, it is reasonably possible for the same judge to be assigned to hear all matters involving a particular family. To enhance the services provided to families and children, the Jefferson Family Court has worked collaboratively with the legal, social service, and law enforcement communities. Each division of family court consists of a judge, family court support worker, secretary, bench clerk, and sheriff. Jefferson Family Court also has liaisons from the Jefferson County Public Schools, the Cabinet, and the Jefferson County Attorney's Office that are available on-site to provide needed services and information to families. Currently, Jefferson County has the only family court in Kentucky but legislation to create more family courts throughout the state has been recently approved by the General Assembly.

Jefferson County is also one of the counties included in the pilot project under the Adoptions Opportunities Grant from the U.S. Department of Health and Human Services. The other counties involved are Laurel and Knox. Kentucky was one of only five states awarded the \$750,000 federal grant, which is being managed by AOC. This project is geared to identify high-risk children and reduce the amount of time a child spends in the judicial and foster care system. The details of the project have yet to be determined.

Survey of District Judges

(Sent to 58 District Judges Covering 71 Counties – 34 Responded)

- How do you determine the amount to award the guardian ad litem? Select the appropriate response.

Amount is based on the time spent on the case.	<u>26</u>	Consider time, but usually \$250	<u>3</u>
Award maximum (\$250) regardless of time spent.	<u>3</u>	Other	<u>2</u>
- Of the following, what do you consider the duties of the guardian ad litem appointed to a child or children? (Check off as many as applies)

Attend all court proceedings.	34	Monitor compliance with court orders.		21
Interview child (if age applicable), outside of the courtroom.	33	Represent children in permanency planning.		17
Visit the home and interview parents or custodians.	17	Other		2
- What are the guardians ad litem basing their recommendations concerning the child's situation?

Independent research and interviews.	<u>32</u>	CASA volunteer's reports.	<u>8</u>
Report from the Dept. of Social Services.	<u>28</u>	Other information.	<u>7</u>
- Who selects the attorney to appoint as the guardian ad litem? Select the appropriate response.

Clerk selects the attorney from the roster.	<u>16</u>	Judge selects the attorney without a roster.	<u>10</u>
Judge selects the attorney from the roster.	<u>8</u>	Other	<u>0</u>
- How do you appoint an attorney as the guardian ad litem? (Check the appropriate response.)

Written order signed by the judge.	<u>27</u>	Verbally appointed by the judge.	<u>3</u>
Both written and verbal	<u>3</u>	Clerk calls and appoints	<u>1</u>
- Indicate your agreement or disagreement with the following statements:

"Guardians ad litem adequately investigate their cases."
 Agree 19 Not Sure 9 Disagree 5 Some 1

"Guardians ad litem are adequately trained."
 Agree 16 Not Sure 10 Disagree 8

"CASA volunteers are adequately trained."
 Agree 9 Not Sure 5 N/A 18 No Response 2
- What is your payment policy for services rendered after the disposition (and the attorney had already received \$250)?

Only if a new petition is filed and they are reappointed.	<u>25</u>
If case is redocketed for court review after disposition.	<u>3</u>
If case is redocketed for court review <u>several months</u> after disposition.	<u>1</u>
Other	<u>5</u>
- What type of documentation do you require to establish a parent's or custodian's indigence?

Affidavit	<u>15</u>	Verbal, on the Record	<u>11</u>
No Response	<u>5</u>	No Documentation	<u>3</u>
- Once it is decided that separate counsel will be appointed, which of the following describes your county's procedure?

One attorney appointed to parent with custody of child(ren).	3
Individual attorney for both the mother and father, regardless of custody.	0
Individual attorney appointed to temporary custodian and the mother and father.	1
Attorney appointed jointly for parents that are married unless there is a conflict of interest.	29
Other	1
- In juvenile delinquent cases, who is appointed to represent the child? (Check off as many as applies)

A CASA volunteer is appointed.	<u>1</u>	Public Defender appointed for the child.	<u>32</u>
A guardian ad litem is appointed.	<u>5</u>	Other	<u>0</u>

Survey of Attorneys
(Sent to 71 Guardian Ad Litem Attorneys – 37 Responded)

1. Of the following, what services do you provide as a guardian ad litem appointed to a child or children?

(Check off as many as applies)

Attend all court proceedings.	37	Monitor compliance with court orders.	25
Interview child (if age applicable), outside of the courtroom.	36	Represent children in permanency planning.	10
Visit the home and interview parents or custodians.	20	Other	7

2. At what point is a guardian ad litem appointed and at what point does the guardian ad litem stop representing the child?

Representation Begins		Representation Ends	
When appointed by the court	18	Final Disposition	24
Temporary Removal Hearing	7	Dispositional Hearing or Later Reviews	3
Date petition filed	3	Permanent Placement	2
Prior to Adjudication	2	Child Returned to Parent	2
Other responses	7	Other responses	6

3. How are you appointed as the guardian ad litem? (Check the appropriate response.)

Written order signed by the judge. 35 District Clerk calls 1
Both written and verbal orders 1 Verbally appointed by the judge 0

4. As a guardian ad litem, are you involved in permanency planning? If yes, what is your role?

Responses:	Roles Described:
Yes 9	Minimally speak with social worker 4
No 24	Inquire about available options 2
Some 3	Inform court of child’s best interest 2
N/A 1	Direct input with the Cabinet 1
	Attend Cabinet’s planning conferences 1

5. Do you track the children you have represented to monitor their placement? If yes, explain process.

Responses:	Roles Described:
Yes 7	Call social worker or custodian 5
No 23	Annual court review for children in foster care 2
Some 5	Maintain list of children represented 1
No response 2	

6. When you submit an Order for Attorney Fees do you: (Check as many as applies)

Attach an affidavit of time records. 26 Request a specific amount in the order. 27
Use the standard AOC-JV-45 form. 25 Leave the amount blank for the judge to complete. 10
Create your own order for attorney fees. 10 Other 0

7. Do you submit a motion for payment for services rendered after the disposition? (Check as many as applies)

Only if a new petition is filed and get reappointed. 19
If case is redocketed for court review after disposition. 5
If case is redocketed for court review several months after disposition. 5
Other 7

8. Indicate your agreement or disagreement with the following statements:

“Guardians ad litem adequately investigate their cases.”
 Agree 25 Not Sure 10 Disagree 2

“Guardians ad litem are adequately trained.”
 Agree 17 Not Sure 10 Disagree 9 No Response 1

“CASA volunteers are adequately trained.”
 Agree 1 Not Sure 17 N/A 17 No Response 2

9. What do you base your recommendations on concerning the child’s situation?

Independent research and interviews. 31 CASA volunteer’s reports. 7
 Report from the Dept. of Social Services. 33 Other information. 13

10. In juvenile delinquent cases, who is appointed to represent the child? (Check off as many as applies)

A CASA volunteer is appointed for the child.	0	Public Defender appointed to represent the child.	27
A guardian ad litem is appointed to represent the child.	10	Other	3

Survey of DSS Family Service Workers
 (Sent to 71 Family Service Offices – 39 Responded)

1. In working with guardians ad litem, do you find that they are knowledgeable about the state’s child protective services system? If no, what do they need to know more about?

Yes 23 No 9 Some 5 No Response 2
 Areas where guardians ad litem need more training: DSS Policies and Procedures 9
 Case Plans/Permanency 1
 Abuse/Neglect Consequences 3

2. Does the guardian ad litem have any involvement with the child(ren) or the family outside of the courtroom? If yes, what type of involvement? Yes 15 No 18 Some 3 No Response 2 N/A 1

Types of Involvement: Interview Children 10 Phone Calls & Office Visits 4
 Meet with Clients as Needed 1 10 - 15 minutes prior to hearing 1 Unknown 1

3. Do you feel the guardian ad litem does an adequate job explaining the court proceedings to the child(ren)?

Yes 18 No 15 Some 3 N/A 3

4. What are the guardians ad litem basing their recommendations concerning the child’s situation?

Independent research and interviews. 19 CASA volunteer’s reports. 4
 Report from the Dept. of Social Services. 32 Other information. 12

5. Does the guardian ad litem monitor the implementation and effectiveness of the court orders? If yes, how is this being done by them? Yes 9 No 23 Some 2 No Response 4 N/A 1

Method of Monitoring: Call the Family Service Worker 6 During Court Hearings 3
 Follow-up with Child and Family 1 Copies of Case Plans 1

6. Indicate your agreement or disagreement with the following statements:

“Guardians ad litem adequately investigate their cases.” Agree 13 Not Sure 12 Disagree 13 N/A 1
 “Guardians ad litem are adequately trained.” Agree 10 Not Sure 19 Disagree 9 N/A 1
 “CASA volunteers are adequately trained.” Agree 3 Not Sure 6 Disagree 2 N/A 28

7. Is the guardian ad litem invited to participate in developing a case plan and if so, do they attend this function?

	Yes	No	Some	No Response	N/A
Guardian ad litem invited to planning.	19	15	2	2	1
Guardian ad litem attends this function.	0	32	4	2	1

8. Is the guardian ad litem involved in the child's permanency planning? If yes, how are they involved?

Yes 14 No 17 Some 3 No Response 4 N/A 1
 Type of Involvement: Attend Family Services Administrative Hearings 5 Contact Family Service Worker 4
 Court Reports and Case Planning Conferences 3 Other 4

9. Of the following, check off the services provided by the guardian ad litem and the services provided by the CASA volunteer. This is based on your experience in your county and if you do not have the CASA program just put N/A for that column.

Services	Guardian Ad Litem	CASA Volunteer	Services	Guardian Ad Litem	CASA Volunteer
Attend all court proceedings.	35	6	Monitor compliance with court orders.	8	5
Interview child (if age applicable), outside of the courtroom.	20	5	Represent children in permanency planning.	5	3
Visit the home and interview parents or custodians.	0	5	Other	3	1

Survey of Court Clerks
(Sent to 71 Court Clerks – 57 Responded)

1. Do you keep a roster (rotating list) of attorneys from which to select the guardian ad litem? If yes, how many attorneys do you have from which to select? Yes 35 No 22

No. of Attorneys: 1 – 5 Attorneys 9 6 – 10 Attorneys 14
 11 – 15 Attorneys 4 Greater than 15 6 No Response 2

2. Who selects the attorney for appointment as the guardian ad litem? (Check the appropriate response.)

Clerk selects the attorney from the roster. 25 Judge selects the attorney without a roster. 22
 Judge selects the attorney from the roster. 9 Other 1

3. How are the attorneys appointed as the guardian ad litem?

Written order signed by the judge 31 Verbally appointed by the judge 5
 Written order signed by the clerk 8 Written on Court Calendar 3
 Both written and verbal 8 Other 2

4. How does the guardian ad litem submit an Order for Attorney Fees? (Check as many as applies)

Attaches an affidavit of time records. 34 Requests a specific \$ amount in the order. 32
 Uses the standard AOC-JV-45 form. 42 Leaves the amount blank for the judge to complete. 16
 Creates a personal order for attorney fees. 20 Other 3

5. Does the guardian ad litem submit a motion for payment for services rendered after the disposition? (Check as many as applies)

Only if a new petition is filed and they are reappointed. 31
 If case is redocketed for court review after disposition. 15
 If case is redocketed for court review several months after disposition. 6
 Other 16

6. When guardians ad litem represent more than one child in an allegation, do they: (Check appropriate response.)

Motion for one fee for all of the children. 42 Motion for separate fees for each child. 11
 Attorneys that do both of the above 4

7. What documentation is collected to establish the parents indigence prior to appointing them separate counsel?

Affidavit 16 Not Known 5 Verbal, on the Record 15
 No Documentation 3 Judge asks questions on wages and property 8 N/A 2
 No Response 7 Other 1

8. Once it is decided that separate counsel will be appointed, which of the following describes your county's procedure?

One attorney appointed to parent with custody of child(ren).	10
Individual attorney for both the mother and father, regardless of custody.	7
Individual attorney appointed to temporary custodian and the mother and father.	2
Attorney appointed jointly for parents that are married unless there is a conflict of interest.	35
Other: Per Judge's Direction	2
No Response	1

9. In juvenile delinquent cases, who is appointed to represent the child? (Check off as many as applies)
 A CASA volunteer is appointed. 4 Public Defender appointed for the child. 49
 A guardian ad litem is appointed. 16 Other 3

Survey of CASA Volunteers
 (Sent to 10 CASA Executive Directors – 9 Volunteers Responded)

1. Indicate your agreement or disagreement with the following statement: "Guardians ad litem adequately investigate their cases."
 Agree 0 Not Sure 3 Disagree 6

2. Of the following, check off the services you provide as a volunteer appointed to a child or children and also check off the services provided by the guardian ad litem? (This is based on your experience in your county)

Services	CASA Volunteer	Guardian Ad Litem	Services	CASA Volunteer	Guardian Ad Litem
Attend all court proceedings.	9	7	Monitor compliance with court orders.	8	1
Interview child (if age applicable), outside of the courtroom.	9	0	Represent children in permanency planning.	9	3
Visit the home and interview parents or custodians.	9	0	Other	2	0

3. Do the attorneys that serve as guardian ad litem make use of your assistance in representing children? If yes, list the services you provide the guardian ad litem. (e.g. home visits, interviews, collecting information)
 Yes 5 No 2 Some 2

Services CASAs provide guardians ad litem: Information Gathering, Interviews, Home Visits 4 CASA Reports 2

4. Does the guardian ad litem have any involvement with the child(ren) or the family outside of the courtroom? If yes, what type of involvement?
 Yes 0 No 4 Some 3 No Response 2

5. What are the guardians ad litem basing their recommendations concerning the child's situation?
 Independent research and interviews. 2 CASA volunteer's reports. 9
 Report from the Dept. of Social Services. 9 Other information. 2

6. In juvenile delinquent cases, who is appointed to represent the child? (Check off as many as applies)
 A CASA volunteer is appointed for the child. 4
 A guardian ad litem is appointed to represent the child. 6
 Public Defender appointed to represent the child. 8
 Other 0

American Bar Association	Center on Children and the Law 740 15th Street, NW Washington, DC 20005 Phone: 202/662-1720 Fax: 202/662-1755 Email: ctrchildlaw@abanet.org http://www.abanet.org/child/home.html	<u>Standards of Practice for Lawyers Representing a Child in Abuse and Neglect Cases</u> ; Approved by the ABA House of Delegates, February 5, 1996. Access @: http://www.abanet.org/child/childrep.html
National Council of Juvenile and Family Court Judges	University of Nevada P.O. Box 8970 Reno, Nevada 89507	<u>Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases</u> ; published by the National Council of Juvenile and Family Court Judges, dated August 1995.
National Court Appointed Special Advocate (CASA) Association	100 West Harrison Street North Tower, Suite 500 Seattle, Washington 98119 Phone: 800/628-3233	<u>Standards for Court Appointed Special Advocate (CASA) Programs Affiliated With the National CASA Association</u> ; Approved by National CASA Association Board of Directors, March 1997.
U.S. Department of Health and Human Services	National Clearinghouse on Child Abuse and Neglect Information PO Box 1182 Washington, DC 20013-1182 (800) FYI-3366 http://www.calib.com/nccanch	<u>Final Report on the Validation and Effectiveness Study of Legal Representation Through Guardian Ad Litem</u> , published by the U.S. Department of Health and Human Services through Contract No. 10549-1727 in November 1993.

INFORMATIONAL CONTACTS

Kentucky Bar Association	Libby Marshall	(502) 695-4630
Kentucky Youth Advocates	Debra Miller	(502) 875-4865
Jefferson County Guardian Ad Litem Association	Juda Hellman	(502) 569-2777
Kenton County Guardian Ad Litem Association	Robert Howell	(606) 431-5110
Court Appointed Special Advocate Association	Sandy Fellows	(502) 443-1440
Kentucky Attorney General Guardian Ad Litem Manual	Barbara Davis	(502) 696-5312
Administrative Office of the Courts, Court Improvement Project Coordinators	Patrick Yewell and Deborah Williamson	(502) 573-2350
Jefferson County Family Court	Jim Birmingham	(502) 595-4392



PAUL E. PATTON
GOVERNOR

OFFICE OF THE SECRETARY
FINANCE AND ADMINISTRATION CABINET
383 CAPITOL ANNEX
FRANKFORT, KENTUCKY 40601
(502) 564-4240
(502) 564-6785 FAX

JOHN P. McCARTY
SECRETARY

August 10, 1998

The Honorable Edward Hatchett, Jr.
Auditor of Public Accounts
Suite 144, Capitol Annex
Frankfort, Kentucky 40601

RE: Guardian Ad Litem Practices Report

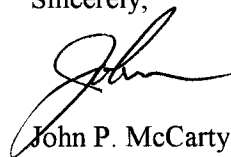
Dear  Auditor Hatchett:

Please accept this letter as appreciation for the Auditor of Public Accounts' review and recommendations of the issues regarding the guardian ad litem fee system that have been experienced by the Finance and Administration Cabinet. It is apparent that the present system for awarding guardian ad litem fees are inconsistent and that the Finance Cabinet lacks authority to properly carry out its fee payment responsibilities.

I wholeheartedly concur with your recommendations that the Administrative Office of the Court assume more responsibility in this process. That approach will work toward the resolution of many problems that presently plague this system.

Again, please accept my appreciation for the work performed by the Auditor's staff as contained in these findings and recommendations. Your staff has succeeded in presenting a thorough and enlightening review of this oft-confusing area of law. The Finance and Administration Cabinet stands ready to support the implementation of the recommendations contained in your report.

Sincerely,



John P. McCarty, Secretary
Finance and Administration Cabinet



ADMINISTRATIVE OFFICE OF THE COURTS

100 MILLCREEK PARK
FRANKFORT, KENTUCKY 40601-9230
(502) 573-2350
FAX: (502) 695-1759

ROBERT F. STEPHENS
CHIEF JUSTICE

PAUL F. ISAACS
DIRECTOR

August 10, 1998

Hon. Edward P. Hatchett
Auditor of Public Accounts
Suite 144, Capitol Annex
Frankfort, Kentucky 40601

RE: Performance audit of Guardian Ad Litem practices in the Commonwealth of
Kentucky, APA-98-P-3

Dear Mr. Hatchett:

On behalf of Kentucky's Court of Justice I want to thank you for providing us a draft copy of your Performance
Audit of Guardian Ad Litem Practices in the Commonwealth of Kentucky and an opportunity to respond to the
recommendations contained in that audit. We appreciate the extensive work done by you and your staff in conducting this
performance audit and the recommendations that you have outlined as a result of your study of the guardian ad litem
program in Kentucky.

Although we do have a difference of opinion on one of your recommendations, we believe that your office has
performed a valuable service in the extensive research conducted by your staff and the recommendations this audit makes
bring these issues to the floor for discussion on how to improve the representation provided to children represented by
guardian ad litem in our court system.

This is a particularly appropriate time for the court to address this issue as we begin our pilot projects for Family
Court which are designed to insure that all issues concerning of families and children's legal problems are fully addressed
by the court.

The Supreme Court and the Administrative Office of the Courts look forward to working with the Executive
Branch and the Legislature in finding the best possible methods of improving the guardian ad litem program in order to
insure that families and children receive the legal representation they need. It is that spirit that we submit the attached
response to the Draft Report of the audit.

Sincerely,

Handwritten signature of Robert F. Stephens

Robert F. Stephens
Chief Justice
Kentucky Supreme Court

Handwritten signature of Joseph E. Lambert

Joseph E. Lambert
Chief Justice Elect
Kentucky Supreme Court

Handwritten signature of Paul F. Isaacs

Paul F. Isaacs
Director
Administrative Office of the Courts

In response to chapter 1 recommendations contained on page 16 "Guardian Ad Litem Practices in the Commonwealth of Kentucky:

The Kentucky Supreme Court and the Administrative Office of the Courts generally agree with Recommendations 1.1, 1.2, 1.3, and 1.4. The Kentucky Supreme Court will consider adopting court rules on the duties of guardian ad litem. The recommendations of the American Bar Association and the National Council of Juvenile and Family Court Judges will be considered in the drafting of those rules. Another component of the rules considered by the court will be that the state comply with federal legislation which require the guardian ad litem's role to continue until the child receives a permanent placement. We further agree that the Supreme Court should consider adopting written rules outlining minimal training requirements for guardians ad litem: that the training be provided by the Administrative Office of the Courts; and that the training be supported by district and circuit judges as a basis for appointing guardians ad litem. The Administrative Office of the Courts agrees to compile the number of hours of representation provided for children and parents/custodians to and provide the data to the Finance and Administration Cabinet and the General Assembly so that they can determine the reasonableness of the fees paid for that representation. The Supreme Court and Administrative Office of the Courts strongly support that the General Assembly should consider reviewing that information and revising and raising the amount of fees that are paid for that representation in order to make it compatible with providing children the proper representation in the guardian ad litem cases.

This is the response to chapter 2 recommendations contained on pages 28 and 29 "Guardians Ad Litem Practices in the Commonwealth of Kentucky:

The Kentucky Supreme Court and Administrative Office of the Courts agree with the recommendations contained in 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9 and 2.11 in that these are generally compatible with the Recommendations in Chapter 1. The recommendations concerning improving the forms, streamlining the process, documentation of indigency, sharing information electronically, and improved training of guardian ad litem are all very appropriate and the Supreme Court and AOC will work on a plan of implementation for these recommendations.

The Judicial Branch fundamentally disagrees with the recommendation that the General Assembly consider switching the appropriated executive budget line item for guardians ad litem from the Executive Branch to the Judicial Branch. It is our position of that payment of fees for providing services to the Courts is function of the Executive Branch and not the Judicial Branch. Currently the Executive Branch provides indigent Defense services and the is appropriate location for Guardian Ad Litem services.

The Judicial Branch agrees with the recommendation that it provide oversight, training, and standards for attorneys who practice these cases. However, the actual payment of the funds

should not be a part of the Judicial Branch budget. Any such recommendation is inconsistent with recommendations 1.3 and 1.4 of chapter one which recommend that AOC compile the number of hours of representation and provide data to the Finance and Administration Cabinet and the General Assembly regarding the reasonableness of the fees paid for representation. Until that study can be made there is no accurate method of determining how much budget for this program. By keeping payment responsibility in the Finance and Administration Cabinet, as a part of the necessary governmental expenses budget, funding can be adjusted to meet needs developed by the study. Within the Judicial Branch budget, there is no mechanism for adjusting the fee structure if it is determined to be inadequate to improve guardian ad litem services.

Placing the funding for this program in the Judicial Branch budget maybe a violation of the separation of powers doctrine. In the case of Bradshaw v. Ball, 487 S.W. 2d 294 (1972), the court, discussing the separation of powers doctrine in a case concerning whether an attorney could be forced to take cases without any method of compensation stated as follows:

No better statement of the basic concept of the doctrine of the separation of powers can be made than that contained in No.78 of The Federalist Papers. See The Federalist Papers (Rossiter edition, 1961). Here, Hamilton States:

“Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors but **holds the sword of the community**. The legislature not only **commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated**. The judiciary, on the contrary, has no influence over **either the sword or the purse**; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL but merely judgement; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgements.”

In the context presented, we are persuaded that it is the duty of the executive department to enforce the criminal laws, and it is the duty of the legislative department to appropriate sufficient funds to enforce the laws which they have enacted. The proper duty of the judiciary, in the constitutionally ideal sense, is neither to enforce laws or appropriate money. The judiciary’s reason for existence is to **adjudicate**. Id. at p. 299

This case articulates that it is the role of the Executive Branch to provide funds for the

lawyers appearing in court on behalf of the Commonwealth whether it is for prosecution, defense, or in this case to provide necessary guardian ad litem services. While the Judicial Branch believes that there are some needed changes in this program and is happy to work with the Executive and Legislative Branch to improve it, the current source of payment should remain in the Finance and Administration Cabinet.

Contributors To This Report

Edward B. Hatchett, Jr., Auditor of Public Accounts

James A. Rose III, CGFM, Director, Division of Performance Audit
Jettie Sparks, CPA, CIA, Performance Auditor

Obtaining Audit Reports

Copies of this report or other previously issued reports can be obtained for a nominal fee by faxing the APA office at 502-564-2912. Alternatively, you may

order by mail: Report Request
 Auditor of Public Accounts
 144 Capitol Annex
 Frankfort, Kentucky 40601

visit : 8 AM to 4:30 PM weekdays

email: Hatchett@apa1.aud.state.ky.us

browse our web site: <http://www.state.ky.us/agencies/apa>

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Audit Services - The staff of the APA office performs a host of services for governmental entities across the state. Our primary concern is the protection of taxpayer funds and furtherance of good government by elected officials and their staffs. Our services include:

Performance Audits: The Division of Performance Audit conducts performance audits, performance measurement reviews, benchmarking studies, and risk assessments of government entities and programs at the state and local level in order to identify opportunities for increased efficiency and effectiveness.

Financial Audits: The Division of Financial Audit conducts financial statement and other financial-related engagements for both state and local government entities. Annually the division releases its opinion on the Commonwealth of Kentucky's financial statements and use of federal funds.

Investigations: Our fraud hotline, 1-800-KY-ALERT (592-5378), and referrals from various agencies and citizens produce numerous cases of suspected fraud and misuse of public funds. Staff conduct investigations in order to lay the foundation for possible referral of cases to prosecutorial offices.

Training and Consultation: We annually conduct training sessions and individual consultations for government officials across the state. These events are designed to assist officials in the accounting and compliance aspects of their positions.

General Questions

General questions should be directed to Donna Dixon, Intergovernmental Liaison, or Ed Lynch, Director of Communications, at (502) 564-5841 or the address above.