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Introduction

Juvenile and family court judges have a significant role to play in decisions about how best to protect children. Whether that decision involves rehabilitating and maintaining families or providing permanent alternative care for child victims of abuse and neglect, judges need to be confident that they are making the best *informed* decision about a child's future. Given that attorneys and other advocates often determine what information a judge is presented with, it is vital that all parties in child abuse and neglect cases have adequate access to competent representation so that judges can make well-informed decisions.

Because representatives play such a critical role in case processing, it was not surprising that representation issues generated considerable discussion from court improvement specialists interviewed as part of the National Research Project. Although a wide range of appointment procedures and quality of counsel was discovered, one central theme consistently emerged: the need for improved training, both in legal and non-legal aspects of child abuse and neglect cases. Repeatedly, the need for information about court processes, the essential features of the law, and the unique elements of dependency practice, were stressed. While some specialists can report favorably about representation in their states, identifying clear strengths and competent and diligent representatives, it is clear

Introduction

that in many jurisdictions representation is the focus of considerable critical attention.

Child abuse and neglect cases are undoubtedly challenging cases for any attorney to take on. Escalating case loads, lack of available resources, and increasingly difficult cases make these cases particularly demanding. Within this demanding environment, attorneys and other advocates play an important role in shaping cases and moving them toward timely resolution. For that reason, special attention should be directed toward ensuring that representatives have a good grasp of this unique and important field of law and practice, and, furthermore, that all parties have access to competent and diligent representation.

It is the goal of this *Technical Assistance Bulletin* to provide state leaders with a nationwide picture of the various issues involved in representation. This *Bulletin* presents both the strengths and challenges of effective representation, identifies some of the major barriers, and presents some of the recommendations of court improvement specialists to improve and maintain high quality representation of parents and children in child abuse and neglect cases.

The National Research Project

In November 1996, the Permanency Planning for Children Project (PPP) of the National Council of Juvenile and Family Court Judges (NCJFCJ) embarked upon a national research effort to examine child abuse and neglect case processing. There were three components to this research endeavor: (1) an analysis of existing state statutes with special attention to mandated time frames; (2) a mail-out questionnaire examining day-to-day practice with respect to statutory requirements; and (3) a lengthy telephone interview focusing on effective court practice, improvement goals, representation, and training issues, as well as future goals of court improvement projects.

The results of the first two components of the National Research Project, the statutory analysis and the mail-out questionnaire, have been presented in previous *Technical Assistance Bulletins*.¹ This publication represents the first in a series of *Technical Assistance Bulletins* that will present findings from the telephone

1

Child Abuse and Neglect Cases: A National Analysis of State Statutes, NCJFCJ, December 1997 and *Child Abuse and Neglect Cases: Examining State Statutes in Everyday Practice*, NCJFCJ, February 1998. For more information about these publications, and others, including the highly regarded *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*, please contact the Technical Assistance Group at the Permanency Planning for Children Project, NCJFCJ: Telephone (702) 327-5300; Fax: (702) 327-5306; Email: tadesk@pppncjfcj.org.

The National Research Project

interview component of the National Research Project. The focus of this *Bulletin* is representation.²

Participants

Court improvement specialists in 49 states³ and the District of Columbia participated in the national research effort. These specialists were chosen for their ability to discuss their states' statutes and day-to-day practice in child abuse and neglect cases. In all cases, the participants have been involved in court improvement efforts over the past several years. Their responses, therefore, were informed by data gathered over the course of statewide court improvement assessments.

Participants had an average of 9 years' experience in the area of child abuse and neglect and dependency, with years of experience ranging from 1 year to 31 years.⁴

2

For more information on the National Research Project please see Appendix A.

3

Wyoming was not included in phases two and three of the National Research Project because it did not participate in the federally funded court improvement project to examine abuse and neglect case processing.

4

For more demographic information about the court improvement specialists participating in the National Research Project please see Appendix B.

The Telephone Interview

Court improvement specialists participated in a 1 to 1.5-hour telephone interview with project researchers. Interviews were standardized, and included both close-ended and open-ended questions. The interview was designed to gather detailed information about practice issues in each state, as well as information about each state's court improvement goals and efforts to achieve these goals. Specialists based their assessments on data obtained from the just-completed court improvement studies undertaken by each state. At the end of the interview, specialists were asked to forward any relevant reports, including court improvement reports, to supplement interview responses. Although the telephone interview addressed a wide variety of issues (see Interview Categories of Information), this *Bulletin* specifically focuses on issues pertaining to the representation of parents and children.

Interview Categories of Information

| | |
|--|---|
| Impressions of overall case processing in child abuse and neglect cases | assessment of overall strengths of case processing assessment of what areas need most improvement |
| State court improvement project | identification of improvement goals identification of steps being taken to achieve improvement goals |

The National Research Project

| | |
|---|---|
| <p>Ratings of specific problem areas</p> | <p>timeliness of required reports and assessments training of attorneys and guardians ad litem case flow management and court delays timeliness of the initiation and completion of the termination of parental rights qualifications, training, and knowledge of judicial officers</p> |
| <p>Time management and case flow</p> | <p>general overall assessments of case processing identification of primary reasons for untimely outcomes discussion of whether or not there is a case manager or administrator who tracks case processing; if yes, an assessment of duties and responsibilities assessment of information-gathering system assessment of the procedure(s) for spotting delayed cases assessment of the timeliness and scheduling of hearings (pre-trial, adjudicatory, and post-adjudicatory)</p> |
| <p>Role of the judiciary</p> | <p>assessment of how committed judiciary is to timely decision-making assessment of how actively involved judiciary is in case processing assessment of the timeliness and quality of judicial case reviews</p> |
| <p>Reasonable efforts</p> | <p>assessment of definition of reasonable efforts assessment of decision-making process with regard to reasonable efforts identification of reasonable efforts for preventing removal, reunification, and termination of parental rights</p> |

The National Research Project

| | |
|---|---|
| <p>Permanency planning</p> | <p>assessment of how realistic federally mandated 18-month permanency deadline is for state identification of what steps are taken to ensure timely permanency assessment of average length of time period required to bring about permanency assessment of procedures and timeliness of termination of parental rights assessment of the role of the court and social services in termination of parental rights</p> |
| <p>Quality and timeliness of hearings</p> | <p>assessment of timeliness, quality of hearings, level of preparation by representatives and social services assessment of court facilities</p> |
| <p>Representation for parents and children, including attorneys, guardians ad litem, and CASAs</p> | <p>assessment of when and if appointment made; timeliness of appointment assessment of representatives' qualifications and training assessment of role requirements and general quality of representation assessment of compensation rates identification of training preferences and training goals</p> |
| <p>Interstate Compact for the Placement of Children (ICPC)</p> | <p>identification of steps taken to facilitate interstate movement of children assessment of procedural requirements of ICPC</p> |
| <p>Indian Child Welfare Act (ICWA)</p> | <p>identification of issues pertaining to ICWA discussion of the extent to which native issues were included in court improvement project</p> |
| <p>Unique approaches, unique strengths</p> | <p>identification and discussion of approaches, goals, or strengths unique to state identification of procedures believed to be particularly effective in state</p> |

The National Research Project

After interviews were completed, responses were transcribed by the interviewer. A code book was constructed and interview responses were coded for comparative purposes. The results of the analysis of the interview responses with respect to representation are presented in the body of this *Bulletin*.

Representation: General Strengths and Weaknesses

General strengths of representation

At the beginning of the telephone interview, court improvement specialists were asked to identify what they saw as the strengths of the overall system for processing child abuse and neglect cases in their state. While a wide variety of general responses were given on a multitude of issues pertaining to child abuse and neglect cases, 14 specialists provided comments relating specifically to representation.⁵

The two most frequently given strengths pertaining to representation were: (1) good representation of children; and (2) early appointment of counsel.

| Table 1: General Strengths of Representation | | |
|---|----------|--|
| Identified Strength | # | Sample Comments |
| Good representation of children specifically | 7 | good GAL system overall 100% attorney representation for children statewide 100% GAL representation for children statewide |

⁵ Many court improvement specialists provided more than one response.

Representation: General Strengths and Weaknesses

| Identified Strength | # | Sample Comments |
|--|----------|---|
| Early appointment of counsel | 5 | GAL appointed at shelter hearing GALs have to be attorneys and they are appointed very early in the process, close to the beginning of the case |
| Representation of parties leading to improved quality of hearings | 4 | representation of all parties (agency, parents, children) is very strong in this state and this leads to a high quality of hearings attorney/GAL has the advantage of providing more thorough representation and better quality hearings |
| CASA | 4 | CASA provides considerable assistance to the court good volunteer system in the counties that use them |
| Training | 2 | comprehensive CLE seminars for counsel for parents and children training of child advocate is strong; engenders strong commitment and involvement |
| Representation of parents specifically | 1 | if parents are indigent they have a statutory right to counsel at all stages |

General weaknesses of representation

Court improvement specialists were also asked a general question about the most problematic aspects of case processing in their respective states. While only 14 specialists specifically identified representation issues as strengths in their states, the majority of specialists (42, or 84%) mentioned representation as an area in need of improvement. This number includes nine of the 14 specialists who had evaluated at least one aspect of representation in their states favorably. Clearly,

Representation: General Strengths and Weaknesses

representation issues are a point of concern for court improvement specialists nationwide.

The vast majority of court improvement specialists (42, or 84%) identified representation as a problematic aspect of case processing in child abuse and neglect cases.

The number one area identified as needing the most improvement with regard to representation was training of attorneys and guardians ad litem (GALs).

Table 2 (pg. 16) provides a summary of general representation areas identified by specialists as needing improvement. Representation areas needing improvement are listed in order of frequency of mention, along with a sample of specific comments provided by specialists. These areas will be discussed in more detail throughout the body of this report.

Representation: General Strengths and Weaknesses

| Table 2: General Weaknesses of Representation | | |
|--|----------|---|
| Problem Areas | # | Sample Comments |
| Education and training of representatives | 21 | <p>education and training of all representatives is needed</p> <p>minimum training requirements are needed</p> <p>better training of all parties essential</p> <p>need to provide for formal training</p> <p>need for improved training for everyone, especially about rules for proceedings</p> <p>there is a need to better articulate required skills and knowledge, responsibilities, and roles</p> <p>need best practice standards for guidance</p> <p>lawyers need to be trained to work within the parameters of the statute and what social services can do, what their resources are, etc.</p> |
| Quality of representation for all parties | 17 | <p>there is poor preparation and communication on the part of attorneys; real attitudinal problems</p> <p>the overall quality of representation needs improvement</p> <p>conflict arises because attorneys for parents come from the same pool as DFS agency attorneys and GALs</p> |
| Quality of representation of parents specifically | 10 | <p>representation for parents is sorely lacking</p> <p>there is a problem with parents awareness of their right to counsel</p> <p>problem with how parents are informed of their right to counsel</p> <p>attorneys for parents are the biggest obstacles to effective case processing</p> |

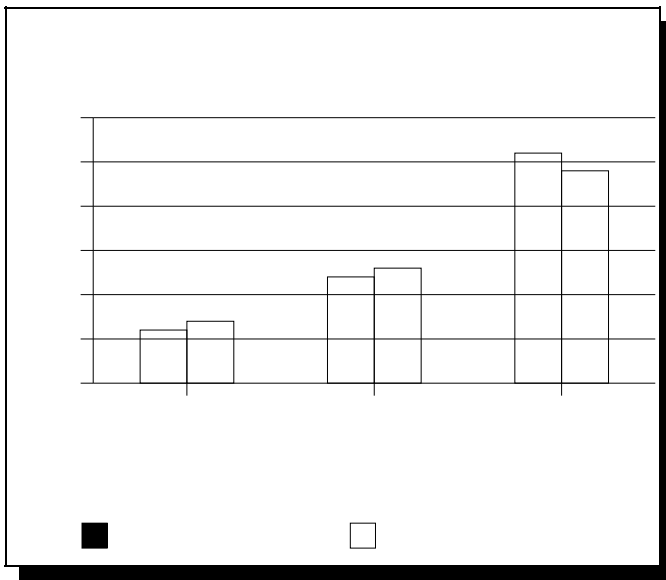
Representation: General Strengths and Weaknesses

| Problem Areas | # | Sample Comments |
|--|----------|---|
| Quality of representation of children specifically | 10 | <p>assessment found that although the appointment of GAL is early, over ½ of children are not represented</p> <p>GAL case loads are too high for adequate investigation</p> <p>the role of GAL needs work; it is inconsistently applied and many are very incompetent</p> <p>attorneys for children are currently too passive and they need to be more active</p> <p>need to bridge the gap between the court and the GAL</p> <p>sometimes attorney or GAL for child not appointed early enough</p> |
| Available resources and compensation | 8 | <p>need more equitable distribution of funds for court-appointed representatives; they aren't paid enough and we are unable to attract the best individuals</p> <p>payment for indigent defense counsel very low and the caseload is high</p> <p>there are great standards for representation in place but no resources to implement them</p> |
| CASA specifically | 5 | <p>CASAs need better training on legal perspectives and better training on court work</p> |
| Clarification of representative's role and responsibilities | 3 | <p>role clarification is needed for all players including representatives of parents and children</p> |

According to the specialists interviewed, education and training of all representatives needs improvement, as well as the quality of representation.

Representation: General Strengths and Weaknesses

All of the specialists interviewed were asked to specifically think about the training of representatives for parents and children and to rate how problematic these two areas are in their states. Specialists were asked to rate the training of representatives on a scale from 0 (not at all problematic) to 10 (extremely problematic). Chart 1 presents an overview of their responses. For purposes of illustration the rating categories have been collapsed into three groups: relatively non-problematic (ratings of 0-2); somewhat problematic (ratings of 3-6); and very problematic (ratings of 7-10).



It is clear that the majority of court improvement specialists consider the training of representatives for parents and children to be very problematic in their states.⁶ The most common rating for both representatives for parents and representatives for children was an 8 (12

specialists rating training of representatives for parents; 11 specialists rating training of representatives for children). The average rating of representatives for

⁶ A specialist from one state declined to rate the training of representatives.

Representation: General Strengths and Weaknesses

parents was 7, at the low end of very problematic and the average rating for representatives for children was 6, at the high end of somewhat problematic. It is worth noting that none of the specialists rated training of representatives as a 0, or not at all problematic.

Representation: General Strengths and Weaknesses

Representation of Parents

An analysis of state statutes⁷ with respect to the representation of parents reveals that 39 states provide that counsel be appointed for indigent parents. Considerably fewer statutes (6) include provisions that counsel be appointed for parents in *all* dependency proceedings. Three states provide only for the appointment of counsel for parents in termination of parental rights (TPR) proceedings, and three states do not provide explicitly for the appointment of counsel for parents in statute.⁸ Further, the appointment of counsel may be mandatory or discretionary depending on specific statutory provisions. (See Chart 2 pg. 22)

Examining statutory provisions alone however, does not necessarily reflect how and when counsel are appointed for parents in practice. In order to more fully capture what is happening with respect to the representation of parents in child abuse and neglect cases across the nation, interviews included specific questions

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The analysis included 50 states and the District of Columbia.

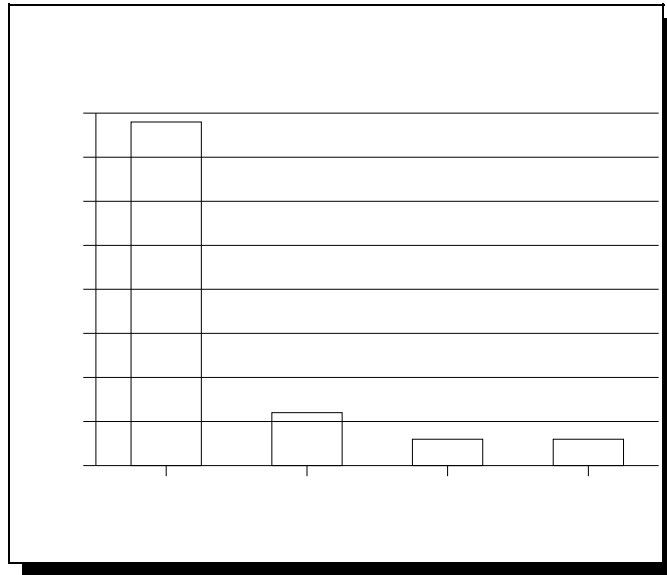
⁸

For a more detailed discussion of statutory provisions please see *Child Abuse and Neglect Cases: A National Analysis of State Statutes*, National Council of Juvenile and Family Court Judges, December, 1997.

Representation of Parents

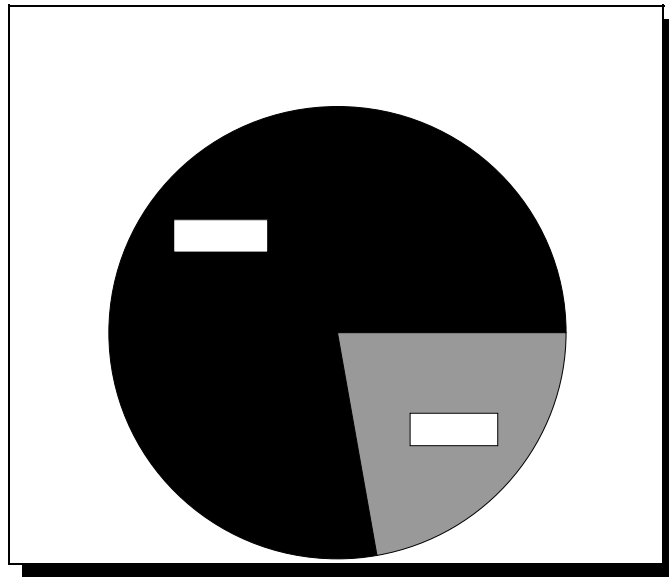
about when, and if, the appointment of counsel for parents typically occurs in practice. Specifically, interviews sought information about the following:

- whether attorneys are generally appointed for parents in practice;
- at what stage appointment of attorneys for parents actually occurs;
- opinions about whether appointment of attorneys for parents occurs early enough in the process;
- what are the duties and responsibilities of counsel for parents; and
- whether or not compensation for attorneys for parents is adequate.



A. Appointment of Counsel for Parents

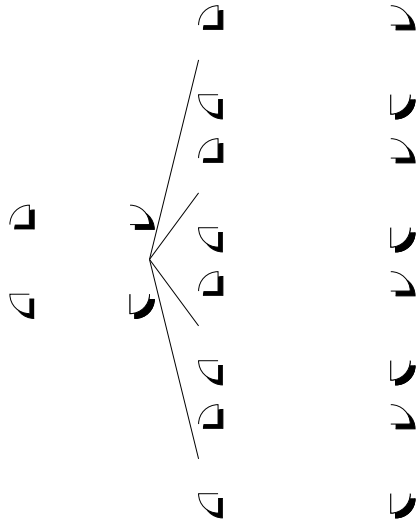
Are attorneys appointed for parents in child abuse and neglect cases?



As shown in Chart 3, a total of 39 state specialists (78%) reported that parents are generally appointed counsel in child abuse and neglect cases in their states. Eleven state specialists (22%) noted that counsel for parents is generally not appointed.

Twenty-two of the 39 state specialists reporting that parents are generally

Appointment of Counsel for Parents



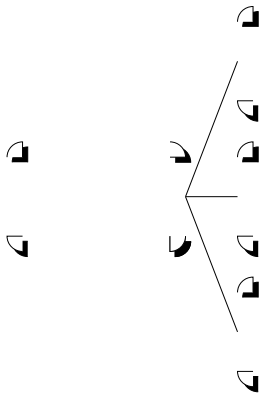
appointed counsel noted that counsel is only appointed when the parent, or parents, meet indigency requirements; that is, parents must meet fiscal requirements or income eligibility before counsel is appointed. In 12 of these 39 states, counsel for parents is appointed in all dependency cases. Interestingly, while only six state statutes specifically require

appointment of counsel for parents in *all* dependency hearings, in practice twice the number of states are actually appointing counsel for parents in all dependency cases. Three states appoint counsel only if requested by the party; however, specialists in these states note that in practice an attorney is usually requested and, therefore, appointed. In two states, counsel is usually appointed only at the termination phase.

Only six state statutes require that parents are appointed counsel in all dependency hearings but in practice twice the number of states are appointing counsel for parents in every case.

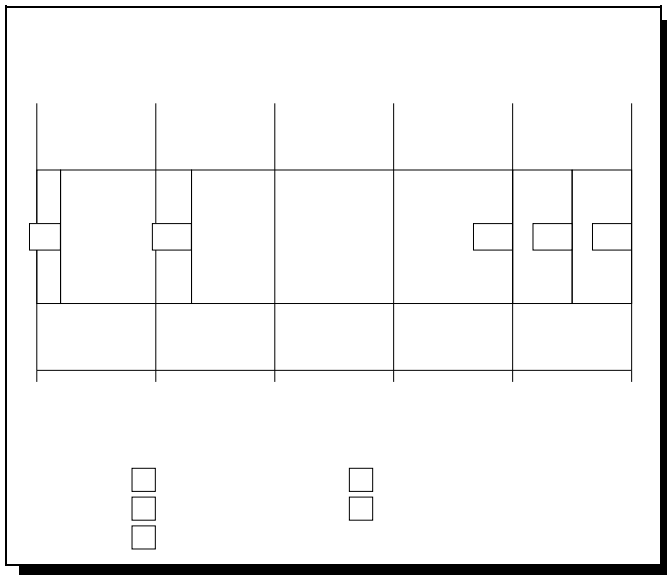
In seven of the 11 states that do not typically appoint counsel for parents, counsel

Appointment of Counsel for Parents



- may be appointed if requested by the party. However,
- specialists in these states indicated that these requests are often declined. Three of the specialists reported that counsel for parents is only appointed at termination of parental rights, if the termination is being

contested. If termination is not contested, then counsel is not appointed. In one state, counsel may be appointed if the parent is under 18 and, in the judge's opinion, requires counsel. The state specialist noted, however, that judges rarely make such appointments.



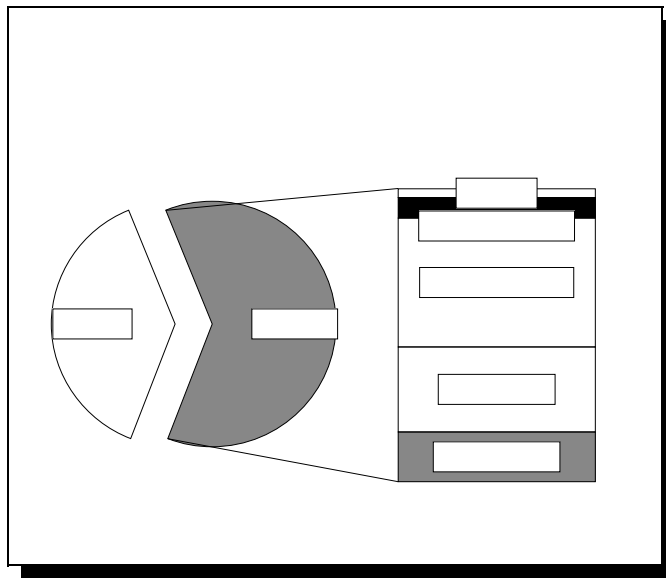
As illustrated in Chart 4, when counsel is appointed for parents, in the majority of states (40, or 80%) the appointment occurs at or before the first hearing. The practice in 27 states (54%) is to appoint

Appointment of Counsel for Parents

counsel for parents at the shelter care, or emergency hearing. In 11 states (22%) appointment occurs at the filing of petition, and two states (4%) appoint counsel upon removal of the child. Of the remaining 10 states, half appoint counsel for parents at the adjudicatory hearing, and half at the termination proceeding.

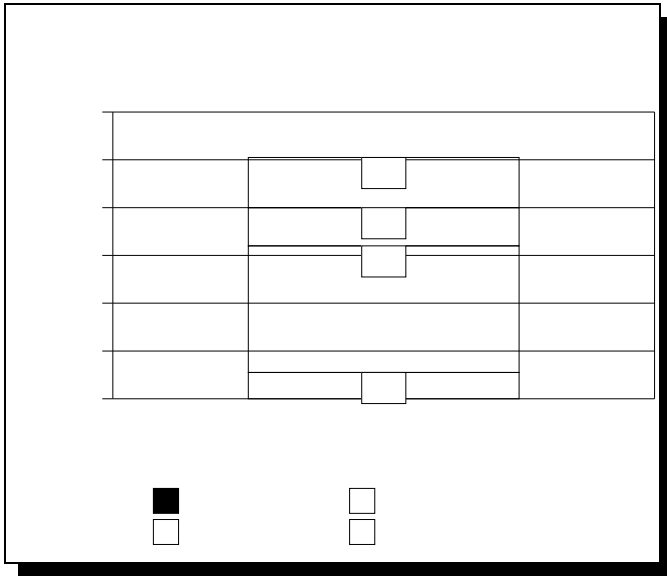
Appointment of counsel for parents typically occurs at or before the first hearing.

Court improvement specialists were also asked if they thought that appointment of counsel for parents in their respective states occurred early enough in the process. As shown in Chart 5, 31 of the 50 specialists (62%) believed that the appointment of counsel did occur early enough in the process. Of these 31 specialists, 28 (90%) were from states that typically appoint counsel either before or at the shelter hearing. Only one specialist who felt that the appointment of counsel occurred early enough in the process,



Appointment of Counsel for Parents

represented a state that did not appoint counsel for parents until the termination of parental rights proceeding.

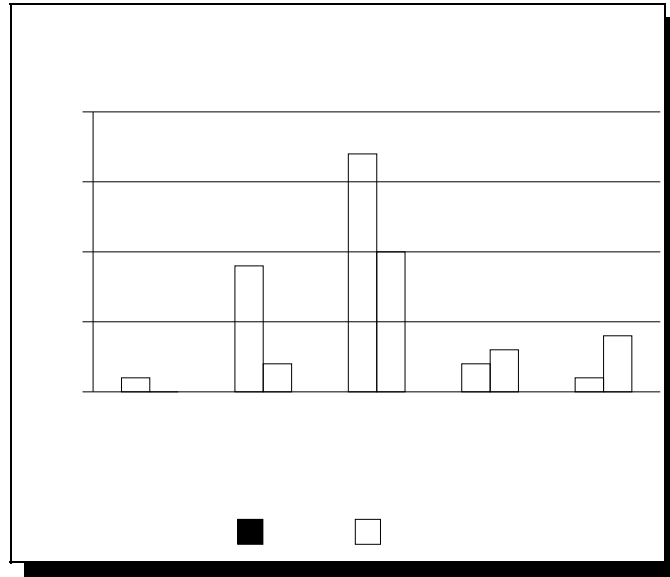


Of the 19 specialists (38%) who believed that appointment did not occur early enough in practice, 10 (53%) represented states that typically appoint counsel for parents at the first hearing. Three specialists (16%) were from states that typically appoint counsel at the adjudicatory hearing, and

four (21%) were from states that typically appoint counsel at the termination proceeding. Two specialists (11%) were from states that typically appoint counsel at the filing of petition. (See Chart 6).

Chart 7 (pg. 28) presents this same information a little differently. As illustrated, the majority of specialists who reported that counsel is appointed for parents prior to the adjudicatory hearing believe that counsel is appointed at the appropriate time. However, when counsel for parents is appointed at the adjudicatory hearing, or later, the specialists reported less satisfaction with the timing of

Appointment of Counsel for Parents



appointment.

Most specialists believe appointment of counsel for parents occurs early enough in the process, especially if appointment occurs at either the shelter hearing or before.

When specialists responded that appointment of counsel did not occur early enough, they were asked what stage in the case would be a more appropriate time for this appointment to occur. Of the 19 specialists, nine believed that appointing counsel at the filing of petition would be more appropriate, five believed appointment at removal would be better, four believed the shelter hearing was most appropriate, and one believed that the adjudicatory hearing would be a

Appointment of Counsel for Parents

better point at which to appoint counsel for parents. Table 3 (pg. 29) breaks down

specialists preferred times for appointment of counsel compared to when appointment currently is made.

| Table 3: Current vs. Preferred Times for Appointment of Counsel for Parents | |
|--|--|
| Current time of appointment | Preferred time of appointment |
| from filing of petition (2) | to removal (2) |
| from shelter hearing (10) | to filing of petition (7) to removal (3) |
| from adjudicatory hearing (3) | to filing of petition (1) to shelter hearing (2) |
| from TPR (4) | to filing of petition (1) to shelter hearing (2) to adjudicatory hearing (1) |

Perhaps appointing counsel for children earlier than filing of petition might work; pilot projects have initiated appointment of counsel when the department begins its investigation and this seems to work well for them.

Conversations with specialists further explored possible reasons why appointment of counsel for parents is not occurring at the most appropriate or optimal time. Of the 19 specialists indicating dissatisfaction with the appointment time, 12

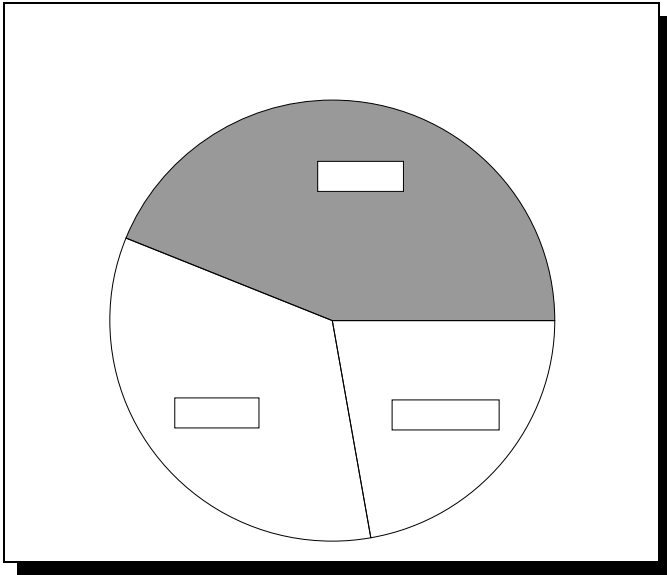
Appointment of Counsel for Parents

(63%) mentioned problems with the notification or advisement of right to counsel. Specifically, specialists complained that either notification and advisement are not made in as timely and efficient a manner as they should be, or that parents do not fully comprehend their rights and the appointment process. These specialists suggested that if the entire appointment process was clearly articulated to parents as soon as possible in the proceedings, appointment could be made earlier than is currently the practice. Five specialists (26%) also pointed out specific problems with application procedures (e.g., confusing forms, forms not being dispensed properly) as sources of delay in appointment of counsel for parents. Two (11%) felt that untimely appointments resulted from a lack of available counsel to represent parents, which they attributed to a lack of available resources. When discussing concerns over problematic appointment times for parents' counsel, one specialist noted that proper and early representation of parents serves the best interests of the child.

It is in the best interests of the child if parents are adequately represented and represented as early as possible in the process.

B. Training of Attorneys Appointed for Parents

Are attorneys appointed for parents qualified?



Twenty-two specialists (44%) believed that attorneys appointed for parents in their state were adequately qualified.

However, four of these specialists indicated that while attorneys were adequately qualified, they were in need of additional training. Seventeen

specialists (34%) believed

that attorneys appointed for parents in their states were not adequately qualified. While all of these specialists tied inadequate qualifications to a general lack of training, three specialists specifically noted that attorneys for parents lack knowledge about the law and have little familiarity with the court process. Two specialists noted that highly qualified attorneys tend not to want to be involved in dependency cases because it is not a glamorous role. Eleven specialists (22%)

Training of Attorneys Appointed for Parents

preferred not to provide an assessment of the relative qualifications of attorneys for parents, due to extreme variability in their states.

What kind of additional training do attorneys appointed for parents receive?

Specialists from 34 states reported that attorneys appointed for parents do not receive any additional training, or, at the very most, they receive only optional continuing legal education (CLE) training. Fourteen specialists reported that attorneys for parents in their states receive some additional training. Although this training was described as mandatory statewide training by two specialists, this training was described by other specialists as state bar association sponsored basic training in juvenile and family court matters.

Only two specialists indicated that attorneys for parents receive a great deal of additional training. In one of these states there is an annual training that covers everything from court process to child development; in the other, there is an elaborate certification system, involving one week on substantive law and three days on trial practice specific to dependency cases. This state also uses mentoring as a feature of their training program for attorneys appointed for parents. When asked if current training for attorneys for parents was adequate, 3/4 (38) of the specialists responded with no. Moreover, of the 14 specialists who felt that the current training was adequate, most did indicate that the training could be better.

Training of Attorneys Appointed for Parents

It is worth noting that in almost all cases, whether current training was rated adequate or not, court improvement projects are focusing considerable attention on training as a means of improving representation. Many states are focusing on multidisciplinary training for all players in the system, including judges, attorneys, GALs, child welfare professionals, and others.

In the majority of states, attorneys for parents currently receive only some or no additional training.

What kind of specific training do you think attorneys appointed for parents should receive?

| Table 4: Suggested Training Areas for Attorneys for Parents⁹ | | |
|--|----------|---|
| General Training Area | # | Specific Training Areas Identified |
| Court process generally | 41 | governing state and federal laws state statutes general structure and operation of the dependency court; general court procedures determining reasonable efforts what constitutes best interests termination proceedings and requirements Indian Child Welfare Act issues non-adversarial alternatives |

⁹ Many court improvement specialists provided more than one response.

Training of Attorneys Appointed for Parents

| General Training Area | # | Specific Training Areas Identified |
|---|----------|--|
| Role of attorney for parents | 11 | role requirements (of court, agency, GAL, and attorney) responsibilities and accountability expectations minimum practice requirements |
| Child welfare system and social services | 8 | duties and role of agency staff structure of system |
| Child development | 7 | social and cognitive development understanding what is age appropriate behavior understanding what constitutes good parenting family dynamics |
| Dynamics of child abuse | 6 | impact on children and family importance of timely permanency Munchausen syndrome; shaken baby syndrome effects of drug and alcohol abuse; fetal alcohol syndrome |

Specific comments offered about what good training should entail included:

- training should focus on general practice issues as well as specific issues such as substance abuse;
- training should meet local needs rather than be a uniform statewide program that would fall short of addressing the needs of local cultures;
- extensive CLE credit should be offered making this work more attractive;

Training of Attorneys Appointed for Parents

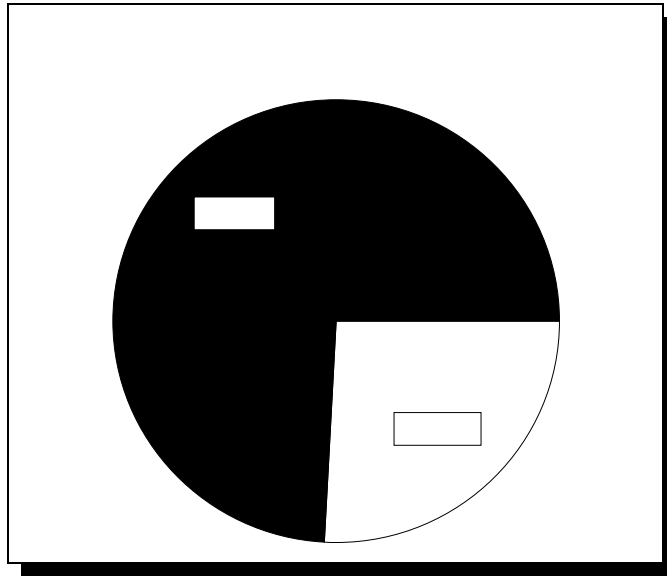
we need to work with law schools to attract good attorneys via internships to the field; and

training should focus more on child welfare generally, child development, attachment, good parenting, juvenile law and court procedure, and child protective services mandates.

Training should include non-legal areas such as family systems and child issues. This would give a better understanding of the dependency system and consequences for children and parents; the system would be less reactive as a result and more proactive. Cross-training involving social service agencies would also be advantageous it is important to see their perspective, what they have to deal with given their resources. There needs to be a system-wide picture.

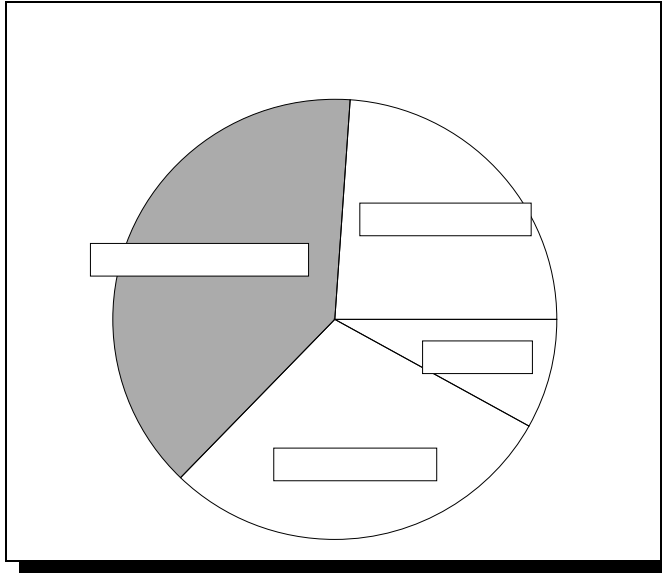
C. Duties and Responsibilities of Attorneys Appointed for Parents

Are duties of counsel for parents specified by rule or statute?



Although 13 specialists responded that the duties of attorneys appointed for parents were specified by rule or statute, it is worth noting that almost all of them indicated that duties are not as clearly or completely articulated as they should be. Many of the specialists in the 36 states that do not specify the duties of counsel for parents, indicated that the duties were outlined, or alluded to, in court standards, codes of ethics, or case law.

How proactive are attorneys for parents?



Specialists were also asked to give a general assessment of how proactive or involved attorneys appointed for parents are in the overall case process. Nineteen specialists (38%) rated counsel for parents as only somewhat proactive.

These individuals did note, however, that there is considerable variation among attorneys and around the state. Many of these specialists (12) believed that better training and higher rates of compensation would result in greater consistency among attorneys and better overall practice.

Although it varies considerably, attorneys are not as proactive as they could be; this is generally related to inadequate training and poor compensation.

Duties and Responsibilities of Attorneys Appointed for Parents

Of the 12 specialists (24%) who felt that attorneys for parents in their state were very proactive, two also noted that some attorneys might be too proactive resulting in an overly adversarial, and therefore longer, process.

The attorneys are willing to go into adjudication and argue, but in terms of doing research and understanding the dynamics of the family, they are not as proactively involved.

Fourteen specialists (28%) believed attorneys for parents are not at all proactive, and 4 specialists were unsure how to rate their attorneys due to considerable variation in the state.

Several reasons were offered for why attorneys for parents are not proactive:

poor practice

only see clients at the courthouse; most are meeting clients at the last minute; lack of preparation on part of attorneys for parents; show no initiative, they are very passive and more reactive than proactive

lack of financial incentives

they are paid by appearance in court, not compensated for out of court work, and are therefore not motivated to get more involved; they don't earn enough

Duties and Responsibilities of Attorneys Appointed for Parents

general attitudes surrounding dependency practice

certain attorneys believe that to do anything other than argue in court is not attorney work, but rather social work; it is not a glamorous role

selection procedures

they are just pulled out of the hall and tend not to be interested in the cases; they don't want to be on the hit list

Social service agency

a lot of the problem relates to DFS because everyone relies on getting information from DFS; DFS information is not given in timely ways or it is incomplete or inappropriate to the request

Certain attorneys believe that to do anything other than argue in court is not attorney work, but social work.

Many attorneys don't understand the process well enough to be proactive.

Two thirds of the specialists reported that attorneys appointed for parents are only somewhat or not at all proactive.

D. Compensation of Attorneys Appointed for Parents

Some states compensate attorneys appointed for parents at an hourly rate that may differ by whether the billed hours are spent in or out of court, or whether the case involves a termination of parental rights proceeding. Some states setting an hourly rate also set a cap on the maximum rate that can be billed. Other states have a flat fee system and two states treat these cases as pro bono work. It does not appear to be the case that those states with lower hourly rates are more rural states, or states with smaller populations. Rather, billing rates seem to be decided upon the basis of available funding. Many specialists also indicated that allowable rates vary around the state, resulting in perceived inequities and inconsistency.

Almost 3/4 of the court improvement specialists interviewed (35, or 70%) felt that attorneys for parents were not adequately compensated. Specialists recognized that the under-compensation of attorneys was an important issue, noting that low wages result in high turnover and a lack of commitment on the part of some attorneys.

Several specialists remarked that it is difficult to keep good, well-trained attorneys when the pay scale is so low. Many echoed the feeling that you get what you pay for. As one specialist noted, We need to be able to pay more in

Compensation of Attorneys Appointed for Parents

order to attract the best and brightest to this area of the law altruism is not enough. Tables 5 and 6 provide samples of hourly rates and flat fees.

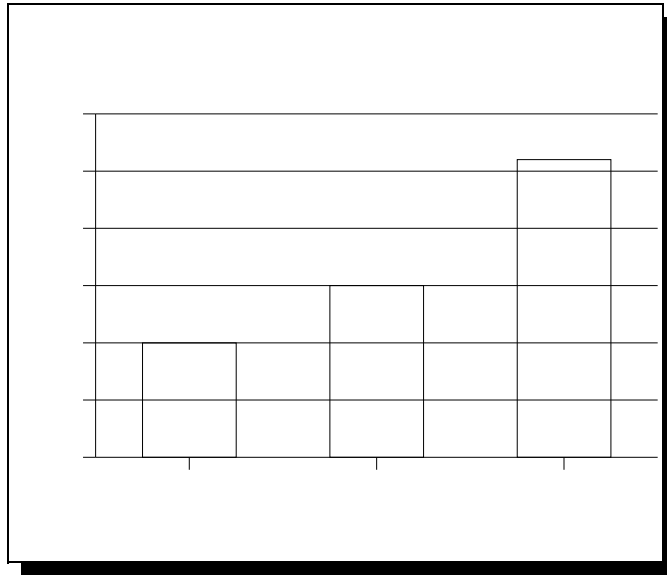
| Table 5: Sample of Hourly Rates |
|---|
| \$20/hour out of court; \$40/hour in court |
| smaller counties get \$20-\$30/hour; larger counties get somewhat higher |
| \$30/hour legislative cap |
| \$40/hour; \$40/hour or \$500/hearing |
| \$45/hour statewide, but it can be increased to \$60/hour with discretion |
| \$50/hour with a cap of \$600 |
| varies, but no lower than \$50-\$60/hour |
| \$55/hour |
| about \$75/hour, but varies around the state |
| \$80-\$90/hour |

| Table 6: Sample of Flat Fees/Per Case Fees |
|--|
| \$100 case |
| \$250 flat fee, but from TPR to adoption a flat fee of \$500 |
| if TPR case, then \$1,000 flat fee for filing of petition through termination; if case appealed then \$2,000 |

We need to be able to pay more in order to attract the best and brightest to this area of the law altruism is not enough.

Representation of Children

A review of state statutes found that 26 states provide for the appointment of both counsel and a GAL for children, 15 require that at least a GAL be appointed, and 10 specifically provide for the appointment of counsel for children.¹⁰



In order to obtain a picture of what occurs in practice, court improvement specialists were asked a series of questions pertaining to the representation of children that paralleled those asked about the representation of parents. Namely,

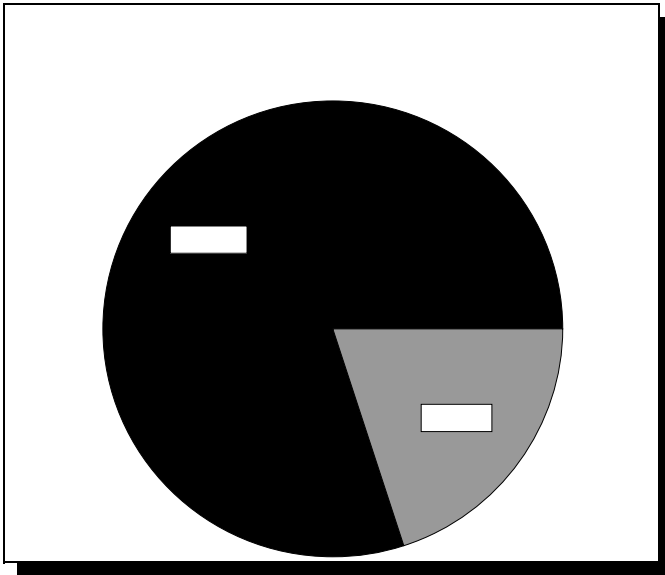
- whether or not children are represented by counsel;
- if represented, under what conditions and when;
- whether or not counsel for children receive adequate training;
- what are the duties and responsibilities of counsel for children; and
- whether or not compensation for counsel for children is adequate.

¹⁰ This reflects 50 states and the District of Columbia.

Appointment of Representatives for Children

A. Appointment of Representatives for Children

Is an attorney appointed for the child in child abuse and neglect cases?

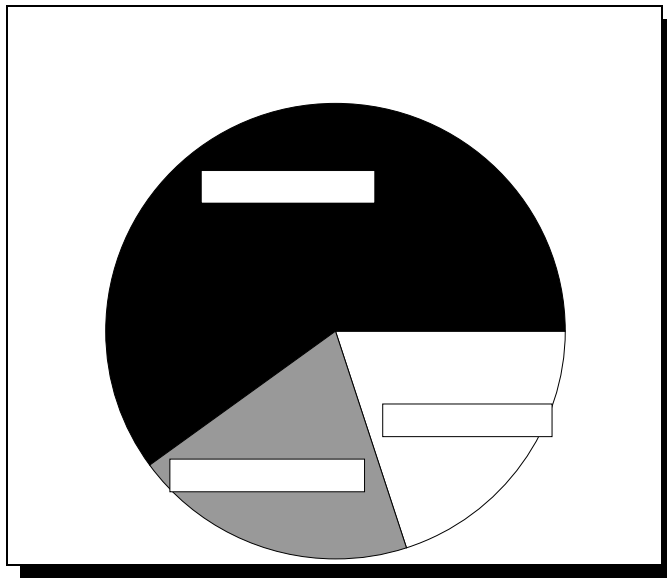


As with counsel for parents, interviews gave us a somewhat different picture of what is happening in practice under the various statutory provisions. Forty states (80%) appoint counsel for children in child abuse and neglect cases.

Of these 40 states, 30 specialists reported that an attorney-guardian ad litem (attorney/GAL) is typically appointed in child abuse and neglect cases. This individual serves a dual function of representing both the best interests of the child and the wishes of the child. In these states, therefore, appointed attorneys are both counsel for children and GALs. In the remaining 10 states that appoint counsel for children, a GAL is appointed in addition to the attorney; attorneys

Appointment of Representatives for Children

perform the single role of representing the child as a client. In the 10 states (20%) where specialists report that an attorney is usually *not* appointed for the child, nine appoint a non-attorney GAL for the child.

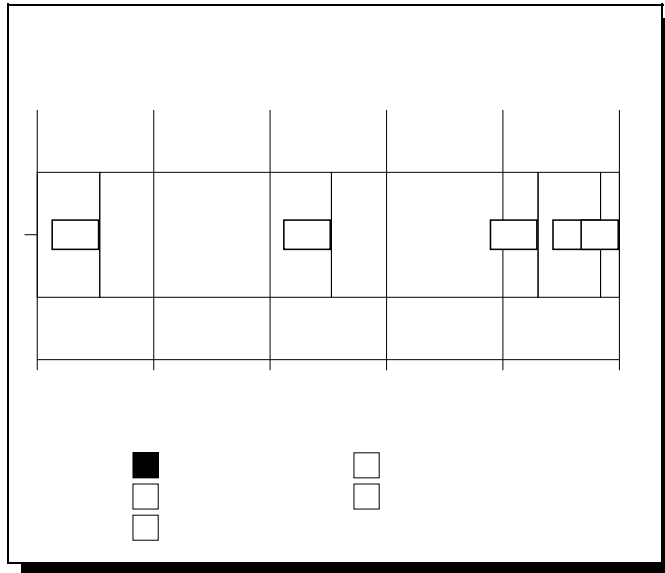


The majority of states appoint an attorney/GAL to represent the child and the child's best interests.

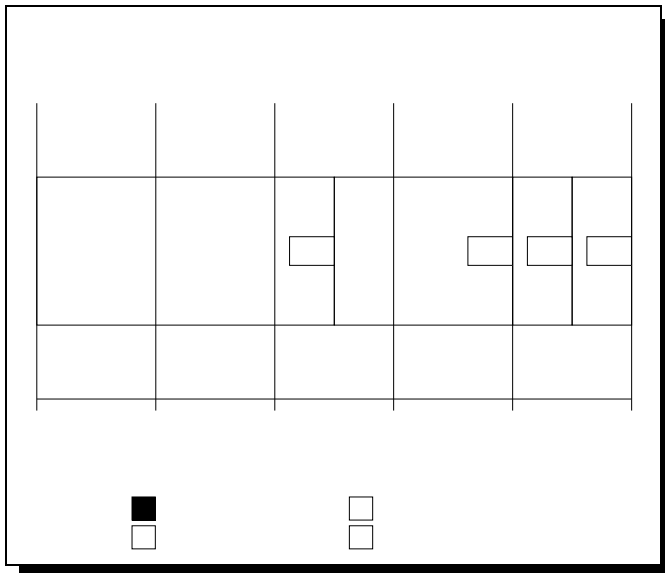
In the 30 states that appoint one person to serve as both an attorney and a GAL, most specialists reported that appointments are made at either the filing of the petition (11 states, or 37%) or the shelter hearing (10 states, or 33%). In three states (10%) appointment of the attorney/GAL usually occurs when the child is removed, and three states (10%) appoint an attorney/GAL at the adjudicatory

Appointment of Representatives for Children

hearing. Only one state specialist (3%) indicated that appointment of an attorney/GAL does not take place until the termination proceeding.¹¹ (See Chart 14).



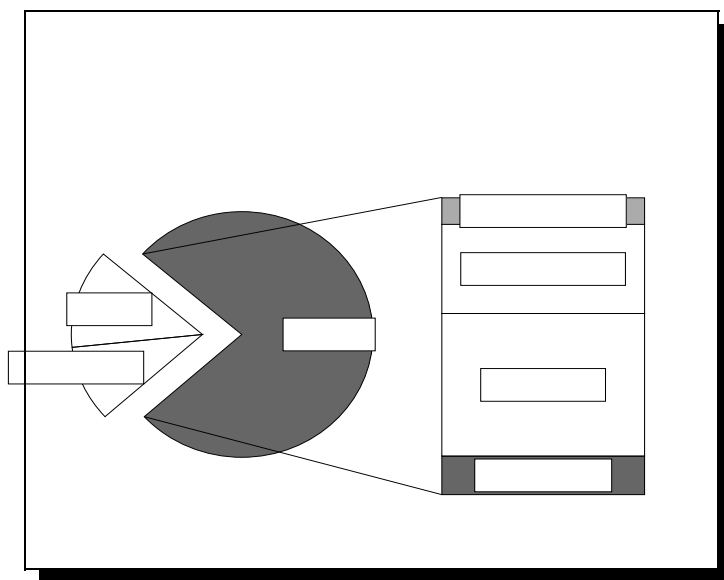
By comparison, of the 10 states that typically appoint both an attorney and a GAL, five specialists (50%) reported that both representatives are appointed at the filing of petition and three specialists (30%) reported that appointment occurs at the shelter hearing. (See Chart 15).



¹¹ Two specialists (7%) were unsure when appointment occurred in practice.

Appointment of Representatives for Children

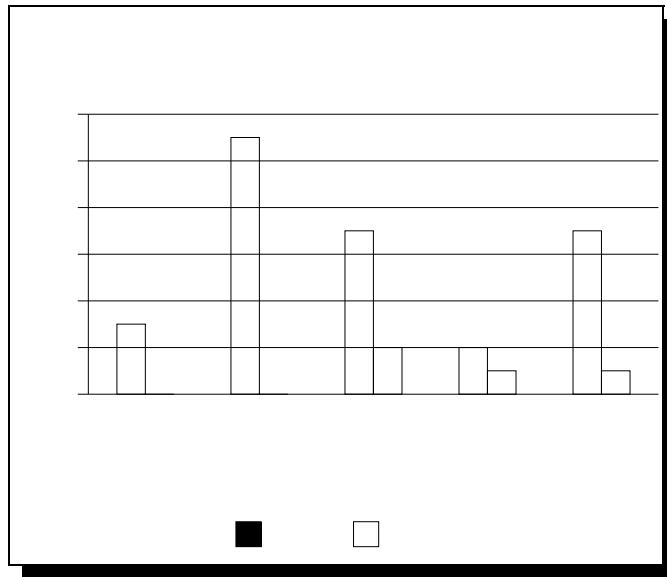
Specialists were asked if they thought the appointment of representation for children occurred early enough in the process. If they responded that it did not, they were asked to indicate when appointment should occur. In the 30 states that typically appoint a single individual as the attorney/GAL, the majority of specialists (23, or 77%) reported that appointment occurs at the right stage of the proceeding. In the majority of these states, an attorney/GAL is appointed at the filing of petition or before (14 states, or 61%).



Of the four specialists who responded that the appointment of an attorney/GAL did not occur early enough in the process, two were from states where appointment occurs at the shelter hearing, one was from a state where appointment occurs at the adjudicatory hearing, and in one case appointment occurs at the termination stage of the proceedings.

Appointment of Representatives for Children

As with the appointment of counsel for parents, specialists reported greater dissatisfaction with appointment times for children s representatives the later in the process they are appointed. Interestingly, however, there is a predominant satisfaction with the timing of appointment of children s representatives even if made in the late stages of the case. (See Chart 17).



When asked what stage would be a better time to appoint an attorney/GAL, two specialists believed removal would be a better time, and two believed the filing of petition would be more appropriate.

Table 7: Current vs. Preferred Time for Appointment of Counsel for Children

| Current time of appointment | Preferred time of appointment |
|-------------------------------|---|
| from shelter hearing (2) | to filing of petition (1) to removal (1) |
| from adjudicatory hearing (1) | to removal (1) |
| from TPR (1) | to filing of petition (1) |

Appointment of Representatives for Children

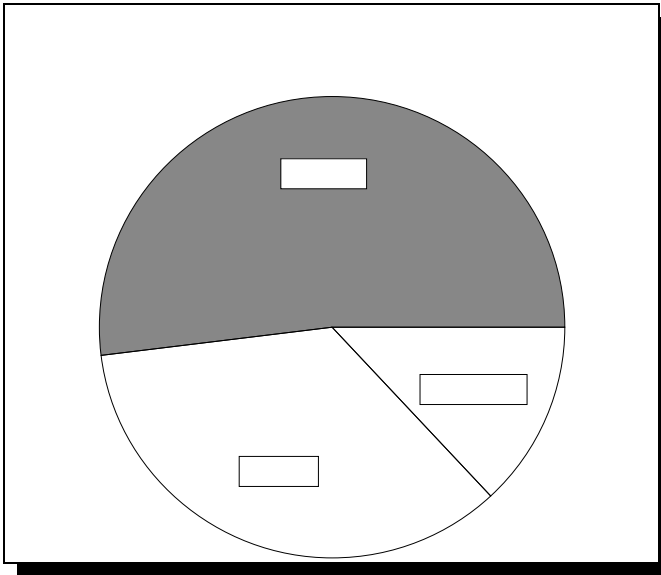
In the 10 states that provide both an attorney and a GAL, nine specialists believed that a representative was appointed early enough in the process, and one individual was not sure. Recall that in five of these states, the attorney and GAL are appointed at the filing of petition, in three states appointment occurs at the shelter hearing, and in one state appointment occurs at the adjudicatory hearing.

Those specialists who are dissatisfied with the current timing of appointment of counsel for children in their state, believe that appointment of counsel for children optimally occurs at removal or filing of petition.

In 10 states, an attorney is not appointed to represent the child; rather, the child is represented by a non-attorney/GAL. When these specialists were asked if they would like to see all children in their states be appointed an attorney, seven responded that while an attorney could be appointed under statute at the request of the party, in practice this just does not happen. One specialist commented that attorneys should be appointed for kids, even infants; parents attorneys protect parental rights, the agency is protected by an attorney, but what about the children? Currently in this state there is not enough advocacy for children; there should be.

B. Training of Attorneys & Attorney/GALs Appointed for Children

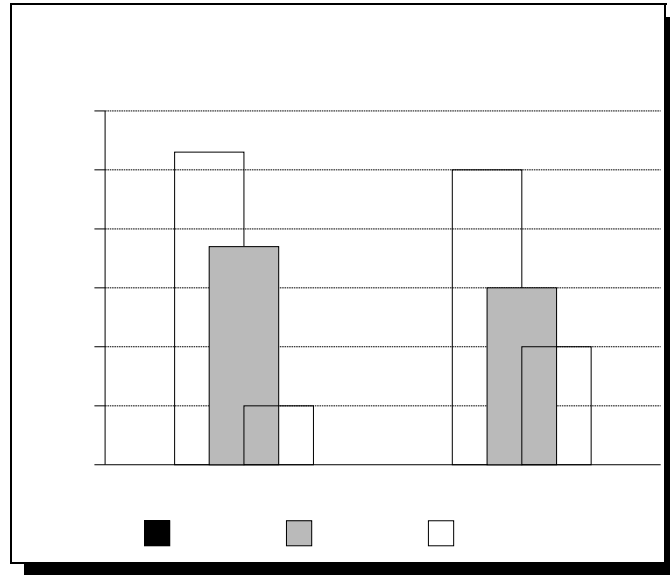
Are representatives appointed for children adequately qualified?



As illustrated in Chart 18, a narrow majority of specialists from the 40 states that appoint either an attorney or an attorney/GAL for children, believe that attorneys representing children are adequately qualified (21, or 52%).

Chart 19 (pg. 51) presents these responses according to whether a lawyer is appointed as attorney/GAL or as attorney for the child (i.e., GAL appointed separately). The ratings for the two groups are very similar, although individuals serving as both attorneys and GALs received a slightly higher qualification rating. Of the 16 specialists who found that attorney/GALs in their states were qualified, 14 noted that while qualified, additional training was still needed. One specialist remarked that although attorney/GALs are generally qualified, when these attorneys come from the pool of contract counsel they tend to be underqualified.

Training of Attorneys & Attorney/GALs Appointed for Children



When the 11 individuals who believed their attorney/GALs were not adequately qualified were asked to explain why, their comments included:

they don't know enough about child development and child psychology;

they are not doing what they are supposed to;

they are not meeting with clients until the last minute;

there is no rhyme nor reason to how one gets to be an attorney/GAL for children; and

a great many are too inexperienced and have too little training.

Of the 10 specialists from states where both an attorney and a GAL is typically appointed, half rated the attorneys as qualified. Of those, three specialists believed that attorneys appointed for children in their states are very well qualified and extremely knowledgeable. Again, one specialist noted that although counsel for children were qualified, more training was needed and another noted a particular problem with under-qualified contract counsel.

Training of Attorneys & Attorney/GALs Appointed for Children

Half of the states appointing separate attorneys and GALs for children found that attorneys are not adequately qualified. Comments included:

they are too inexperienced and don't have sufficient understanding of the law and the court process; they don't fully appreciate the requirements of the role due to inexperience and lack of knowledge; and they need more training on general practice, as well as on specific issues such as substance abuse.

Attorneys appointed for children are too inexperienced and don't have sufficient understanding of the law and court process; they do not fully appreciate the requirements of their role due to inexperience and lack of knowledge.

Contract attorneys are well organized in this state and ready to serve. The problem is that most jurisdictions use a public defender system hit list where the first available person is pulled from the hall.

What kind of additional training do attorneys appointed for children receive?

(I) States Appointing an Attorney/GAL (30 states)

Of the 30 specialists from states that appoint an attorney/GAL, 15 indicated that their attorneys receive only some additional training. In nine states, training available from the state bar association ranges from three hours of required CLE

Training of Attorneys & Attorney/GALs Appointed for Children

training per year to 12 hours of required CLE training. Descriptions of these CLE training courses varied. Three of the nine specialists noted that training covers children's issues and child development, two described courses as teaching the role of the court, and the remaining seven specialists each noted that training focuses on juvenile law, the role of the GAL, family dynamics, or cross-disciplinary training on child abuse and neglect. Five of the 15 specialists indicated that their attorney/GALs receive some required training from a specific GAL program. Three described this program as including education on juvenile law and child development. One specialist noted, however, that a judge can override the training requirement, and another specialist noted that while the special program is available, attendance requirements vary considerably around the state. One specialist commented that attorney/GALs receive some training from a combination of CLE credits and attendance at national conferences. When asked if this training was adequate in their opinion, seven of these 15 specialists responded that it was not adequate.

Ten specialists from states appointing an attorney/GAL for the child reported that their attorney/GALs received no additional training. Not surprisingly, all 10 specialists agreed this was inadequate.

Five specialists believed that attorney/GALs in their states received a great deal of training. Two of these specialists noted that attorney/GALs are required to have specialized training on statutes, court processes, duties, and child development. One specialist remarked that attorney/GALs are required to take a mandatory three-day intensive training on court process. This training covers all aspects of abuse and neglect, including training in psychological development and injuries, as well as domestic violence and divorce. Another one of these five states

Training of Attorneys & Attorney/GALs Appointed for Children

requires 12 hours of training about legal issues, and child development and needs. This training is provided through the state judicial college. In addition, one state has a training program that addresses reasonable efforts, appropriate interviewing techniques for children, legal issues, and child development. When asked if this training was adequate, all five specialists felt that the training was adequate.

Those specialists who believe current training practices are *adequate*, commented:

some additional training beyond CLE credit is available;
CLE training includes children's issues and cross-disciplinary court practice; and
CLE training specific to the attorney/GAL role is offered.

Those specialists who believe current training practices in their states are *inadequate*, made the following comments:

although contract attorneys receive training, most of the appointments come from the public defender's office where they're just the first person from the hit list who will have had no training;
training is too minimal;
training is not formal enough;
there is no special area qualification; and
judges can override the state training requirement, and often do in order to appoint someone.

(II) States Appointing a Separate Attorney and GAL (10 states)

Of the 10 specialists representing states that appoint a separate attorney and GAL

Training of Attorneys & Attorney/GALs Appointed for Children

for the child, five reported that their attorneys receive no additional training, three reported that their attorneys receive some training, and two report a great deal of training. Of the five reporting no additional training, four noted that optional CLE credits are available and one commented that a voluntary conference is held annually, and accompanying videos and research materials can be requested.

Of the three specialists who reported that their attorneys for children receive only some additional training, all noted that while training is available it is either not required or does not cover substantive issues. Comments included:

there is mandatory training on child abuse and neglect, but it is nothing substantive; there is nothing on the law and court practice for these cases;

there are 15 CLE credits available on family dynamics, the role of the court, the role of the attorney, and the role of the GAL, but it is not mandatory; and

training is available only on a limited basis and is not consistently offered; when it is offered, its primary focus is on the legal process.

All the specialists reporting that attorneys received either some or no additional training, rated that training as inadequate either because attendance at training sessions is not required or because the training itself is insufficient. This sentiment was expressed regardless of whether attorney/GALs are appointed or both counsel and GALs are appointed.

What kind of specific training do you think attorneys appointed for children should receive?

The training issues identified as being important for attorneys appointed for children are very similar to the training issues identified for parents attorneys. However, for children s attorneys the main focus shifts to child development and child psychology. (See Table 8, pg. 57).

Substantive training on family dynamics, child abuse and neglect, substance abuse, and child development is necessary. But, also important is an intensive focus on the law and court process, as well as the duties, requirements, and responsibilities of representatives for children. Good training addresses all of these issues.

Training should address specific needs of children of different races, cultures, and ages.

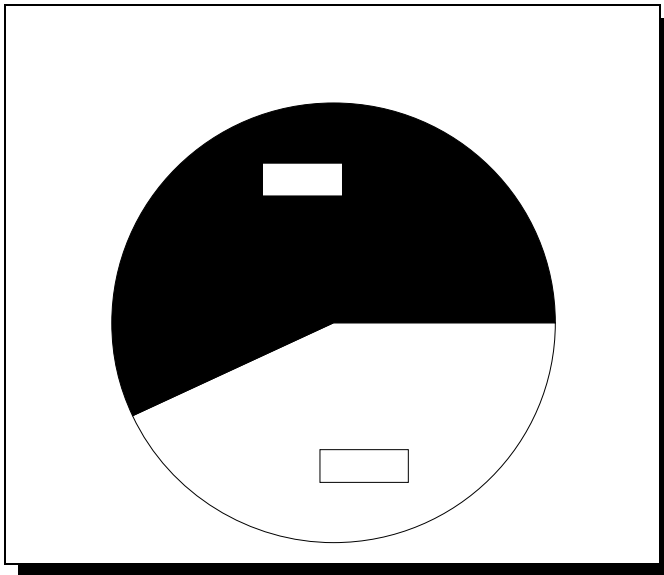
Modified cross-training with more legal emphasis should serve to elevate the status of these attorneys and attract better qualified and motivated individuals.

Training of Attorneys & Attorney/GALs Appointed for Children

| Table 8: Training Areas for Counsel for Children | | |
|---|----------|---|
| General Training Area | # | Specific Training Areas Identified |
| Child development and child psychology | 20 | child development, generally specific needs re: ages, sex, cultures, and race/ethnicity what constitutes appropriate psycho- social development mental health issues impact of maltreatment and abuse on child Munchausen syndrome recantation effects of substance abuse in home; fetal alcohol syndrome |
| Court process | 15 | court practice and procedures law, statutes, and case law trial management techniques what constitutes best interests what constitutes reasonable efforts termination of parental rights, procedures expectations of social service agencies |
| Role requirements | 10 | clarification of role, duties, expectations how to interview children effectively refocus on child |
| Cross-disciplinary training | 3 | including all parties (agency, court, attorneys, GALs) both legal and child issues |
| Native American children | 2 | ICWA concerns |

C. Duties and Responsibilities of Attorneys Appointed for Children

Are duties of attorneys appointed for children specified by rule or statute?



As shown in Chart 20, over half of the specialists interviewed reported that the duties and responsibilities of attorneys appointed for children are not specified by rule or statute. As was the case with counsel for parents, almost all of the specialists whose statutes or rules

address the duties and responsibilities of attorneys for children indicated that duties are not as clearly or completely articulated as they should be.

What is the role of the attorney for the child?

When asked what the role of the attorney is for the child, 10 specialists (25% of states using attorneys as representatives) indicated that this is a hotly contested issue

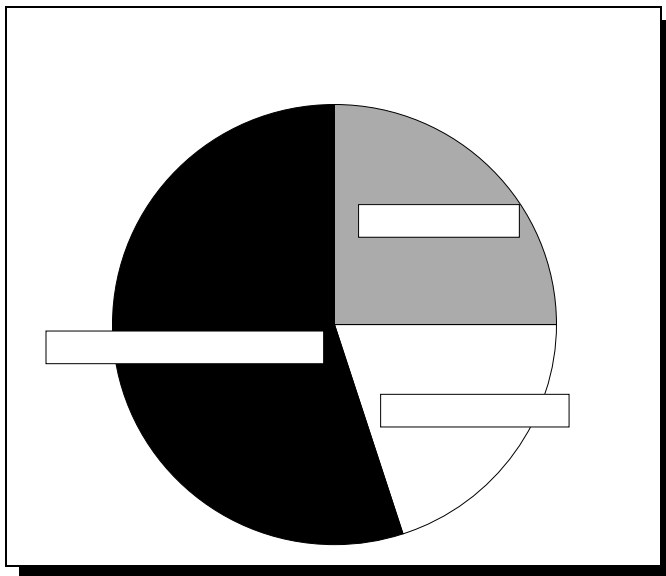
The role of the attorney is to represent the best interest of the child exclusively. However, wants versus best interests is a practice issue with conflict arising and confusion ensuing.

Duties and Responsibilities of Attorneys Appointed for Children

in their state and, in some cases, role requirements are perceived to be contradictory and confusing. Role confusion was mentioned by 27% of specialists in states appointing attorneys/GALs and 20% of specialists in states appointing attorneys separately from GALs.

The boundaries are blurred. Are attorneys serving as counsel or as a GAL? This is a problem in this state. By statute they are supposed to represent the best interests of the child, but they are counsel who are to advocate for the child s wishes. There is conflict in practice over whether they are counsel, GAL, or both.

None of the specialists in states where only a non-attorney GAL is appointed indicated that there was confusion over the nature of the non-attorney representative s role. This suggests that role confusion is inherent in the role of counsel, whether identified as attorney/GAL or simply as attorney for the child.



As depicted in Chart 21, in 10 (25%) of the states which involve attorneys in the representation of children, specialists believe that the role of the attorney appointed for the child is characterized as representing the best interests of the child. However, over half of the

specialists (22, or 55%) describe the role of the attorney in their states as

Duties and Responsibilities of Attorneys Appointed for Children

balancing the child's best interests with the child's wishes.

Examples of comments expressing a focus on balancing best interests with the child's wishes include:

to represent the best interests of the child unless the child is old enough, at which point the attorney's job is to represent the child's wishes; and
the attorney must balance best interests with the wishes of the child.

Eight or 20% of specialists (seven from attorney/GAL states and one from an attorney and GAL state) indicated that the role of the attorney appointed for the child was more specifically related to legal procedures and requirements.

Examples of comments expressing a focus on the legal aspects of the role include:

to provide advice on the legal aspects of the case;
to make sure that court procedures are being properly carried out in a timely manner;
to present to the court the best procedural position;
to advocate for the child by attending all court hearings, staffings, and reviews;
to get the needed information, do the legwork, and to make recommendations to the court about the best interests of the child; and
to ensure that all statutory requirements are followed.

Duties and Responsibilities of Attorneys Appointed for Children

Recall that more than half of the specialists interviewed (55%) indicated that the role of the attorney for the child involves balancing the best interests of the child and the child's wishes if the child is old enough. Ten specialists further noted that it is precisely this balancing act which results in confusion over what constitutes the appropriate role for the attorney appointed for the child. For example:

there is a great deal of confusion about the role [of the attorney for the child] ... the attorney is supposed to represent the child's wishes, but, because it is a child, the attorney must also represent the child's best interests; there needs to be legislative clarification on this issue;

this is an area of great debate and confusion; the problem lies in what the attorney considers the best interests of the child and what the child thinks are his/her best interests; and

by statute the attorney is supposed to represent the interests of the child exclusively. However, wants versus best interests becomes a practice issue with conflict arising and confusion ensuing.

Not surprisingly, most of these comments were directed to the conflict between representing best interests or the child-client's wishes. This conflict seems to arise whether attorneys are appointed as attorney for the child *or* as attorney/GAL.

Concern over role confusion does not necessarily appear related to the attorney's qualifications. Six of the 10 specialists indicating that there was confusion believe that attorneys are appropriately qualified. Four of the 10 specialists, however, feel that attorneys appointed for children in their state are inadequately

Duties and Responsibilities of Attorneys Appointed for Children

qualified.

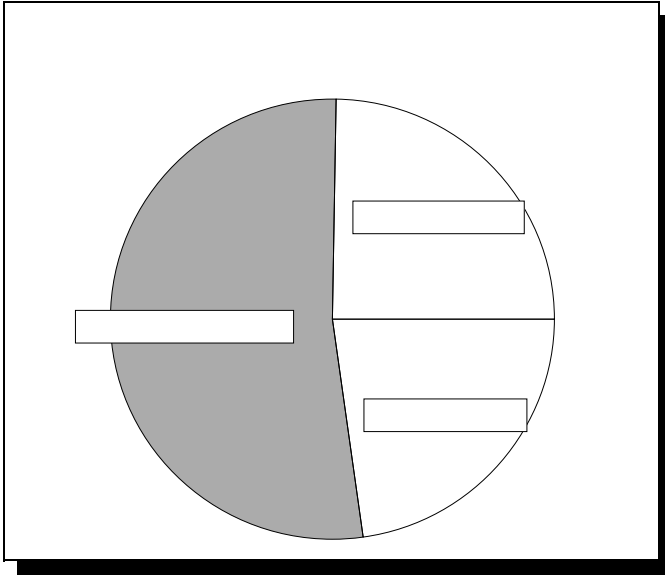
Although inadequate qualifications might not be directly implicated in role confusion, when examined in conjunction with specialists' evaluations of training for attorneys appointed for children, concern about confusion over dual roles appears related to the *extent and quality of training available*. In no circumstance, for example, is a state providing a great deal of training associated with concerns over the appropriate duties, responsibilities, and expectations of the attorney's role as a child's representative. Rather, five specialists from states providing no training and five specialists from states providing only some training report that attorneys for children experience difficulty balancing the best interests of the child with the child's wishes (27% of states appointing attorney/GALs; 20% of states appointing a separate attorney and GAL). All 10 of these specialists also stated that the available training for attorneys appointed for children in their state was inadequate. Comments include:

better training would clarify confusion over the attorney's role;
training needs to fully articulate the appropriate role for the
attorney; and
training schemes should clarify the attorney's role; is it best
interests or wishes?

Inadequate qualifications, therefore, do not appear to be the primary reason for perceptions of role confusion among attorneys appointed for children. Rather, confusion about the appropriate role for attorneys for children seems to be closely associated with inadequate training. In all cases where concern was expressed, training was either deficient in amount and/or in substantive issues covered.

**Role confusion exists due to
inexperience and lack of training.**

How proactive are attorneys for children?



Specialists were also asked to give a general assessment of how proactive or involved attorneys appointed for children are in the overall case process (See Chart 22). Although specialists indicated that there is considerable variability across their states, ten

specialists (25%) evaluated counsel for parents as generally very proactive (six attorney/GALs; four attorney and GAL). These individuals describe attorneys for children as very involved and committed, and doing a great job. One specialist remarked that attorney/GALs were almost too proactive resulting in an environment that was too adversarial. This specialist suggested that perhaps attorneys do not fully understand the differences between an attorney's role and an attorney's role when appointed as an attorney/GAL.

Attorneys for children need to be encouraged to be more proactive.

Of the 40 specialists from states using attorneys as representatives for children, 21 (53%) specialists report that attorneys are only somewhat proactive (18 attorney/GALs; 3 attorney and GAL). These attorneys are described as only mediocre and spending minimal time with clients. Nine of the 21 specialists

Duties and Responsibilities of Attorneys Appointed for Children

indicating that attorneys representing children are only somewhat proactive suggest that improved training and reduced caseloads would increase levels of involvement.

The level of mediocrity in attorneys for children is of concern.

Nine specialists (23% of the 40 states using attorneys) believe that attorneys appointed for children are not at all proactive (6 attorney/GALs; 3 attorney and GAL). A number of reasons for this lack of involvement were given. Examples of comments include:

lack of experience and training

don't get involved because they lack experience and knowledge necessary; passive and reactive due to confusion over role and lack of training

large caseloads

are far too over-worked to get involved; caseloads are too high to really get behind each case; budget constraints result in too few appointments which leads to large caseloads which prevents full involvement

poor practice

don't meet clients until the last minute; are generally unprepared

D. Compensation of Attorneys Appointed for Children

When specialists in the 40 states that appoint an attorney for the child (whether in the dual role of attorney/GAL or as a separate attorney) were asked to evaluate the level of compensation for attorneys appointed for children, almost 3/4 of the specialists believed that attorneys for children are under-compensated. This is consistent with how compensation for attorneys appointed for parents was rated and the comments given were very similar.

Compensation for attorneys appointed for children is too low. We need to provide financial incentives to get experienced people. More experienced people would stay longer so there would be less turnover.

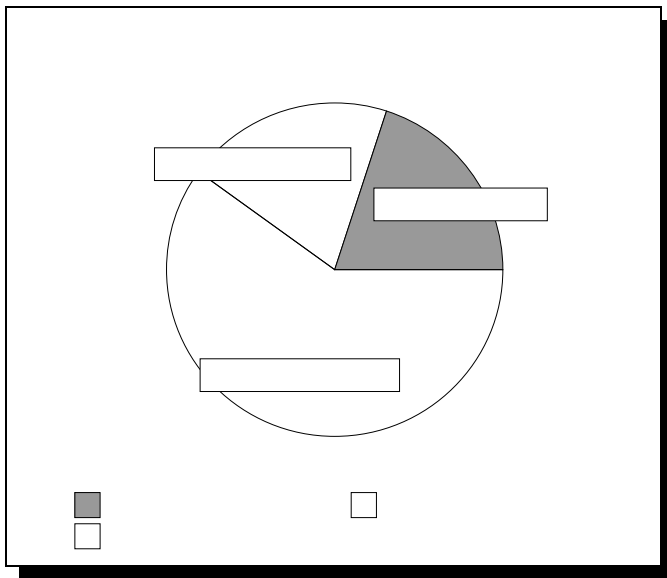
3/4 of the court improvement specialists found that both attorneys for parents and attorneys for children are under-compensated. In both cases, specialists recognize that under-compensation often results in less qualified and committed individuals and higher turnover.

Of the eight specialists believing that compensation for attorneys appointed for children is adequate, one noted that attorneys get paid \$72/hour and another noted that attorneys for children get public defenders salary and contract counsel receive the same. Three specialists were unsure how to judge the adequacy of compensation for attorneys appointed for children.

E. Appointment of Guardians ad Litem for Children

Thirty-seven state statutes (of the 50 states and the District of Columbia) require that a GAL be appointed in every case. Fourteen of those statutes fulfill this requirement by providing for the appointment of an attorney/GAL and 23 statutes provide for the appointment of a non-attorney GAL. Of the remaining 14 state statutes, 11 statutes provide that a GAL may be appointed and three do not specify provisions for GAL appointment for the child.

Is a guardian ad litem appointed for the child?

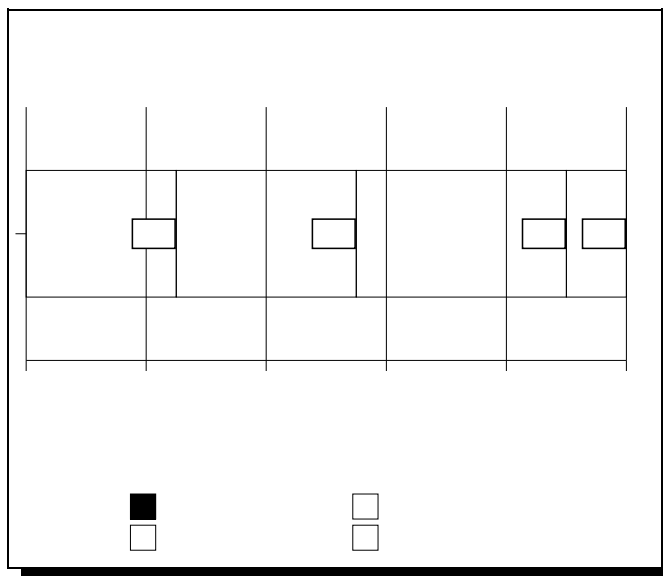


As previously mentioned, 10 state specialists (20%), reported that their states typically appoint a GAL in addition to counsel for children. According to specialists in these states, GALs may either be drawn from the office of the public guardian (or state equivalent) or from the

pool of available CASA volunteers. The separate appointment of counsel for children occurs in these states even if the GAL appointee is also an attorney. Another 10 specialists (20%) noted that their states typically appoint a non-attorney GAL for children. These GALs serve as sole representatives for the children, as attorneys for children are rarely appointed. This GAL could be a

Appointment of Guardians ad Litem for Children

social worker or a CASA volunteer. While attorneys may be appointed as GALs if specifically requested or if the case is highly contested, specialists in this group do not typically see attorneys appointed as GALs in practice. Rather, a non-attorney alternative is appointed, often because

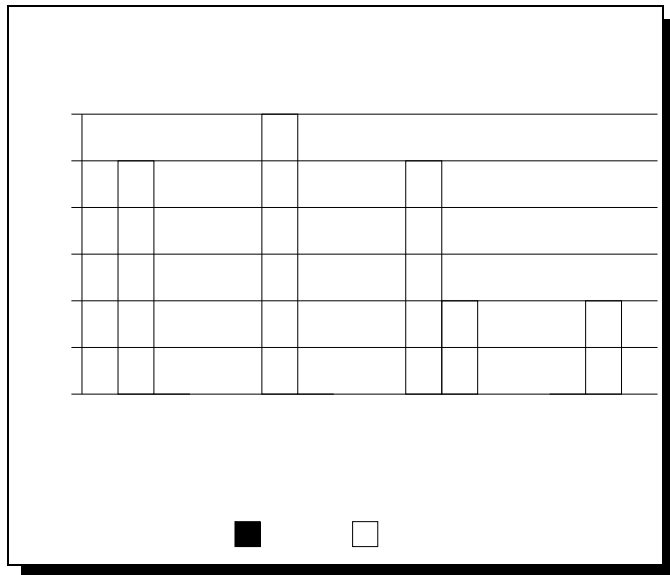
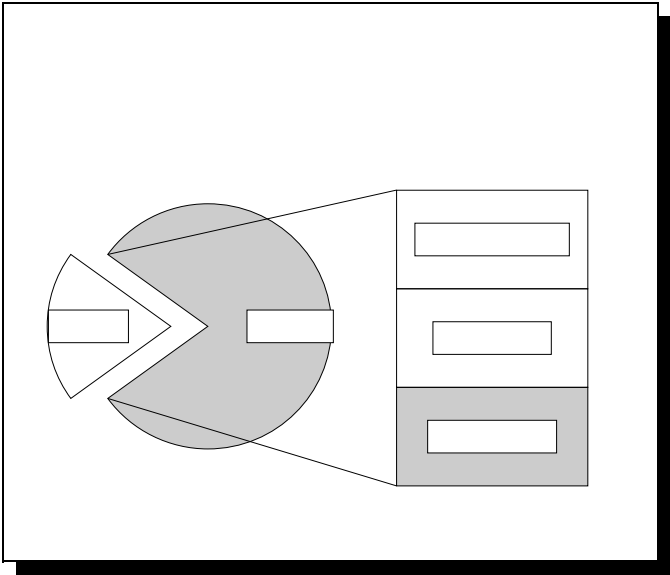


of a lack of available attorneys, as seven specialists note, or because of the cost associated with an attorney appointment, as three specialists indicate.

Of the 20 specialists indicating that an individually-designated GAL is appointed for children (whether non-attorney GAL only or GAL in addition to counsel), seven specialists (35%) reported that appointment occurs at or prior to the first hearing. The practice in five of the states (25%) is to appoint counsel when the child is removed, in six of these 20 states (30%) appointment typically occurs at the filing of petition. The remainder of the 20 states (2, or 10%) reporting that a GAL is appointed, noted that appointment is usually made at the adjudicatory hearing. (See Chart 24).

Court improvement specialists were also asked if they thought that appointment of GALs for children in their respective states occurred early enough in the process. All of the specialists noted that appointment of a GAL is extremely variable, occurring early in many cases but not in others. Despite this variability,

Appointment of Guardians ad Litem for Children



specialists were asked to consider whether, on the whole, appointments occur early enough in case proceedings. As shown in Chart 25, most (16, or 80%) of the 20 specialists from states in this group believe that the appointment of GALs occurs early enough in the process. All of the specialists whose states typically appoint an attorney and a GAL felt that appointment occurred early enough in the process. In six states appointment of a GAL generally occurs at the same time as the attorney s appointment and in four states the GAL s

appointment occurs before an attorney is appointed. Four specialists, however, believe that the GAL s appointment could occur earlier. Of these specialists, two were from state that typically appoint counsel at the adjudicatory hearing. The remaining two specialists were from states appointing a GAL for the child at the

shelter hearing.

Chart 26 presents this same information a little differently. As illustrated, all of the specialists who report that a GAL is appointed for children *prior* to the shelter care hearing believe that a GAL is appointed at the appropriate time. However, when a GAL is appointed at the shelter care hearing or later, the specialists reported less satisfaction with the timing of appointment.

When specialists responded that appointment of a GAL did not occur early enough in the process, they were asked when in the proceedings appointment should be made. Of the four specialists, three suggested that the appointment should occur at the filing of petition, and one suggested that appointment should occur as early as when the child is initially removed from the home. Table 9 breaks down preferred times for appointment of a GAL according to when appointment is currently made.

| Table 9: Current vs. Preferred Appointment Time for GAL for Children | |
|--|---|
| Current time of appointment | Preferred time of appointment |
| from shelter hearing (2) | to filing of petition (1) to removal (1) |
| from adjudicatory hearing (2) | to filing of petition (2) |

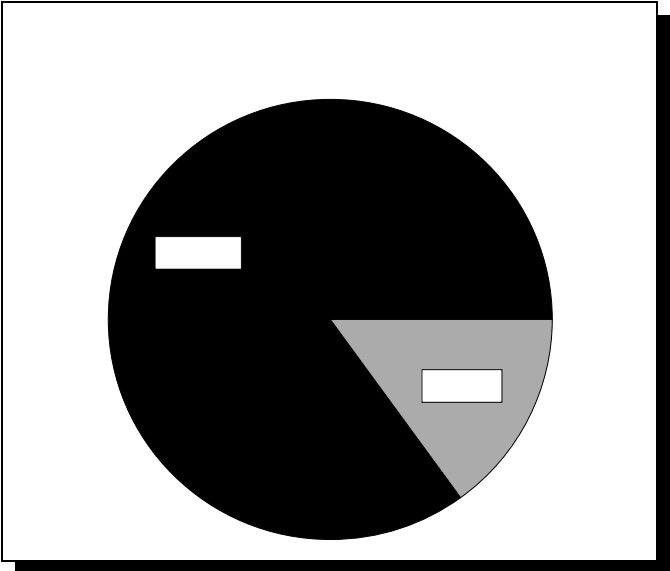
Conversations with specialists further explored possible reasons why appointment of a GAL is not occurring at the most appropriate or optimal time. All four of the specialists indicating dissatisfaction with the appointment time explained that a lack of available GALs in their jurisdictions, due to high caseloads, resulted in a delay in appointment to cases.

Appointment of Guardians ad Litem for Children

Most specialists believe that GAL appointment for children occurs early enough in the process, especially if appointment occurs at filing of petition or before.

F. Training of GALs Appointed for Children

Are GALs appointed for children adequately qualified?



Overall, the majority of specialists from the 20 states that individually appoint either a GAL and an attorney or a non-attorney GAL, reported that GALs are adequately qualified (17, or 85%).

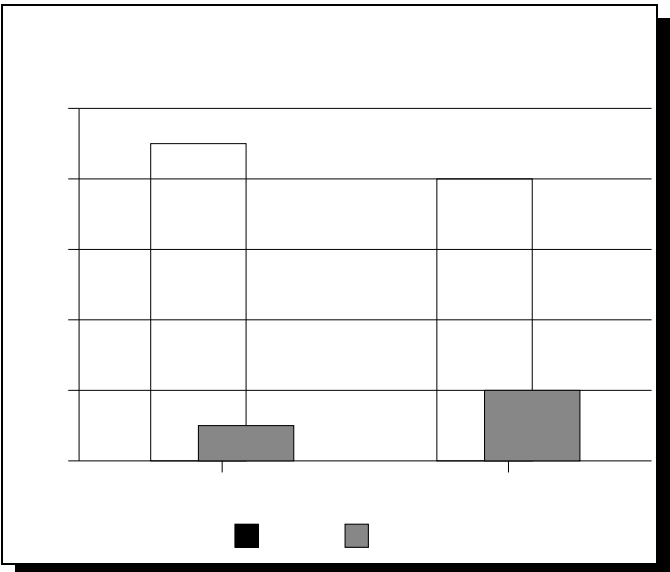


Chart 28 presents these responses according to whether a GAL is appointed in addition to an attorney or whether a non-attorney GAL alone is appointed. The ratings for the two groups are very similar.

Of the 17 specialists who believe that GALs are qualified, 13 noted that

Training of GALs Appointed for Children

although qualified, additional training is needed. This opinion was almost the same regardless of whether a GAL was appointed in addition to an attorney (seven specialists from this group expressed this view) or a non-attorney GAL alone was appointed (six specialists from this group expressed this view). Specific problems seem to be related to poor knowledge of the court process in these cases and a lack of understanding about the GAL role. For example:

GALs don't receive enough training in legal procedures to be really qualified for what they have to do;
they certainly could benefit from more legal training;
their lack of legal training probably underqualifies them for their job, or at the very least a better understanding of the law and court procedures would enable them to be more assertive and fully involved in the process; and
they could really use some additional training, especially with respect to their role and responsibilities.

Not surprisingly, of the three specialists who reported that GALs for children are typically not qualified, all believe that GALs receive inadequate training. Specifically, these specialists reported that GALs receive inadequate training in legal procedures and the court process in child abuse and neglect cases.

GALs don't understand the court process, the procedures involved at each stage and what is expected of them

What kind of additional training do GALs appointed for children receive?

(I) States appointing an attorney and a GAL (10 states)

Of the 10 specialists from states that appoint both an attorney and a GAL, four indicated that GALs in their states receive only some training. In these states, training is based on the National CASA Association curriculum and includes training on children's issues and child development, as well as the role of the court and the role of the GAL. When asked if they felt this training was adequate, only one of the specialists believed that the training currently provided GALs was adequate.

The remaining six specialists from states that typically appoint an attorney and a GAL reported that GALs in their states receive a great deal of training. This training, which is based on National CASA Association guidelines, was described as extensive, comprehensive, and first-rate, and as covering children's issues as well as court practice. One specialist also described GAL training as involving direct supervision and mentoring by experienced GALs. Another specialist further described this training as involving ongoing internal training on statutes and court process, in addition to the CASA curriculum including child development and psychology, and the role and responsibilities of the GAL. Another specialist described GAL training as very good and build[ing] real commitment and involvement by providing a solid knowledge base. All of these specialists agreed that the great deal of training offered GALs is adequate.

Training of GALs Appointed for Children

Those specialists that believe current training practices are *adequate*, commented:

training is adequate, but GALs could use more communication and facilitation training; and

GALs need additional training about the influence and operation of gender and economic biases on decision-making.

Those specialists that believe current training practices are *inadequate*, commented:

GALs need substantially more training on the legal aspects of child abuse and neglect cases; and

GALs need to have a better understanding of their role and duties, as well as what the agency and court do; GALs' current training is deficient in this area.

(II) States Appointing a non-attorney GAL (10 states)

Of the 10 specialists representing states that typically appoint a non-attorney GAL as sole representative for the child, seven reported that GALs receive some training. This training was described by all of these specialists as based on the National CASA Association curriculum. One specialist added that depending on the jurisdiction, some GAL training is offered by the office of the public guardian in that state.

When asked whether they felt this training was adequate, four specialists rated the GAL training in their state as inadequate. Two of these specialists stated that GAL training does not provide enough background in effective advocacy. One specialist added that GALs do not receive enough training in legal perspectives, and another specialist reported that GALs need more training about child

development issues and family systems. Three specialists in states typically appointing a non-attorney GAL believe that GALs receive a great deal of training in their states, and that this training is adequate. This training was described as incorporating the National CASA Association curriculum with in-depth coverage of children's issues and court practice.

What kind of specific training do you think GALs appointed for children should receive?

Recall that important training areas for children's attorneys identified by specialists were, in order of frequency of mention: child development and child psychology; court process; role requirements; cross-disciplinary training; and issues pertaining to Native American children. For individually appointed GALs, similar training areas appear to be important, but court process is considered to be a slightly more important training issue.

| Table 10: Training Areas for GALs for Children | | |
|--|---|--|
| General Training Area | # | Specific Training Areas Identified |
| Court process | 8 | effective advocacy basic legal training legal perspective and court work statutes and case law court practice and procedures |
| Child development and child psychology | 5 | child development, both social and emotional child psychology children's needs |
| Role requirements | 3 | clarification of role, duties, expectations how to interview children effectively |

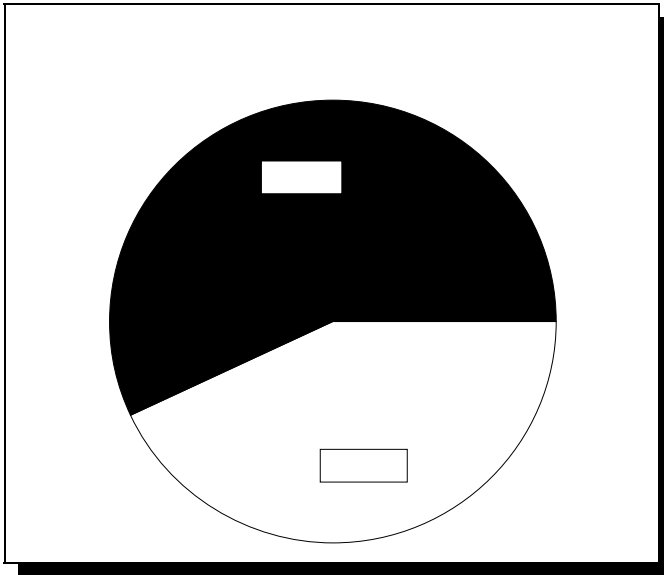
Training of GALs Appointed for Children

| General Training Area | # | Specific Training Areas Identified |
|------------------------------|----------|---|
| Communication | 2 | communication and facilitation training collaboration techniques |
| Biases | 2 | awareness of gender and economic biases |

Specialists report that GALs appointed for children need a better understanding of the legal aspects and court processes associated with child abuse and neglect cases.

G. Duties and Responsibilities of GALs Appointed for Children

Are duties of GALs appointed for children specified by rule or statute?



Not surprisingly, the same number of states that specify duties and responsibilities of attorneys for children in rule or statute, also specify the duties and responsibilities of GALs. Again, this represents less than half of the jurisdictions.

What is the role of the GAL for the child?

When asked what the role of the GAL is in their state, 12 (60%) of the 20 specialists from states that appoint either a non-attorney GAL (10 states) or both a GAL and an attorney (10 states), indicated that the GAL's role is to represent the child's best interests. Eight of these specialists are from states that appoint both a GAL and an attorney, and four specialists are from states that appoint a non-attorney GAL as sole representative for the child. The remaining eight specialists

Duties and Responsibilities of GALs Appointed for Children

view the GALs' role as providing an independent assessment of the case and making recommendations to the court based on that assessment. Six of these specialists are from states that typically appoint a non-attorney GAL for the child, and two are from states using a GAL and attorney appointment procedure.

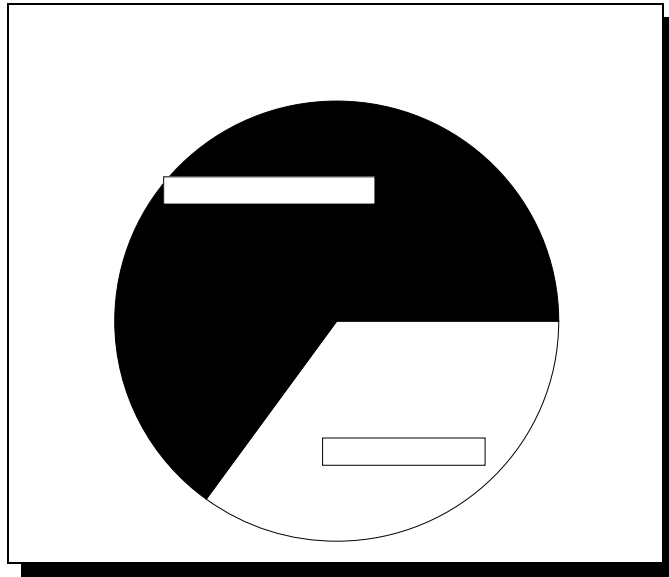
Unlike discussions about attorneys for children, none of the 20 specialists in this group believed that GALs in their state experience role confusion. Although specialists indicated that GALs would benefit from additional training with respect to their role, suggestions were more specifically directed toward improving GALs' liaison with courts and social service agencies. As one specialist noted; GALs' communication with the court and agency staff would improve significantly if court and agency expectations for the GAL were more clearly articulated. Another specialist concurred, stating that recommendations made by GALs would carry more weight if they had a better understanding of what was required of them.

The role of the GAL is to investigate allegations, speak to all parties, write a formal report to the court, and make recommendations based on the best interests of the child.

The role of the GAL is to provide best interests representation, to keep the court informed, and to provide the court with independent assessment and recommendations.

The role of the GAL is to serve as the independent eyes and ears of the court.

How proactive are GALs for children?



Specialists were also asked to give a general assessment of how proactive or involved GALs appointed for children are in the overall case process. Although specialists indicated that there is considerable variability across their states, particularly between rural and urban areas, 13 specialists (65%) considered GALs on the whole to be somewhat proactive (six from the 10 states appointing only non-attorney GALs and seven from the 10 states appointing attorneys and GALs). Although three specialists noted that GALs were more involved than attorneys, they believe that GALs could do better, and were only moderately or adequately involved in cases. As one specialist remarked: GALs are only moderately involved in a child's case. They receive information but don't proactively participate. Each of these specialists felt that improved training in the law and procedures would enable GALs to become proactive participants in the process.

Duties and Responsibilities of GALs Appointed for Children

The remaining specialists (seven, or 35%) believe that GALs are very proactive. Very proactive GALs were described as committed, fully involved, and as sometimes the most proactive party in a case. One specialist felt that GALs are full participants and are truly the eyes and ears of the court. Another specialist indicated that GALs get right in there, spend a lot of time, and put in a lot of effort. However, one specialist cautioned that GALs can become too proactive and overly involved and that distancing is a real problem with GALs in that state. Another specialist remarked that although GALs in rural counties are very involved, metro counties experience too much turnover, with one GAL appointed for a specific court date and someone different by the next hearing; this results in an inability to be fully involved in the case. For this specialist, GAL involvement is not the problem per se, but rather the lack of consistency of GAL appointment to a case.

GALs would be more proactive if they understood the law better.

Overall, GALs are somewhat involved; those who are very involved have an enormous impact.

H. Compensation for Guardians ad Litem Appointed for Children

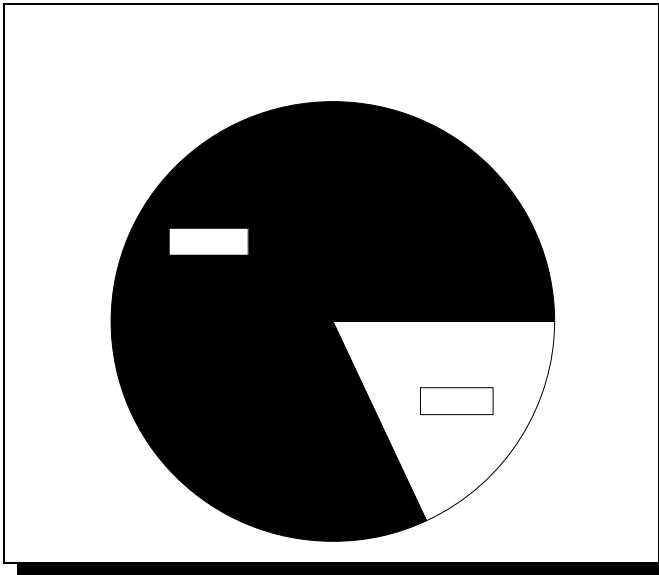
Most specialists indicated that GAL compensation was adequate. Nine specialists described GALs as uncompensated volunteers (seven specialists from states appointing an attorney and a GAL and two specialists from non-attorney GAL states), although in these situations GALs are often reimbursed for mileage and incidentals. One specialist indicated that non-compensation helps individuals feel more committed and more independent, and ensures an uninfluenced look at the case.

Six specialists (two from attorney/GAL states and four from non-attorney GAL states) reported that GALs are under-compensated in their opinion. One specialist believes that this creates a problem with professionalism. Another specialist noted that GALs are under-compensated because the cost of support staff for GALs is extremely expensive making additional compensation prohibitive.

Court Appointed Special Advocates

Court appointed special advocates (CASAs) are trained citizen volunteers who are appointed by the court to speak up for the best interests of abused and neglected children. CASAs review records, research information, and talk to everyone involved in the child's case. They also make recommendations to the court as to what is best for the child and they monitor the case until it is resolved. In some jurisdictions, CASAs are appointed in addition to GALs, and in other jurisdictions CASAs are appointed in the place of GALs. Often the decision to appoint a CASA is based upon their availability, funding, and resources.

Does your state use court appointed special advocates (CASAs)?



While 28 states include a provision for the appointment of CASAs in statute, 23 state statutes do not specify provisions for CASAs.¹² In practice, however, 41 state specialists (82%) reported that CASAs are appointed for children in their states, although this appointment

is often limited to certain jurisdictions and by judicial discretion. Only nine of the specialists reported that CASA appointments are not used in their states. When

¹² Again, this refers to 50 states and the District of Columbia

asked to describe the nature of the training that CASAs receive, all 41 specialists reporting the use of CASA noted that their states' training is based on the National CASA Association curriculum guidelines.

A variety of CASA training and organizational program structures were described:

- statewide CASA conferences;
- statewide CASA programs;
- local CASA programs attached to the court;
- local CASA programs not attached to the court; and
- CASA programs affiliated with hospitals.

Training topics included:

- legal process;
- court practice;
- child development and child psychology;
- family systems;
- social service resources; and
- role and responsibilities.

Approximately half of the specialists (19) believe CASA training is adequate in their states. Nevertheless, two changes to current training schemes consistently suggested by these individuals were additional coverage of court process and basic legal training.

Eleven specialists consider CASA training to be very good in their states. CASA

Court Appointed Special Advocates

training was described as very strong, excellent, and providing a great knowledge base. Indeed, a number of specialists indicated that all parties in child abuse and neglect cases would benefit from CASA training.

Nine specialists, however, indicated that CASA training in their states is lacking or inadequate. Representative comments:

CASAs need to be more aggressive and independent; effective training should make them more proactive; and
CASAs need more training in legal issues and procedures.

Specialists also identified some advantages and disadvantages to the assignment of CASAs in child abuse and neglect cases. See Table 12 for an overview.

| Table 12: Advantages and Disadvantages of CASA | |
|--|--|
| Advantages of CASA | Disadvantages of CASA |
| ensures child does not get lost in system; provides a voice for the child allows for an independent assessment more people, more options for children, more perspectives, more alternatives for the judge; more people to keep an eye on DFS | need to be more aggressive and more independent; need to serve more as an information source for the court there is a concern that they may drop out of the program halfway through, leading to inconsistencies attorney-GALs do a better job than CASA, therefore do not use CASA |

Despite some perceived disadvantages associated with the use of CASAs, the vast majority of specialists who reported that CASAs were used on a limited basis in their states also mentioned that CASA should be expanded and used statewide.

Court Appointed Special Advocates

Conclusion: What Have We Learned?

This *Technical Assistance Bulletin* has addressed many issues pertaining to the representation of parents and children, and has provided a great deal of information about the strengths, weaknesses, problems, and challenges encountered by individuals across the nation as they strive to ensure adequate representation of all parties.

Representation issues are among the primary concerns for court improvement projects across the country. Representation was identified as a problematic aspect of overall case processing by the majority of interviewees. When asked to specifically rate training of representatives of parents and children, specialists provided average ratings within the very problematic range for both the training of parents and children's representatives.

What are the components of effective representation?

What constitutes effective representation of parents is not always clearly defined. However, specialists agree that attorneys for parents must competently and diligently represent their clients throughout the processing of the case. Most specialists felt that ideally appointment of counsel for parents should occur at or before the first hearing. And, in order for attorneys for parents to competently and diligently represent their clients, attorneys must be adequately trained in all of the substantive areas necessary for good representation, and receive appropriate levels of compensation.

**Counsel for Parents
Components of Effective Representation**

*Early appointment of counsel,
preferably at or before the first
hearing*

*Required training that covers
substantive issues relating to:*

- (1) the court process;*
- (2) the role of the attorney;*
- (3) the child welfare system
and social services;*
- (4) the principles of child
development; and*
- (5) the dynamics of child
abuse*

Proactive representation

Appropriate levels of compensation

Not surprisingly, the components of effective practice of counsel for parents are generally reflected in the components of effective practice for representatives for children. As with counsel for parents, effective representation requires early appointment of a representative. Most specialists felt that a representative for the child should be appointed either at the time the child is removed from the home, or at filing of petition. All of the specialists agreed that a representative, whether an attorney or non-attorney GAL, should be appointed for the child in every case. Specialists rated attorney/GALs, attorneys, and individually-specified GALs as adequately qualified for the most part, but in need of additional training to ensure effective representation. Specifically, specialists believed that extensive training in substantive issues should be required of any attorney or GAL who represents

Conclusion: What Have We Learned?

children, and that *proactive* representation was critical. Consistent with their feelings regarding compensation for counsel for parents, the majority of specialists believed that representatives for children should also be better compensated.

**Representation of Children
Components of Effective Representation**

*Early appointment of a
representative, preferably at
removal or at filing of petition*

*Required training that covers
substantive issues relating to:*

*(1) child development and
child psychology;
(2) court processes;
(3) role requirements of
representatives; and
(4) Native American
children*

Proactive representation

Appropriate levels of compensation

A primary area of concern for specialists is the apparent role confusion associated with counsel for children, regardless of whether the attorney serves solely as an attorney or as an attorney/GAL. This role confusion reflects the tension between representing the child's best interests on the one hand and the child-client's wishes on the other, and appears to be related more to inadequate training than to the dual function of attorney/GALs. This suggests that in states where attorneys serve a dual attorney/GAL role, reform should be focused on ensuring that the

Conclusion: What Have We Learned?

attorney/GAL is properly trained. In fact, proper training on the roles, duties, expectations, and responsibilities of representatives for children appears critical for any attorney appointed for the child, whether serving a dual function or not.

For individually-specified GALs, whether appointed alone or with an attorney, a consistently raised concern was lack of legal knowledge and understanding of court process. Policy leaders in states where non-attorney/GALs are appointed as *sole* representatives for children may wish to consider the implications of this practice for legal advocacy on behalf of children and/or their best interests in child abuse and neglect cases.

What are the barriers to effective representation?

| |
|---|
| <p>Barriers to Effective Representation (in order of frequency)</p> <p>lack of adequate training;</p> <p>lack of financial incentives;</p> <p>general attitudes surrounding dependency practice; and</p> <p>poorly defined roles and duties.</p> |
|---|

The number one barrier to effective representation is inadequate training.

Conclusion: What Have We Learned?

Recall that the majority of court improvement specialists consider the training of representatives for parents and children to be very problematic in their states. In almost all states, attorneys for parents and children currently receive only some additional training or none at all. Moreover, even when additional training was provided, most specialists rated it as inadequate either because attendance at training sessions was not required or because the training itself was inadequate. Implicit in the identification of inadequate training as a major barrier to effective practice, is the recognition that roles, duties, and expectations of representatives are not clearly defined this is especially true for children s representatives.

A second major barrier to effective representation identified by court improvement specialists was inadequate compensation. Recall that nearly 3/4 of specialists interviewed believed that attorneys for parents and attorneys for children are under-compensated. As discussed, compensation rates and billing varies considerably both within and among states. Specialists relate poor compensation rates to high turnover and a general lack of commitment on the part of attorneys. It is understandable that attorneys who are poorly compensated for their time and efforts simply cannot afford to invest large amounts of time and energy to the case. Clearly, systems which rely on pro bono representation compound the potential problems.

The general attitude that serving as counsel in dependency cases is a non-glamorous role, was identified by a number of specialists as a significant barrier to effective practice. These specialists argued that such an attitude undermines the legitimacy of the attorney and often discourages more experienced and better qualified attorneys from becoming involved in dependency cases. Such an attitude may be a consequence of inadequate training and poor compensation,

Conclusion: What Have We Learned?

both of which give the perception that serving as counsel in dependency cases is a low status role. Without doubt, the combination of such an attitude, inadequate training, and poor compensation together constitute a significant barrier to effective representation. Also closely related to inadequate training and poor compensation are the poor selection procedures, such as just pulling anyone out of the hall, sometimes utilized by the court.

Underlying specialists' comments about barriers to effective representation, are perceptions that the roles and duties of representatives in child abuse and neglect cases need clarification. Clearly defining roles and duties would reveal the high level of skill and knowledge needed in order to effectively represent parties. This would, in turn, serve to elevate the status associated with the position, drive efforts to improve training, and justify better compensation.

Primary areas to focus on for reform

| |
|---|
| <p>Areas for Reform (in order of frequency)</p> <p>training;</p> <p>compensation;</p> <p>perceived status of counsel in dependency cases; and</p> <p>selection procedures.</p> |
|---|

Conclusion: What Have We Learned?

The primary focus of reform efforts should be on training. A focus on training, in turn, will positively influence compensation, status, and selection procedures.

(I) Training of representatives

States are using a variety of strategies to improve the quality and scope of training, to ensure wide-spread attendance at and participation in training sessions, and to encourage compliance with minimum training requirements.

Training in substantive areas

As discussed, specialists identified a number of substantive areas critical to ensuring effective representation of parents and children. Although most of the training areas identified were common to both representatives for parents and children, there was a shift in the relative importance of each area (See Table 13).

| Attorneys for Parents | Attorneys for Children |
|---|---|
| Court process generally | Child development and child psychology |
| Role of attorneys for parents | Court process generally |
| Child welfare and social services | Role requirements |
| Child development and the dynamics of child abuse | Issues pertaining to Native American children |

Strategies to improve training of representatives

Strategies to Improve Training

develop multidisciplinary training

increase the scope of CLE training courses and enforce compliance

work with law schools to develop courses on family law

develop on-the-job training opportunities

legislate minimum training requirements

Development of multidisciplinary collaborative training was identified as a critical training goal.

Multidisciplinary training

Many states are focusing their efforts on multidisciplinary training that brings together judges, attorneys, agency personnel, foster parents, and others with the goal of communication and information exchange, role clarification, and skills development. The primary purposes of such collaborative efforts are to facilitate understanding and relationship-building among system players, to facilitate ongoing communication, and to facilitate a stronger commitment to timely case processing at all levels and at all points in the process.

Conclusion: What Have We Learned?

One specialist noted, for example, that a state court improvement goal is to develop common training and practice materials for attorneys, CASAs, social workers, and law enforcement officers so that they are all using the same script. Such a script, argued the specialist, would have seven components:

- (1) a good flowchart of procedures;
- (2) a detailed outline of the duties and responsibilities required for each procedure;
- (3) common forms to be used by everyone, from law enforcement officers to the judge;
- (4) a checklist that is more help than harm for example, things to do at the temporary custody hearing, options for placement, how to assess imminent danger, and how to make reasonable efforts determinations;
- (5) time standards and deadlines;
- (6) a list of resource materials; and
- (7) cross-disciplinary training.

The guiding principle of training, according to this specialist, should be to make this stuff simple and easy to use and everyone will use it.

Improved CLE training

Many specialists indicated that although CLE training in the area of child abuse/dependency was available in their states, the training either did not cover a wide enough range of substantive areas, or attendance was not required. In their efforts to improve CLE training, many states are attempting to broaden the scope of the issues covered.

Conclusion: What Have We Learned?

As the majority of specialists indicated, good CLE training should focus on:

- the law and court process;
- the role of the representative;
- issues pertaining to child development, child psychology, and family dynamics; and
- the interface between the court and social services.

A number of specialists indicated that their states are working with their state bar associations to help enforce compliance. One specialist suggested that the state bar associations should hold individuals in compliance and disqualify anyone who does not comply with training requirements.

Work with law schools to develop courses on juvenile and family law

A number of states are working closely with local law schools to develop courses in juvenile and family law. For example, in one state, court improvement specialists and law school faculty are trying to develop first year evening classes on youth and the court. Ideally, once the course has been completed, law students in this state would be assigned to the GAL system for a practicum and would develop a mentoring relationship with a practicing attorney. Many specialists believed that incorporating juvenile and family law more fully into law school curricula would not only ensure better training in the law, but would also perhaps increase the number of individuals who want to practice in this area.

Develop on-the-job training opportunities

Several states are considering implementing on-the-job training. Such training would enable an attorney new to dependency cases to work alongside someone with greater experience and to more actively learn the duties and responsibilities

Conclusion: What Have We Learned?

associated with this area of practice. Specialists cautioned, however, that on-the-job training alone is not enough. Rather, effective on-the-job training should follow some basic training procedures and pains should be taken to ensure that those individuals serving as mentors are well qualified, have the appropriate experience, and are recognized as effective representatives.

Legislate minimum training requirements

Several states are attempting to institute changes in required training standards through legislative initiatives.

In its publication, *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*, the NCJFCJ also sets forth some general training areas (see following page). The recommendations of the NCFJCJ are consistent with the training recommendations offered by court improvement specialists.

Attorneys should 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 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.

Reprinted with permission of the publisher. *Resource Guidelines*, pg. 23.

(II) Compensation

The vast majority of court improvement specialists recognized poor compensation of all representatives as a significant barrier to the kind of intensive, involved representation that is acknowledged as effective. Many states are currently investigating possible funding sources for increasing payment scales or payment rates. Availability of funds for any effort has historically been tied to perceived importance and necessity. This issue will not be resolved without

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attention to clearly defined roles and responsibilities, qualification to serve, and related matters.

(III) Perceived status of counsel in dependency cases

Quite a number of specialists commented on the low status afforded attorneys who practice in dependency cases as a barrier to effective practice. These specialists believed that as a consequence of low status, the best and brightest are not attracted to dependency law. Most of these specialists felt, however, that the status ascribed to counsel would increase as a function of increased training requirements, clearly defined roles and responsibilities, and better compensation. Better training and better compensation would, they argued, associate this area of law with a higher status and a more specialized attorney role. As a consequence of having a more important and specialized function, these specialists suggested that attorneys would become more committed to, and interested in, dependency cases, and find this challenging area of law more rewarding.

(IV) Selection procedures

As discussed, specialists were very critical of current selection practices which often amount to nothing more than pulling the first available person out of the hall to represent parties. As with status concerns, selection procedures would be indirectly improved through better training requirements and increased compensation. If there are minimum training requirements then selection procedures will have to reflect these minimum requirements. And, if better compensation and higher status is associated with dependency cases, more qualified and experienced attorneys will be attracted to this area of law thereby increasing the pool of well-qualified attorneys. In attempting to address problems

due to poor selection procedures, some states are attempting to build lists that reflect individuals' training and experience.

Accountability

While not listed by specialists as a separate issue related to effective representation, underlying all of the representation issues discussed are issues of accountability. When individuals are appropriately trained and have clearly defined roles, expectations, and duties, for example, they can be held accountable for effective representation practice. Appropriate selection procedures that ensure appointment of adequately prepared representatives also increase accountability for effective practice. Specialists stressed that judicial oversight of representation in these cases is essential to ensure effective practice. Judicial oversight of representation practice is facilitated when roles, duties, and expectations of representatives are fully and clearly articulated.

To facilitate effective representation, appointment of counsel must occur early in the process; required training must address substantive issues such as court process, role requirements and duties of representatives, the child welfare system and social services, principles of child development, and the dynamics of child abuse; representation must be proactive; and counsel must be appropriately compensated.

The barriers to effective representation are: (1) a lack of adequate training; (2) a lack of financial incentives; (3) attitudes surrounding dependency practice; and (4) poorly

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defined roles and duties.

Reform efforts should focus on (1) improving required training; (2) increasing compensation levels; (3) elevating the perceived status of counsel in dependency cases; and (4) improving selection procedures.

Strategies for improving training include: (1) developing multidisciplinary, collaborative training; (2) increasing the scope of CLE training and enforcing compliance; (3) working with law schools to develop courses on family law; (4) developing on-the-job training opportunities; and (5) legislating minimum training requirements.

Judicial oversight is a critical component of effective representation. Accountability must be built into the process.

**Appendix A:
The National Research Project**

The National Research Project

The National Research Project entailed three components:

- (1) an analysis of existing state statutes with special attention to mandated time frames for events;
- (2) a mail-out questionnaire examining day-to-day practice with respect to statutory requirements; and
- (3) a lengthy telephone interview focusing on effective court practice, improvement goals, representation, and training issues, as well as future goals of court improvement projects.

The purpose of the research is:

to identify effective court practice for the processing of child abuse and neglect cases;

to provide state and national reports on:

- statutory requirements and mandated time frames;
- day-to-day practice within each state;
- perceived effectiveness of state statutes;
- suggestions for improvements to statutes and practice;
- detailed descriptions of events and procedures;
- the nature of representation for children and parents;

Appendix A: The National Research Project

training issues; and

unique approaches to case processing and permanency.

Results of the statute analysis recently appeared in the *Juvenile and Family Court Journal*, and can also be reviewed in the December 1997 NCJFCJ publication entitled: *A National Summary of State Child Abuse and Neglect Statutes*.¹³

(I) The statutory analysis

Over the course of a 12-month period, NCJFCJ researchers reviewed all state statutes pertaining to the processing of child abuse and neglect cases. In this review, particular attention was paid to mandated deadlines and time frames. For example, deadlines for filing of the petition, various necessary hearings, filing of reports, and court reviews were noted. Attention was also paid to reasonable efforts to prevent removal of a child and representation of parents and children. For each state, researchers reviewed the relevant information and compiled a summary state matrix. This matrix was then sent to court improvement specialists in each state who were asked to review the summary and note any incorrect or misrepresented information. Once all revisions were incorporated,

¹³

For more information about these publications and others, including the *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases*, please contact the Technical Assistance Group at the Permanency Planning for Children Project, National Council of Juvenile and Family Court Judges: Telephone (702) 327-5300; Fax: (702) 327-5306; tadesk@pppncjfcj.org.

Appendix A: The National Research Project

the state matrices then underwent a final review by a project attorney. The *Technical Assistance Bulletin: A National Analysis of State Statutes*, presents data highlights of the statutory analysis in both graphic and narrative form. Data is presented in such a way as to allow for comparison between the states. Also included in the Bulletin, is a master matrix comparing states on mandated time frames and a summary matrix for each state (Appendices A and B).

(II) State statutes in everyday practice: The mail-out questionnaire

The mail-out questionnaire was semi-structured in nature, and included both open-ended and close-ended questions. Questions were designed to elicit assessments about the effectiveness of each state's child abuse and neglect statutes, as well as judgments on how well statutes translate into everyday practice. The judgments were to be based upon the data and experience obtained from the just-completed court improvement studies undertaken by each jurisdiction, including a review of statutes and actual practice. Specialists were asked to respond to the questions with their states' current statutes in mind, and to note pending legislation at the end of the questionnaire. After interviews were completed, responses were transcribed by the interviewer. A code book was constructed and interview responses were coded for comparative purposes.

Appendix A: The National Research Project

Questionnaire Categories of Information

| | |
|---|---|
| <p>Evaluation of current state statutes</p> | <p>Assessment of thoroughness of statutory requirements in addressing key practice issues Assessment of how closely statutory time frames are adhered to in practice Identification of primary problems associated with statutes Identification of effective or helpful statutes</p> |
| <p>Evaluation of the use of continuances on mandated time frames</p> | <p>Assessment of the frequency of continuances Identification of conditions under which continuances are granted</p> |
| <p>Nature of proposed legislative changes</p> | <p>Listing of proposed legislative changes</p> |

(III) The telephone interview

Court improvement specialists participated in a 1 to 1.5-hour telephone interview with project researchers. Interviews were standardized, and included both close-ended and open-ended questions. The interview was designed to gather detailed information about practice issues in each state, as well as information about each state's court improvement goals and efforts to achieve these goals.

General categories of information:

- impressions of overall case processing;
- state court improvement project;
- ratings of specific problem areas;
- time management and case flow;
- role of the judiciary;

Appendix A: The National Research Project

reasonable efforts;
permanency planning;
quality and timeliness of hearings;
representation of parents and children;
Interstate Compact on the Placement of Children;
Indian Child Welfare Act; and
unique approaches, unique strengths.

Specialists based their assessments on data obtained from the just-completed court improvement studies undertaken by each state. At the end of the interview, specialists were asked to forward any relevant reports, including court improvement reports, to supplement interview responses. Upon completion of the interview, responses were transcribed by the interviewer and coded empirically.

Appendix B: Research Participants

Court improvement specialists in 49 states and the District of Columbia participated in the national research effort. These specialists were chosen for their ability to discuss their states' statutes and day-to-day practices in child abuse and neglect cases. In all cases, the participants have been involved in court improvement efforts over the past several years. Their responses, therefore, were informed by data gathered over the course of statewide court improvement assessments.

Forty-two of the participants were court improvement specialists associated with the Administrative Office of the Court in their respective states, while six individuals were associated solely with the Court Assessment Project as either a manager or director. Five of the participants were family court judges, one court improvement specialist was associated with a Foster Care Review Board, and one was part of an Adoption Task Force.¹⁴

Participants had an average of 9 years experience in the area of

¹⁴

Two states preferred to include more than one specialist in the telephone interview phase of the research. These interviews were conducted on the same date and at the same time via a conference call. Thus, a total of 55 specialists, representing 49 states and the District of Columbia, participated in the research.

child abuse and neglect and dependency, with years of experience ranging from 1 year to 31 years.

Most frequently identified areas of particular interest for these participants:

improving data collection and case management systems (10);¹⁵

education and training for judges and attorneys (9);

representation of children (5);

improving the relationship between courts and social service agencies (4);

mediation and non-adversarial alternatives to dispute resolution (4);

best interests of children (3);

breaking the pattern -- breaking the link to delinquency (3); and concurrent planning (3).

¹⁵

The bracketed number indicates the number of specialists providing this response.

**Appendix C:
Sample Statutes**

In their efforts to address the duties and roles of representatives in child abuse and neglect cases, most states have focused on delineating the duties of guardians ad litem in statute, and have not provided a clear statutory articulation of the role and duties of attorneys appointed to represent parents and children. This lack of attention to the attorney role may reflect an assumption that the duties of attorneys are implicitly understood and reflected in professional rules and codes of conduct. This research has shown, however, that the attorney role in child abuse and neglect cases is qualitatively different than the more general attorney role: issues about safety and permanency for children override strict party advocacy; and, representation of both best interests and child s wishes can prove challenging. In addition, good practice demands facility with substantive law, knowledge of the child protection system, and child development/family dynamics. This suggests that the quality of attorney representation would benefit from clear statutory guidance regarding the nature of the attorney role and the duties of attorneys in these types of cases, whether appointed for parents or children.

This Appendix provides four examples of state statutes that articulate the roles and duties of guardian ad litem and CASAs. These statutes are highlighted for illustrative purposes and are not meant to represent all statutes.

Appendix C

§7A-586 Appointment and duties of guardian ad litem

(a) When in a petition a juvenile is alleged to be abused or neglected, the judge shall appoint a guardian ad litem to represent the juvenile. ... The appointment shall terminate at the end of two years. Upon motion of any party including the guardian ad litem, or upon the judge's own motion, the guardian ad litem may be reappointed upon a showing of good cause. In every case where a nonattorney is appointed as guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the child's legal rights through the dispositional phase of the proceedings, and after disposition when necessary to further the best interests of the child. The duties of the guardian ad litem program shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and the community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; to explore options with the judge at the dispositional hearing; and to protect and promote

the best interest of the juvenile until formally relieved of the responsibility by the judge.

(b) The judge may order the Department of Social Services or the guardian ad litem to conduct follow-up investigations to insure that the orders of the court are being properly executed and to report to the court when the needs of the juvenile are not being met. The judge may also authorize the guardian ad litem to accompany the juvenile to court in any criminal action wherein he may be called on to testify in a matter relating to abuse.

(c) The judge may grant the guardian ad litem the authority to demand any information or reports whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case. ... The confidentiality of the information or reports shall be respected by the guardian ad litem and no disclosure of any information or reports shall be made to anyone except by order of the judge or unless otherwise provided by law.

General Statutes, North Carolina, 1997, § 7A-586

**39.465 Right to counsel;
guardian ad litem**

(2)(a) The court shall appoint a guardian ad litem to represent the child in any termination of parental rights proceedings and shall ascertain at each stage of the proceedings whether a guardian ad litem has been appointed.

(b) The guardian ad litem has the following responsibilities:

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.

(c) A guardian ad litem is not required to post bond but shall file an acceptance of the office.

(d) A guardian ad litem is entitled to receive service of pleadings and papers provided by the Florida Rules of Juvenile Procedure.

**Florida Statutes Annotated
(1998) §39.465**

16-1631. Guardian ad litem -- Duties.

Subject to the direction of the court, the guardian ad litem shall have the following duties which shall continue until resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever first occurs:

- (a) To conduct an independent factual investigation of the circumstances of the child including, without limitation, the circumstances described in the petition.
- (b) To file with the court a written report stating the results of the investigation, the guardian ad litem's recommendations and such other information as the court may require. The guardian ad litem's written report shall be delivered to the court, with copies to all parties to the case at least five (5) days before the date set for the adjudicatory hearing. The report shall not be admitted into evidence at the adjudicatory hearing, and shall be used by the court only for disposition if the child is found to be within the purview of the act.
- (c) To act as an advocate for the child for whom appointed at each stage of proceedings under this

chapter and is charged with the general representation of the child.

To that end, the guardian ad litem shall participate fully in the proceedings and to the degree necessary to adequately represent the child, and shall be entitled to confer with the child, and the child's siblings and parents.

(d) To facilitate and negotiate to insure that the court, the department, if applicable, and the child's attorney, if any, fulfill their obligations to the child in a timely fashion.

(e) To monitor the circumstances of a child, if the child is found to be within the purview of the act, to assure compliance with law and to assure that the terms of the court's orders are being fulfilled and remain in the best interest of the child.

(f) To meet with any parent having joint legal and physical custody of the child, record the concerns of the parent, and report them to the court or file an affidavit stating why no meeting occurred.

(g) To maintain all information regarding the case confidential and to not disclose the same except to the court or to other parties to the case.

(h) Such other and further duties as may be expressly imposed by the

Art. 424. Court-appointed special advocates (CASA)

The judge of the court exercising juvenile jurisdiction is authorized to appoint one or more court-appointed special advocates, hereinafter referred to as CASA volunteer, to assist the court in fulfilling its duties and responsibilities to children brought into court. The CASA volunteer shall have as his special duty and responsibility the advocacy of the best interests of the child involved in the juvenile proceeding in which he is appointed.

(1) CASA volunteers serve without compensation and at the pleasure of the court exercising juvenile jurisdiction. The judge of the court will first satisfy himself of the volunteer's qualifications, training, and ability to serve as a CASA volunteer, including his ability to represent and advocate the best interest of children assigned to him.

All CASA volunteers shall:

- (a) Be sworn by the judge making the appointment.
- (b) Swear or affirm to abide by all the laws, regulations, and orders of court.
- (c) Swear or affirm to advocate what he perceives to be the best interests of the child for whom he is

appointed in all matters pending before the court.

A. It shall be the duty of a CASA volunteer to:

(1) Provide independent, factual information to the court regarding the children and cases to which they are appointed.

(2) Advocate on behalf of the children involved in the cases in which they are appointed what they perceive to be in the best interest of the children.

(3) Monitor proceedings in cases in which they have been appointed and advise and assist the court in its determination of the best interest of the children involved.

A(1) To accomplish the appointment of a CASA volunteer, the court shall issue an order of appointment which shall grant the CASA volunteer the authority to review all relevant documents and interview all parties and witness involved in the proceeding in which he is appointed.

(2) The CASA volunteer shall be notified by the court of all court proceedings and hearings of any kind pertaining to a child for whom he is appointed and shall be entitled to attend such hearings. He shall also be given access to all portions of the court record relating to that

Appendix C - Louisiana

to the court and notice to all parties, the court may grant the CASA volunteer access to other information, including the department records as provided in R.S. 46:56, relating to the child and to other matters involved in the proceeding in which he is appointed.

(3) The CASA volunteer shall be notified by the department of all administrative review hearings concerning the case to which he has been appointed.

(4) The CASA volunteer may be called as a witness in the proceedings by any party or by the court and may request of the court the opportunity to appear as a witness.

E (1) All reports of the CASA volunteer shall be directed to the presiding judge and will be made available to counsel for the parties but the reports may be subject to a protective order upon the request of the CASA volunteer, a party or party's attorney, or by the action of the judge.

(2) All records and information requested or reviewed by the CASA volunteer in the course of his appointment shall be deemed confidential and shall not be disclosed by him except pursuant to

court order, and such materials will only be disclosed as directed by court order and will be subject to whatever protective order the court deems appropriate.

B. The CASA volunteer may request a hearing before the court when any of the following occur:

(1) The case plan on behalf of the child is not being implemented or adhered to by any party.

(2) The plan is not meeting the child's needs.

(3) For other reasons in the best interests of the child.

G. No cause of action shall exist against any CASA volunteer, director, employee staff, or volunteer who in good faith makes a report, cooperates in an investigation by an agency, or participates in judicial proceedings and each such person shall have immunity from civil or criminal liability that might otherwise be incurred or imposed. This immunity from liability shall not extend to:

(1) Any alleged principal, conspirator, or accessory to an offense involving the abuse or neglect or sexual exploitation of a child.

(2) Any person who makes a report known to be false or with reckless

confidential information occasioned by the
CASA volunteer's gross fault or gross
neglect.

**Louisiana Children's Code (1995) §Art.
424**