SB126 pt 01
31

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2/12/02

BILL NO. SB 126
or
SUBJECT GAL-

Lisa Stewart-Boettcher
(NAME)

N3401 Oxbow Rd.
(Street Address or Route Number)

Columbus, WI 53925
(City and Zip Code)

FCBTP
(Representing)

Speaking in Favor: ☐

Speaking Against: ☒

Registering in Favor: but not speaking: ☐

Registering Against: but not speaking: ☐

Speaking for information only; Neither for nor against: ☐

Please return this slip to a messenger PROMPTLY.

Senate Sergeant–At–Arms
State Capitol – B35 South
P.O.Box 7882
Madison, WI 53707–7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2/13/02

BILL NO. SB 126
or
SUBJECT Guardian ad Litem

Barbara McCrory
(NAME)

51 South Main St
(Street Address or Route Number)

Janesville WI 53545
(City and Zip Code)

Wisconsin Family Court Com-
(Representing)

Speaking in Favor: ☒

Speaking Against: ☐

Registering in Favor: but not speaking: ☐

Registering Against: but not speaking: ☐

Speaking for information only; Neither for nor against: ☐

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P.O.Box 7882
Madison, WI 53707–7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: February 13, 2002

BILL NO. SB 126
or
SUBJECT GAL in Actions
Affecting the Family

Michael Entleitner
(NAME) Jefferson County Fam. Ct. Commr

320 S. Main St Rm 204
(Street Address or Route Number)

Jefferson, WI. 53549
(City and Zip Code)

WIS. Fam. Ct. Commrs' Assoc.
(Representing)

Speaking in Favor: ☒

Speaking Against: ☐

Registering in Favor: but not speaking: ☐

Registering Against: but not speaking: ☐

Speaking for information only; Neither for nor against: ☐

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Madison, WI 53707–7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2/13/02

BILL NO. 126
or
SUBJECT

Pat Wathen
(NAME)

538 Evergreen Ave
(Street Address or Route Number)

Madison WI 53704
(City and Zip Code)

(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor:
but not speaking: ☐

Registering Against:
but not speaking: ☐

Speaking for information
only; Neither for nor against: ☒

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Madison, WI 53707–7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2-13-02

BILL NO. SB126
or
SUBJECT Guardian Ad Liten

John Barrett
(NAME)

334 N. 74th Street
(Street Address or Route Number)

Milwaukee, Wi 53213
(City and Zip Code)

WCCCA + Milw. Co.
(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor:
but not speaking: ☐

Registering Against:
but not speaking: ☐

Speaking for information
only; Neither for nor against: ☒

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State Capitol – B35 South
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Madison, WI 53707–7882

☆ Call w/ Rep Gundrum

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2/13/02

BILL NO. SB 126
or
SUBJECT

Sen. Kim Plache
(NAME)

(Street Address or Route Number)

(City and Zip Code)
Co-Chair of Special Committee on GALs
(Representing)

Speaking in Favor: ☒

Speaking Against: ☐

Registering in Favor:
but not speaking: ☐

Registering Against:
but not speaking: ☐

Speaking for information
only; Neither for nor against: ☐

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State Capitol – B35 South
P.O.Box 7882
Madison, WI 53707–7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2/13/02

BILL NO. AB482 + SB126
or
SUBJECT

Rep. Mark Gundrum
(NAME)

State Capitol 19N
(Street Address or Route Number)

(City and Zip Code)

(Representing)

Speaking in Favor:	X
Speaking Against:	
Registering in Favor: but not speaking:	
Registering Against: but not speaking:	
Speaking for information only; Neither for nor against:	

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Senate Sergeant–At–Arms
State Capitol – B35 South
P.O.Box 7882
Madison, WI 53707–7882

☆ call w/ Sen. Plache ☆

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2/13/02

BILL NO. SB 126
or
SUBJECT

Rep. Mark Gundrum
(NAME)

(Street Address or Route Number)

(City and Zip Code)
co-chair of Special Common GALs
(Representing)

Speaking in Favor:	X
Speaking Against:	
Registering in Favor: but not speaking:	
Registering Against: but not speaking:	
Speaking for information only; Neither for nor against:	

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State Capitol – B35 South
P.O.Box 7882
Madison, WI 53707–7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2-13-02

BILL NO. GALs
or
SUBJECT SB126

Atty. Tom Glowacki
(NAME)

2158 Atwood Avenue
(Street Address or Route Number)

Madison WI 53704
(City and Zip Code)

Family Law Section of the State Bar
(Representing)

Speaking in Favor:	A
Speaking Against:	
Registering in Favor: but not speaking:	
Registering Against: but not speaking:	
Speaking for information only; Neither for nor against:	

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State Capitol – B35 South
P.O.Box 7882
Madison, WI 53707–7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2/13/02

BILL NO. SB 126
or
SUBJECT

Thomas Pfeiffer
(NAME)

4214 Beverly Rd
(Street Address or Route Number)

Madison 53711
(City and Zip Code)

WI Fathers for Children + Families
(Representing)

Speaking in Favor: ✓

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: FEB 13, 2002

BILL NO. AB 482 +
or
SUBJECT CHILD SEX OFFENDERS

JEFF WISWELL
(NAME)

TENNEY PLAZA, SUITE #802
(Street Address or Route Number)

MADISON, WISC. 53703
(City and Zip Code)

WISC. SHERIFFS & DEPUTY SHERIFFS ASSOC.
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking: ✓

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 2-13-02

BILL NO. SB 126
or
SUBJECT

Sarah Diedrick-Kasdorf
(NAME)

100 River Place, Suite 101
(Street Address or Route Number)

Monona 53716
(City and Zip Code)

Wisconsin Counties Association
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking: ✓

Speaking for information only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

THE LAW OFFICES OF THOMAS J. AWEN
740 N. Plankinton Avenue, Suite 530
Milwaukee WI 53203

Phone (414) 276-6900
Fax (414) 226-2050

E-mail: tawen@execpc.com

February 8, 2002

VIA FACSIMILE AND U.S. MAIL
Senator Gary George, District 6
Room 118 South
State Capitol
P.O. Box 7882
Madison WI 53707-7882

RE: 2001 Senate Bill 126

Dear Senator George:

It is my understanding that you are the Chairperson of the Senate Committee on Judiciary, Consumer Affairs and Campaign Finance Reform. On today's date I learned that on February 13, 2002 there will be a public hearing at the State Capitol to receive input and discussion as to the proposed changes in renumbering and amending Wis. Stat. Sec. 767.045 (6) (a) and create Wis. Stat. Sec. 767.045 (6) (b) as it relates to the payment of Guardian ad Litems. While I would want to appear and provide your committee with my input, I am unable to do so because of pre-existing court commitments.

First of all, let me introduce myself. I am an attorney practicing in Milwaukee and Waukesha Counties with a primary emphasis in criminal defense but in a secondary emphasis as a collection counsel for attorneys and attorney receivables. Included within this group, I represent nine (9) attorneys who have been, are or will continue to be Guardian ad Litems appointed by the various family court judges and commissioners in custody disputes in the family courts for Milwaukee County. These attorneys are my clients, having contracted with me to pursue and enforce payment of unpaid Guardian ad Litem bills which they themselves have been unable to pursue or enforce. From my own review, I have, on average 30-35 cases involving unpaid Guardian ad Litem fees, requiring court or other action.

I have reviewed the proposed merits of Sec. 767.045 (6) (b) (Section 4 of the Bill) and I believe it would prove to be a useful vehicle to assist Guardian ad Litems in enforcing payment of the services they provide.

I have no doubt that there are opponents to any piece of legislation and it would be folly for me, as a resident, attorney and voter, to think otherwise as it comes to this piece of proposed legislation. Nor do I have doubts that there are critics who believe that this proposed legislation is unnecessary or inappropriate in light of the laws already in existence as it relates to the

appointment, employment and payment of Guardian ad Litems.

My goal here today is not to address whether the process and the role Guardian ad Litems serve in the family courts is or is not flawed. My goal is to assist you, the Chairperson of the Senate Judiciary Committee, with sharing some insight from a person who "is in the trenches". One of the major concerns I have is the shrinking pool of good, qualified attorneys who are willing to accept an appointment as a Guardian ad Litem. One of the causes for this shrinking pool is the fact that those attorneys who accept said appointments are not being paid for the services rendered.

No matter what precautions the appointing court can take, at the end of a divorce or custody dispute, there will be outstanding fees owed to the Guardian ad Litem. Individual parties (the Petitioner and Respondent) often are unwilling to pay (because they were aggrieved) or not inclined to do so (because of other distractions, other "priorities", etc.,). If the parties do not willingly pay, then the Guardian ad Litem is confronted with one of two choices. Either do nothing and let the account go dormant or take action in compelling payment through the courts.

Of the attorneys I have known in my career (not my clients) who have been or are Guardian ad Litems as well as those who are my clients, almost all of them are either sole practitioners or belong to a firm of three persons or less. In short, they belong to a category I can best describe as "small business" people. Due to the small size of their offices (or firms) these attorneys do not have the support staff or resources to prosecute, on their own, to carefully monitor and follow up these unpaid accounts and should they take these nonpaying parties back to Court to have these people held accountable.

One of the remedies available is to have the Court issue a judgment against the nonpaying party(ies). It is then left to the Guardian ad Litem to enforce the judgment. Commonly, enforcement of judgments can be done by wage garnishment as codified under Chapter 812 of the Statutes. Unfortunately, if the nonpaying party(ies) is already paying child support (ranging from 17% to 34%, or more, of his gross income) then the garnishment cannot be implemented since it does not allow for the deduction of a maximum of 25% of the person's *net* income. So that leaves a Guardian ad Litem the unsavory prospect of considering whether to use the Execution process by bonding the Sheriff and go out to attach property.

Is it important to have Guardian ad Litems? I believe so, based upon nearly fourteen years of experience in the family courts of Milwaukee County. Is it important that Guardian ad Litems be paid for their time and services? Absolutely. Is it important to give them (and the courts) the necessary vehicle to ensure they are paid? Without question. What will be the consequences if nothing is done by the legislature to assist Guardian ad Litems in being paid for their duties? Disaster.

I say "disaster" because I am thinking of the old maxim "the bad drives out the good". If good, experienced, knowledgeable attorneys no longer will accept Guardian ad Litem appointments because they will not get paid then the Court is left to appointing those attorneys who are neither experienced nor qualified to assume a very difficult, yet important role in the family courts.

SUMMARY OF TESTIMONY BEFORE THE SENATE COMMITTEE ON JUDICIARY ON 2001 SENATE BILL 126, FEBRUARY 13, 2002

Michael D. Onheiber, Family Court Commissioner (Jefferson County)
Barbara McCroy, Family Court Commissioner (Rock County)

We appear individually and on behalf of the Wisconsin Family Court Commissioners' Association (WFCCA), both to communicate the formal action taken by the WFCCA on the recommendations of the Special Committee On Guardians *Ad Litem* in Actions Affecting the Family (now before you in the form SB 126) and to provide our individual views of the key provisions of the bill. Commissioner Onheiber, having served as a member of the Special Committee, formally presented the committee report to our 87 member organization at our 2001 Spring Conference in Wausau. Following that presentation, and discussion of the committee report, the WFCCA voted its overwhelming support for the passage of this legislation. The WFCCA recognizes and supports the invaluable role of the G.A.L. in the family court system. The above-noted vote of support evinces a statewide consensus among commissioners, who on a daily basis deal directly with the myriad problems faced by family court litigants, that the recommendations contained in the committee report will preserve and enhance the important function of the G.A.L., and improve provisions for training and supervision of attorneys practicing as G.A.L.

- **The Role and Responsibility of the G.A.L.**

Section 767.045(4) clearly defines the nature of the G.A.L. role, setting out its scope and limitations. The G.A.L. must function as an independent attorney for a party, on behalf of the child's best interests. The G.A.L. has no greater powers than any other attorney (but no lesser either) and is not a "decision maker" nor granted any dispensation from the rules of ethics and conduct governing all attorneys. The G.A.L. dose not have any of the powers of a general guardian. SB 126 does not seek to radically alter the core concept of a G.A.L.

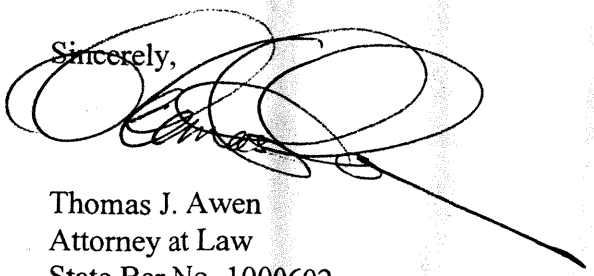
We, and the WFCCA strongly endorse the clear consensus of the Special Committee concerning the definition of a G.A.L. It has been recognized and developed in case law and statute over many decades. We believe that maintaining a high standard and providing for continued improvement in G.A.L. practice lies in adherence to the rules and principles developed by the courts and legislature over generations, not in redefining the G.A.L.

There are several essential functions the G.A.L. must perform in carrying out his or her duties as an independent lawyer for the best interests of the child. First, the G.A.L. must determine what investigation of the case is needed, and then conduct that investigation. As an attorney, the G.A.L. must assess the information obtained and witnesses interviewed, to make an informed judgment of the disposition that will best serve the child's interests. The effective G.A.L. then shares that analysis, and the essential material upon which it is based, with the other attorneys (or pro se parties) in a constructive (and often successful) effort to settle or narrow the dispute. When issues remain for trial or hearing, the G.A.L. can be effective only by preparing and presenting evidence.

Attorneys who are neither experienced nor qualified will only pose a detriment and impediment in resolving a difficult custody/visitation case.

Accordingly, and after reviewing at least this tiny provision of Bill 126, I would only hope that your Committee will approve said Bill, as it relates to the payment of Guardian ad Litem fees.

Sincerely,



Thomas J. Awen
Attorney at Law
State Bar No. 1000602

Testimony was presented to the Special Committee based on individual unsatisfactory experiences with guardians *ad litem.* These experiences ranged from insufficient attention to the case, to excessive time spent on a case, to just plain poor performance in a variety of ways. Such anecdotes are undoubtedly based on actual experiences. Attorneys serving as G.A.L. are human beings - not perfect beings, and some will do excellent work, many very good work, and a few may perform below standard. The best solution in any individual case to poor legal work by the G.A.L., however, is good legal work by the other attorneys (or pro se parties) involved. For example, if key evidence of the child's adjustment to school and each parent's role with regard to it has been ignored by the G.A.L., when such evidence is presented in court by the others involved, it is not likely to be missed by the judge or court commissioner. Nor is such poor performance likely to result in future appointments of that individual. Beyond that, behaviors meriting the G.A.L.'s removal can be brought to the attention of the court by motion, and behaviors meriting professional discipline may be pursued through the appropriate channel. The existence of this reality, however, does not establish that the vast majority of attorneys serving throughout this state are guilty of such conduct. Much less does it merit revamping the long established Wisconsin law providing independent legal advocacy for children whose welfare and interests are directly and sometimes dramatically affected by the decisions the court is called upon to make.

Having stated our strong support for the core concept of a G.A.L. under longstanding Wisconsin law - we do not (nor does the membership of the WFCCA) believe there is no room for improvement. The specific measures recommended by the Special Committee and contained in SB 126 make important contributions in that direction. They should be enacted, in our view. We add, however, that no legislation, however well conceived and crafted, can by itself result in effective and efficient performance in individual cases. There is simply no substitute for the court's exercise of sound discretion in making appointments, and requiring, by its rulings, the G.A.L. to comply with high standards of performance.

- **Commencement and Termination of the Appointment**

Whenever the welfare and best interests of the child will be directly and seriously affected by the outcome of the issues placed before the court, such as legal and physical custody, and paternity of a marital child, appointment of a G.A.L. is required. However, it need not be made immediately upon the appearance of each issue. For example, in custody and physical placement cases, the appointment need not be made until mediation efforts required under sec. 767.11(12) have been tried and have been unsuccessful. It is then required (with limited exceptions). Earlier appointment, if appropriate, is not precluded.

Under sec. 767.045(5), the appointment terminates, automatically, upon entry of a final order or upon termination of an appeal in which the G.A.L. elects or is ordered to participate. The court may continue the appointment for a period of time beyond entry of the final orders, but if so must specify the scope of responsibility during that extended appointment.

SB 126 does not seek to prescribe or limit the time for commencement and termination of the appointment. We concur with the Special Committee that current law is well balanced. It requires the court to determine, based on the individual case, whether an early appointment may be urgently needed or in any event may be more cost effective than deferring the appointment. By permitting an early appointment if needed, but otherwise deferring the appointment until mediation is concluded, the law allows the court to address the needs of the individual case, rather than impose "cookie cutter" orders that may be either too late or premature.

- **Qualifications, Training and Supervision**

The only statutory requirements are that the G.A.L. must be admitted to the practice of law and may not be a party or relative of party and may not represent a party in the proceeding. The requirement of admission to practice law goes to the core definition of the G.A.L., and we clearly support its continuation for the reasons noted above. Although the other recommendations of the Special Committee as to qualifications, training and supervision were directed to the Supreme Court and the State Bar and therefore are not directly entailed in SB 126 - we note our agreement with those recommendations, and are pleased that the Supreme Court has amended SCR 35 accordingly. (Effective July 1, 2003, a lawyer accepting G.A.L. appointments must have completed 6 hours of G.A.L. continuing education, at least 3 of which must be family court G.A.L. programs approved under SCR 35.03(1m) (with limited exceptions). The Board of Bar Examiners is required to approve G.A.L. law school courses and CLE programs addressing G.A.L. education and training on specified topics particulary pertinent to family law.

- **Compensation**

Compensation is addressed generally in sec. 767.045(6). The rate of G.A.L. compensation is governed by *Friedrich v. Dane County Circuit,* under which public defender rates apply, subject to the higher rate established by Supreme Court Rule (presently, $70 per hour) if required to retain qualified and effective counsel. Under the combined effect of the 1995 amendment of sec. 767.045(6) and the recent case of *Olmsted v. Circuit Court for Dane County,* the court may not order payment by the county of venue for an indigent party unless the other party is also indigent. Some counties read *Olmsted* to also preclude advancement of funds, in any form, by the county even if subject to ongoing reimbursement from the parties. SB 126 would cure problems for the courts and unfairness for the parties resulting from the *Olmsted* case.

The legislation would allow counties a variety of options in structuring the method of G.A.L. compensation. The court could order the parties to pay the G.A.L. directly, and fully, depositing the required retainer and paying outstanding balances as due. The court could also require such full, immediate payment, but into an escrow fund, thus insulating the G.A.L. from collection requirements and disputes. This would eliminate an unnecessary opportunity for inappropriate pressure on the G.A.L., potentially compromising impartiality or at least its appearance, and thus undermining the important settlement role of the G.A.L. Moreover, placing the G.A.L. in the role

of collector will probably dissuade well-qualified attorneys otherwise willing to serve in this difficult and essential role at the very much sub-standard rate of $50-$70 per hour.

Under current law, if a party is indigent, the entire cost of the G.A.L. is automatically shifted to the other party. This provides the non-paying party with an incentive to litigate, and to do so in ways that increase the paying party's burden. Similarly, if the costs at issue include, in addition to a substantial retainer for the G.A.L., significant deposits for the custody study and other substantial costs associated with it (such as psychological evaluation fees) the sums involved may be beyond the party's immediate ability to pay from ongoing income and assets. In such cases, a party who may well be able to pay some deposit and significant monthly payments to reimburse county outlays may have to be found "indigent" and the entire financial burden is thus shifted to the public, with no reimbursement allowed, even though it is financially feasible for the parties to pay in that fashion. While the 1995 amendment to sec. 767.045(6) was clearly intended to reduce county outlays for G.A.L. fees, we doubt that the above noted effects were either foreseen or intended. We strongly urge their correction by adoption of the Special Committees' proposal to allow the court to order payment by the county for an indigent party. We similarly agree that the term "payment" should not be so rigidly defined as to prohibit advancement of fees and costs by the county subject to ongoing reimbursement from the parties, through wage assignment.

- **Parent Education**

We support the SB 126 provisions requiring the court (rather than just permitting it) to order parent education, and empowering the court to deny a final hearing until parent education requirements have been fulfilled. We further support the SB 126 proposed change to make the four hours for such programs a minimum, rather than a maximum. These programs are inexpensive and have been well received by most litigants and attorneys. They are an effort to reduce initial and post-judgment custody litigation, thereby reducing the need for G.A.L. appointments.

- **Parenting Plans**

Presently, parenting plans must be filed with the court prior to any pre-trial conference. That term is nether well defined nor is there an inherent reason to delay the parenting plan that long. Rather, its intent - to encourage settlement and in any event to encourage detailed planning by each parent (as opposed to general posturing on custody issues) - will be well served by moving the requirement up in time.

- **Family Court Counseling Services**

Payment of FCCS custody study and mediation fees is not currently authorized by income withholding. SB 126 permits this. We support it.

Patricia Wathen
538 Evergreen Ave.
Madison, WI 53704

February 13, 2002

Re SB126

Dear Committee Members:

I am very disappointed that SB 126 does not address the abuses by GALs. I attented some of the Reg Council's public hearings and I know the abuses were brought forward. I have included some information about how these problems have been handled in other states. I would hope that Wisconsin would address this issues as well.

Patricia Wathen

SUMMARY OF TESTIMONY BEFORE THE SENATE COMMITTEE ON JUDICIARY ON 2001 SENATE BILL 126, FEBRUARY 13, 2002

Michael D. Onheiber, Family Court Commissioner (Jefferson County)
Barbara McCroy, Family Court Commissioner (Rock County)

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Having stated our strong support for the core concept of a G.A.L. under longstanding Wisconsin law - we do not (nor does the membership of the WFCCA) believe there is no room for improvement. The specific measures recommended by the Special Committee and contained in SB 126 make important contributions in that direction. They should be enacted, in our view. We add, however, that no legislation, however well conceived and crafted, can by itself result in effective and efficient performance in individual cases. There is simply no substitute for the court's exercise of sound discretion in making appointments, and requiring, by its rulings, the G.A.L. to comply with high standards of performance.

- **Commencement and Termination of the Appointment**

Whenever the welfare and best interests of the child will be directly and seriously affected by the outcome of the issues placed before the court, such as legal and physical custody, and paternity of a marital child, appointment of a G.A.L. is required. However, it need not be made immediately upon the appearance of each issue. For example, in custody and physical placement cases, the appointment need not be made until mediation efforts required under sec. 767.11(12) have been tried and have been unsuccessful. It is then required (with limited exceptions). Earlier appointment, if appropriate, is not precluded.

Under sec. 767.045(5), the appointment terminates, automatically, upon entry of a final order or upon termination of an appeal in which the G.A.L. elects or is ordered to participate. The court may continue the appointment for a period of time beyond entry of the final orders, but if so must specify the scope of responsibility during that extended appointment.

SB 126 does not seek to prescribe or limit the time for commencement and termination of the appointment. We concur with the Special Committee that current law is well balanced. It requires the court to determine, based on the individual case, whether an early appointment may be urgently needed or in any event may be more cost effective than deferring the appointment. By permitting an early appointment if needed, but otherwise deferring the appointment until mediation is concluded, the law allows the court to address the needs of the individual case, rather than impose "cookie cutter" orders that may be either too late or premature.

- **Qualifications, Training and Supervision**

The only statutory requirements are that the G.A.L. must be admitted to the practice of law and may not be a party or relative of party and may not represent a party in the proceeding. The requirement of admission to practice law goes to the core definition of the G.A.L., and we clearly support its continuation for the reasons noted above. Although the other recommendations of the Special Committee as to qualifications, training and supervision were directed to the Supreme Court and the State Bar and therefore are not directly entailed in SB 126 - we note our agreement with those recommendations, and are pleased that the Supreme Court has amended SCR 35 accordingly. (Effective July 1, 2003, a lawyer accepting G.A.L. appointments must have completed 6 hours of G.A.L. continuing education, at least 3 of which must be family court G.A.L. programs approved under SCR 35.03(1m) (with limited exceptions). The Board of Bar Examiners is required to approve G.A.L. law school courses and CLE programs addressing G.A.L. education and training on specified topics particulary pertinent to family law.

- **Compensation**

Compensation is addressed generally in sec. 767.045(6). The rate of G.A.L. compensation is governed by *Friedrich v. Dane County Circuit,* under which public defender rates apply, subject to the higher rate established by Supreme Court Rule (presently, $70 per hour) if required to retain qualified and effective counsel. Under the combined effect of the 1995 amendment of sec. 767.045(6) and the recent case of *Olmsted v. Circuit Court for Dane County,* the court may not order payment by the county of venue for an indigent party unless the other party is also indigent. Some counties read *Olmsted* to also preclude advancement of funds, in any form, by the county even if subject to ongoing reimbursement from the parties. SB 126 would cure problems for the courts and unfairness for the parties resulting from the *Olmsted* case.

The legislation would allow counties a variety of options in structuring the method of G.A.L. compensation. The court could order the parties to pay the G.A.L. directly, and fully, depositing the required retainer and paying outstanding balances as due. The court could also require such full, immediate payment, but into an escrow fund, thus insulating the G.A.L. from collection requirements and disputes. This would eliminate an unnecessary opportunity for inappropriate pressure on the G.A.L., potentially compromising impartiality or at least its appearance, and thus undermining the important settlement role of the G.A.L. Moreover, placing the G.A.L. in the role

of collector will probably dissuade well-qualified attorneys otherwise willing to serve in this difficult and essential role at the very much sub-standard rate of $50-$70 per hour.

Under current law, if a party is indigent, the entire cost of the G.A.L. is automatically shifted to the other party. This provides the non-paying party with an incentive to litigate, and to do so in ways that increase the paying party's burden. Similarly, if the costs at issue include, in addition to a substantial retainer for the G.A.L., significant deposits for the custody study and other substantial costs associated with it (such as psychological evaluation fees) the sums involved may be beyond the party's immediate ability to pay from ongoing income and assets. In such cases, a party who may well be able to pay some deposit and significant monthly payments to reimburse county outlays may have to be found "indigent" and the entire financial burden is thus shifted to the public, with no reimbursement allowed, even though it is financially feasible for the parties to pay in that fashion. While the 1995 amendment to sec. 767.045(6) was clearly intended to reduce county outlays for G.A.L. fees, we doubt that the above noted effects were either foreseen or intended. We strongly urge their correction by adoption of the Special Committees' proposal to allow the court to order payment by the county for an indigent party. We similarly agree that the term "payment" should not be so rigidly defined as to prohibit advancement of fees and costs by the county subject to ongoing reimbursement from the parties, through wage assignment.

- **Parent Education**

We support the SB 126 provisions requiring the court (rather than just permitting it) to order parent education, and empowering the court to deny a final hearing until parent education requirements have been fulfilled. We further support the SB 126 proposed change to make the four hours for such programs a minimum, rather than a maximum. These programs are inexpensive and have been well received by most litigants and attorneys. They are an effort to reduce initial and post-judgment custody litigation, thereby reducing the need for G.A.L. appointments.

- **Parenting Plans**

Presently, parenting plans must be filed with the court prior to any pre-trial conference. That term is nether well defined nor is there an inherent reason to delay the parenting plan that long. Rather, its intent - to encourage settlement and in any event to encourage detailed planning by each parent (as opposed to general posturing on custody issues) - will be well served by moving the requirement up in time.

- **Family Court Counseling Services**

Payment of FCCS custody study and mediation fees is not currently authorized by income withholding. SB 126 permits this. We support it.

Wisconsin Counties Association

MEMORANDUM

TO: Honorable Members of the Senate Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform

FROM: Sarah Diedrick-Kasdorf, Legislative Associate

DATE: February 13, 2002

SUBJECT: Opposition to Senate Bill 126

The Wisconsin Counties Association (WCA) opposes Senate Bill 126 relating to guardians ad litem, parent education and parenting plans in actions affecting the family. Specifically, there are two provisions included in the bill that are of concern to county government: compensation of guardians of litem for indigent parties and parenting plans.

Compensation of guardians ad litem for indigent parties

Under current law, the court shall order either or both parties to pay all or any part of the compensation of the guardian ad litem. If both parties are indigent, the court may order the county of venue to pay the compensation of the guardian ad litem. Under provisions included in Senate Bill 126, if either party is indigent, the court may direct that the county of venue pay the compensation and fees for that party.

Requiring counties to pay a portion of costs associated with guardian ad litem services in cases where only one party is indigent will have a significant fiscal impact on county government, with the potential of forcing service cuts in the office of the clerk of circuit courts. **Counties are currently being asked to cut their budgets and are facing cuts in their shared revenue appropriation. Now is not the time to request counties to take on additional fiscal responsibilities.**

If the legislature feels it is appropriate to pass Senate Bill 126, WCA respectfully requests an increase in the guardian ad litem appropriation paid to counties. The guardian ad litem appropriation, as well as county circuit court support grants, are funded from a court support services fee assessed to individuals at the time of filing an action with the court. This fee generates approximately $3 million more than what is returned to county government to fund the costs associated with operating the state court system. The increased GAL costs to counties could be funded through fee revenue. (The Governor has recommended increasing this fee in the deficit reduction bill to fund state court operations and the state public defender. It is anticipated that the fee increase will generate $8 million.)

100 River Place, Suite 101 ◆ Monona, Wisconsin 53716 ◆ 608/224–5330 ◆ 800/922–1993 ◆ Fax 608/224–5325

Mark D. O'Connell, Executive Director

Craig M. Thompson, Legislative Director

Lynda L. Bradstreet, Administrative Director

Parenting Plans

Senate Bill 126 requires the clerk of court to provide, without charge, to each person filing a petition in certain actions in family court instructions for completing and filing a parenting plan. The bill does not specify the entity responsible for creating the instructions to be distributed. Additionally, it is uncertain how "instructions for completing and filing" a parenting plan will be interpreted. For example, will county clerk of court staff be required to walk through the creation of a parenting plan step by step with an individual (which we do not have the staffing capability to do), and if so, does that put the county at risk for providing legal advice the county may not be qualified to provide?

The Wisconsin Counties Association understands the vital role guardians ad litem play in the family court system. Unfortunately, we must oppose Senate Bill 126 in its current form not only due to the fiscal impact the legislation will have on counties, but also the potential risk associated with the legislation to the county.

If you have any questions regarding our position, please do not hesitate to contact the WCA office.

Thank you for considering our comments.

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February 13, 2002

Dear Members of the Senate Judiciary Committee:

RE: SB 126

I am writing to you in reference to SB 126 which entails the role of Guardians Ad Litem to be more clearly stated, their compensation methods, and their right to income withholding for prior clientele.

I believe that 98% of SB 126 is focused on what can be done to ensure that the GAL receives his/her monies in due time, and how they can further continue to extend these cases, as many are prone to do, simply to ensure themselves a better income.

This bill simply protects the GAL against an already corrupt system, thus making the system for consumers worse. A GAL is supposed to be looking out for the best interests of a child, however, since they VOLUNTARILY put themselves on the 'list' of candidates to act as GAL, they put themselves at risk for having a lesser earning potential. Hence, when many of the GAL's agree to take certain cases, they are aware that the average pay is $70.00 per hour. Therefore, in order to 'make up' for what may be considered 'lost time', often times it is made up at the hands of incompetent legal services. This leaves the child(ren) without decent representation, thus costing the family more money to attend unnecessary counseling sessions, to have to pay the primary attorneys more for endless litigation, thus stealing money right out of the pocket of the child's future.

SB 126 does nothing for the consumer. There is much work to be done. We do not need as much clarification as the Committee may think. Many have been in the system for years and know exactly what the role of a GAL is supposed to be; yet, too far often the GAL is not correctly carrying out that role. We need CHANGE. Not CLARIFICATION.

Further, if a person wishes to dispute the fees that the GAL and the Courts set forth, this cannot be done. There is no formal grievance procedure for the conduct of neither the GAL nor the fees. The State Bar Fee Arbitration Commission will not investigate any fee disputes that are between a consumer and a court appointed attorney. Therefore, since GAL's are court appointed, the consumer is left with no alternative if he or she feels that the fees were unjust. I have spoken with Kris Wenzel of the Wisconsin State Bar, as well as the Executive Director, George Brown. Mr. Brown tells me that this is something that the lawmakers must handle. I suggest that a formal grievance procedure, as well as fee arbitration for Guardians Ad Litem and Family Court Counseling be investigated immediately before pursuing this bill. I have resources available for you, should you be willing to question as to where to start with such investigation, as there are many concerns about this topic.

While considering wage garnishment, what about the indigent? What if that person falls within the realms of 'poverty level', or is on AFDC? What if one is in arrears for child support payments, does that mean that the other party that has primary custody, must suffer the antics of a deadbeat parent *plus* having his/her wages garnished just to pay for a GAL?

Section 14 is troubling to me. "***The consequences of stipulating to a custody and placement arrangement and of resolution of disputes by the court.***"

This tells me, that we can never be free. We have 'consequences' should we wish to leave an abusive relationship, should we fear for our safety. We have 'consequences' because Wisconsin is still lacking the class to protect battered parents of children from perpetrators without seeing dollar signs.

No where, in this bill, is there any concern about the GAL undergoing education for domestic violence dynamics, AODA, child developmental issues and parenting classes. The GAL should, at all times, attempt to be on the same wavelength of the parents of the child. I saw wonderful things in the investigation that I read, but they never made it to the bill.

In my own experience with GAL's, I have had one good, one bad. The good one went by the book. She was swift, and conscientious of how much money it would cost our family during a Termination of Parental Rights case in which I acted Pro Se on. Of course, I won.

The bad one never had anything to report to the judge during status conference hearings, he forced my family into more and more counseling, whereas my abusive ex husband never had to undergo any. The GAL was a misogynist. This GAL was oblivious to his role, simply dragging the case out to make more money, slipping in discrepancies into the final bill, (which I caught) and he even told me that my ex "sure had a different reason for beating you" after initial contact with him. This unethical, and unprofessional behavior as well as many of the Chapter 20 Supreme Court Rules that he had violated have been brought to the attention of the Office of Lawyer Regulations.

The bottom line is that GALs have far too much power with the families that they are paid to work with. Certainly, they are supposed to be representing the children as their role, but I hear many complaints as to where the GAL becomes biased, or they may become withdrawn or burnt out from the case. Many different scenarios may occur, thus making it important for the Continuing Legal Education committees to recognize since we have families and children on our hands. It's not fair that we are court appointed a lawyer for our children, then 97% of the time, they fail to even ***try*** to do a decent job.

It is my suggestion that the entire GAL system be stripped down, re-evaluated and reconstructed. Or, abolished completely. No longer can we have children being forced to live in fear at the hands of a GAL. When I first moved to this state, I was told that this was a great place to raise children. On the contrary. Wisconsin is only hurting children by their continuance of these botched laws that are in the child's detriment. There are states that would not think of this type of treatment to a child. (i.e., North Dakota, Washington, Missouri, California, and Oregon just to name a few.)

Wisconsin is a shameful place to me, and I am embarrassed to say that I live here because the state does not deliver what is best for children. However, I am so far in debt now, thanks to my GAL dragging on my case, I cannot afford move to a better state for a long time.

With SB 126, I encourage you to dig much deeper into finding out how Wisconsin can help its' future generation. Rather than to further continue to aid the GAL's that are raping it.

Very truly yours,

Lisa Stewart-Boettcher

Guardian ad Litem Grievance Procedures (Cite as WCGAL)

To print the Guardian ad Litem Grievance Procedures Rules, click here.

WCGAL 7.1
Guardian ad Litem Advisory Committee

The Court's Guardian ad Litem Advisory Committee, hereinafter referred to as the "Committee," will administer complaints about guardians ad litem.

[Effective 9/1/00]

WCGAL 7.2
Submission of Complaints

All complaints must be in writing and must be submitted to the Superior Court Administrator. All complaints must bear the signature, name and address of the person filing the complaint.

[Effective 9/1/00]

WCGAL 7.3
Review of Complaint

Upon receipt of a written complaint, the Court Administrator shall convene the Committee to review the complaint. Upon review of the complaint, the Committee shall either:

(a) Make a finding that the complaint is with regard to a case then pending in the court and decline to review the complaint and so inform the complainant. In such instances the Committee shall advise the complainant that the complaint may only be addressed in the context of the case at bar, either by seeking the removal of the guardian ad litem or by contesting the information or recommendation contained in the guardian ad litem's report or testimony. In such cases the Committee and its members shall perform its role in such a manner as to assure that the trial judge remains uninformed as to the complaint; or

(b) Make a finding that the complaint has no merit on its face, and decline to review the complaint and so inform the complainant; or

(c) Make a finding that the complaint appears to have merit and request a written response from the Guardian ad Litem within 10

business days, detailing the specific issues in the complaint to which the Committee desires a response. The Committee shall provide the Guardian ad Litem with a copy of the original complaint. In considering whether the complaint has merit, the Committee shall consider whether the complaint alleges the Guardian ad Litem has:

(1) Violated a code of conduct;

(2) Misrepresented his or her qualifications to serve as a Guardian ad Litem;

(3) Breached the confidentiality of the parties;

(4) Falsified information in a report to the court or in testimony before the court;

(5) Failed, when required, to report abuse of a child;

(6) Communicated with a judicial officer ex-parte concerning a case for which he or she is serving as a guardian ad litem;

(7) Violated state or local laws or court rules; or,

(8) Taken or failed to take any other action which would reasonably place the suitability of the person to serve as a Guardian ad Litem in question.

[Effective 9/1/00]

WCGAL 7.4
Response and Findings

(a) Upon receipt of a written response to a complaint from the Guardian ad Litem, the Committee shall make a finding as to each of the specific issues in the complaint to which the Committee desires a response, as delineated in the Committee's letter to the Guardian ad Litem. Such findings shall state that either there is no merit to the issue based upon the Guardian ad Litem's response or that there is merit to the issue.

(b) The Committee shall have the authority to issue a written admonishment, a written reprimand, refer the Guardian ad Litem to additional training, or recommend to the Presiding Judge that the Court suspend or remove the Guardian ad Litem from the registry. In considering a response, the Committee shall take into consideration any prior complaints that resulted in an admonishment, reprimand, referral to training, or suspension or removal from a registry. If a Guardian ad Litem is listed on more than one registry, the suspension or removal may apply to each registry the Guardian ad Litem is listed on, at the discretion of the Committee.

(c) The complainant and the Guardian ad Litem shall be notified in writing of the Committee's decision following receipt of the Guardian ad Litem's response.

[Effective 9/1/00]

WCGAL 7.5
Confidentiality

(a) A complaint shall be deemed confidential for all purposes unless the committee has determined that it has merit under WCGAL 7.4, above.

(b) Any record of complaints filed which are not deemed by the committee to have merit shall be confidential and shall not be disclosed except by court order.

[Effective 9/1/00]

WCGAL 7.6
Complaint Processing Time Standards

(a) Complaints shall be resolved within twenty-five (25) days of the date of receipt of the written complaint if a case is pending.

(b) Complaints shall be resolved within sixty (60) days of the date of receipt of the written complaint if the complaint is filed subsequent to the conclusion of a case.

[Effective 9/1/00]

WCGAL 7.7
Removal from Registry

(a) When a guardian ad litem is removed from the court's registry pursuant to the disposition of a grievance hereunder, the Court Administrator shall send a notice of such removal to the Office of the Administrator for the Courts.

(b) When the Court Administrator receives notice from the Office of the Administrator for the Courts that a guardian ad litem on the court's registry has been removed from the registry of any other Washington Superior Court the Administrator shall advise the Presiding Judge of such removal.

[Effective 9/1/00]

Superior Court; Courthouse Suite 301, 311 Grand Avenue, Bellingham, WA 98225 USA
Telephone: (360) 676-6777; Fax for judge's copies: (360) 676-6693
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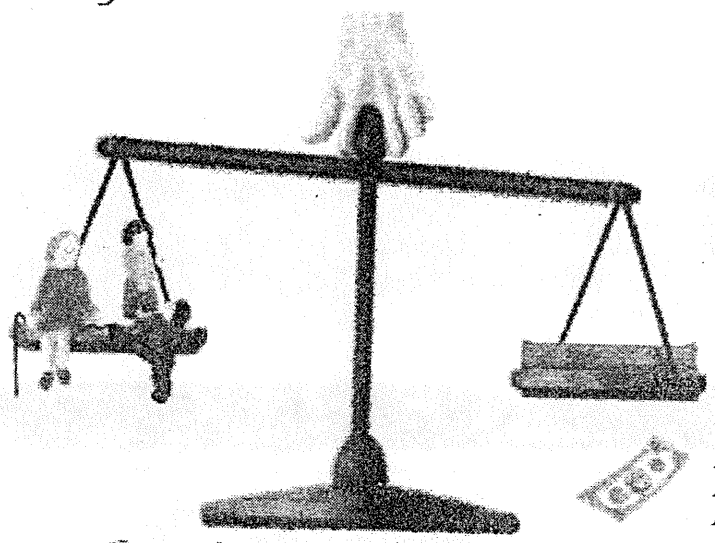

Guardians ad Litem Face the 1996 Statute Changes

Adjusting in the Aftermath: *Guardians ad Litem Face the 1996 Statute Changes*

by Meredith Lynn Hardy & Nancy Bradburn-Johnson

Last year, the Washington State Legislature enacted sweeping changes to the laws under which Washington courts appoint guardians ad litem in family law,[1] juvenile and guardianship cases.[2] The intent of the 1996 "Act Relating to Guardian and Guardian Ad Litem Systems To Protect Minors and Alleged Incapacitated Persons"[3] was to "make improvements to the guardian and guardian ad litem systems currently in place for the protection of minors and incapacitated persons." [4] This article is limited to discussion of guardians ad litem (hereinafter "GALs"), who are persons appointed by the court for a temporary and specific set of purposes, primarily to investigate and report to the court. GALs are distinguished from guardians, who are generally appointed for longer terms and have decision-making authority on behalf of the ward for whom they are appointed.

The legislature's focus on GAL issues was first directed by complaints from those in the guardianship arena, who testified about the wrongs inflicted by GALs upon them, their loved ones or their clients in guardianship cases.[5] Soon thereafter, however, similar anecdotes were given of GAL abuses in family law cases,[6] which centered on the futility of challenging a GAL once appointed and of the difficulties in challenging the GAL's recommendations in court. The Legislature jumped in to correct problems perceived to have been caused in large part by lack of judicial control over GALs.

Complaints about GAL fees and billing practices were supported by testimony of hourly billing rates, excessive final bills, absence of monthly statements or statements which did not provide enough detail about GAL activity on the case, and GALs churning the case to incur larger fees. In some cases, large GAL fees were billed, but a written report was never prepared.

Many of the concerns voiced have a legitimate factual foundation. Certainly, every practice area has its own brand of horror stories. The lack of accountability is attributable to the lack of a "system" to oversee GAL activity.

In keeping with legislative intent to make improvements to protect vulnerable populations, the new legislation set requirements for guardians ad litem relating to mandatory education, study of the feasibility and desirability of GAL certification, investigation of the problems and concerns about the role of GALs in RCW Titles 11, 13 and 26 and study of the feasibility of statewide use of CASA (Court Appointed Special Advocate)[7] programs, including private funding sources. Fulfilling legislative mandate, the Office of the Administrator for the Courts (OAC) issued a 65-page report on these topics dated August 1997. The report provides definitions, reviews issues for guardianship and family law GALs, outlines curriculum for GAL education and makes further recommendations. The recently released report supports the importance of the judiciary's role in maintaining public confidence and details the court's oversight, ensuring fairness and impartiality and prohibiting *ex parte* communication.

New Guardianship Rules

Under RCW 11.88.090(2)(b), GALs are now required to file and serve, within five days of appointment, each party with a statement which includes (1) the GAL's education related to GAL duties; (2) previous 10 years' criminal history, per RCW 9.94A.030; (3) hourly rate, if compensated; (4) whether the GAL has had contact with a party before appointment; and (5) whether there is an apparent conflict of interest. Within three days, any party may file and serve a motion for order to show cause why the GAL should not be removed for one of the following reasons: (1) lack of necessary expertise; (2) hourly rate higher than reasonable; or (3) conflict of interest. If the GAL is removed in the noticed hearing on the motion, the court must state the reasons for removal in the order. If the GAL is not removed, the moving party may be assessed fees/sanctions.[8]

A new section, RCW 11.88.045(5), allows any person to request court protection for an alleged incapacitated person subject to various kinds of abuse/exploitation or for emergency needs. An "alternative arrangement" (such as a power of attorney), executed before the petition for guardianship was filed, "shall remain effective unless the court" determines otherwise. A GAL may also move the court for this action.[9]

Parties to a guardianship proceeding now

> . . . may file responses to the GAL report with the court . . . at any time . . . the court may remove the GAL for failure to perform (the GAL's) duties as specified in this chapter, provided that the GAL shall have five days' notice of any motion to remove before the court enters such an order. In addition, the court in its discretion may reduce a guardian ad litem's fee for failure to carry out (the GAL's) duties.[10]

Guardianship GALs are now required to investigate and report on other

> . . . arrangements previously made by the alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney, and why a guardianship is nevertheless necessary.[11]

Under RCW 11.88.090(4)(e), the GAL's duties include

> . . . to investigate alternate arrangements made, or which might be created, by or on behalf of the alleged incapacitated person, such as revocable or irrevocable trusts, or durable powers of attorney; whether good cause exists for any such arrangements to be discontinued; and why such arrangements should not be continued or created in lieu of a guardianship.

Under RCW 11.88.090(4)(f)(iv), the GAL's report must include

> . . . a description of any alternative arrangements previously made by the alleged incapacitated person or which could be made, and whether and to what extent such alternatives should be used in lieu of guardianship, and if the guardian ad litem is recommending discontinuation of such arrangements, specific findings as to why such arrangements are contrary to the best interest of the alleged incapacitated person.

Under Title 11 as amended, the GAL may request continuation of the hearing date on the petition. If the hearing does not occur within sixty (60) days of the petition filing date, however, the GAL

> shall file interim reports summarizing [the GAL's] activities on the proceeding during the time period as well as fees and costs incurred.[12]

Lastly, the GAL must now attend all hearings in person unless there is a written waiver by all parties,[13] and the

> court may consider whether any person who makes decisions regarding the alleged incapacitated person or estate has breached a statutory or fiduciary duty.[14]

The superior courts, in addition to requiring mandatory education as described elsewhere in this article, are required to maintain a registry of persons willing and qualified to serve as GALs in Title 11 matters. The court selection for appointment shall be "in a system of rotation" unless there is a need for "particular expertise." The court was further mandated to

> develop procedures for periodic review of the persons on the registry and for probation, suspension or removal of persons on the registry for failure to perform properly their duties as guardian ad litem. In the event the Court does not select a person next on the list, it shall include in the order of appointment a written decision explaining its decision.[15]

Eligibility for the GAL registry includes the following added specifics: (1) written

statement of background, including (a) level of formal education, (b) training related to GAL's duties, (c) number of years' experience as GAL, (d) number of appointments as GAL and the county or counties of appointment, (e) criminal history, as defined in RCW 9.94A.030 and (f) evidence of knowledge in areas previously listed in the statute (such as developmental disabilities). The written statement is also to include how many times a GAL has been removed for failure to perform GAL duties. Further, the background and qualification statement is to be updated annually; and (2) completion of the model training program.[16]

An attorney now may not serve as a superior court judge *pro tempore* or a superior court commissioner *pro tempore* in a judicial district while appointed to serve on a case in that judicial district as a paid GAL under Title 11, 13 or 26 RCW if that judicial district is contained within Division I or II of the Court of Appeals and has a population of more than one hundred thousand.[17]

Title 13 GALs

Under RCW 13.34.100(3)(e), the guardian ad litem statement of qualifications does not need to include identifying information that may be used to harm a GAL.

When a CASA or volunteer GAL is requested, the program will give the court the name of the person it recommends and appointment is effective immediately. If a party reasonably believes the CASA is inappropriate or unqualified, the party may request review of the appointment by the program. The program must complete the review within five judicial days and remove any appointee for good cause. If the party is not satisfied, the party may file a motion with the court for removal of the CASA on the grounds the advocate or volunteer is inappropriate or unqualified.[18]

Family Law GALs

RCW 26.12.11175(1)(b) states that the "court may require the GAL to provide periodic reports to the parties regarding the status of [the GAL's] work. The GAL shall file . . . report at least sixty days prior to trial." Furthermore, GALs who are not volunteers must provide the parties with an itemized accounting of their time and billing for services each month.[19]

RCW 26.12.175(3)(e) and RCW 26.12.175(4) require background information from Title 26 GALs similar to that required for other types of GALs.

The statutes now require:

> [E]ach GAL program for compensated GALs shall establish a rotational registry system for the appointment of GALs. If a judicial district does not have a program the court shall establish the rotational registry system. GALs shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry. RCW 13.34 . . . (2)(a) and RCW 26.12 . . . (2)(a).

Further,

> [I]n judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information . . . including hourly rates for services. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name next appears on the registry shall be appointed. RCW 13.34 . . . (2)(b) and RCW 26.12 . . . (2)(b).

Then,

> if a party reasonably believes that the appointed GAL lacks the necessary expertise for the proceeding, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed GAL by filing a motion with the court. RCW 13.34(2)(c) and RCW 26.12(3).

Finally, the "rotational registry system shall not apply to CASA programs." RCW 13.34(3) and RCW 26.12(3).

Mandatory GAL Education

The OAC recommendations for training and education of GALs to assure a minimum standard of competency include 30 hours of instruction for Juvenile Court GALs, 28 hours of instruction for family law GALs and a requirement new to those in law, a six-month practicum for all new GALs. The practicum is designed to pair a new GAL with a "mentor" GAL, who will review reports, help answer questions and provide direction to the new GAL as the GAL gains skills. It is as yet unclear who will pay the costs associated with the mentor's time. The committee, however, has recommended public financing of GALs in indigence cases, which may stretch to fit this additional short-term expense.

The OAC recommends against "grandfathering" GALs by exempting them from training and ongoing education requirements set in place in the 1996 legislative session. The committee reasoned that the benefit of training is to assure minimum standards of practice in this very important area. By exempting those who have been doing this work, continuation of uneven work product is likely. OAC recommends that "all persons applying to become a GAL or CASA after January 1, 1998" should be required to complete training in the curriculum or an OAC approved program before accepting their first GAL case.

The OAC recommendations for training distinguish between acquiring knowledge, building skills and developing the abilities necessary to make complex decisions, such as adhering to ethical standards and performing self-evaluations. The report also acknowledges the differences between juvenile dependency and family laws. Recommendations for training identify those legal areas and recommend training in those areas be taught separately by experts in the area of practice. In other areas of training that share a common body of knowledge, such as child development and substance abuse treatment, GALs applying for juvenile dependency and family law cases may be taught together, although by no means is that a requirement.

The OAC recommends that CASA programs not be mandated by the state in Chapter 13 and 26 actions, but rather recommends the state to encourage the use

of CASA programs in Chapter 13 cases by funding new programs and maintaining and expanding existing programs. In Chapter 26 actions, the judges of the state are encouraged to review their GAL policies and to consider use of CASAs. The OAC also acknowledges the cost of supporting a CASA program and the difficulty of obtaining private funding, and therefore recommends continued public funding of CASA programs.

OAC also recommends creation of a central registry through OAC for all GALs who are removed from any state court listing as a result of a grievance process. A registry will allow courts to track GALs more carefully, while preserving GALs' due-process rights.

The committee also recommends changes be made to the GAL order of appointment, urges adoption of court rules by our Supreme Court to standardize GAL practice, and it recommends the judiciary take steps to regain the public's confidence in the use of GALs. The OAC report recommends discontinuation of a rotational policy because of the constitutional problems contained therein and the inconsistency of application by state courts.

Recommendations

Concerns notwithstanding, court appointment of GALs in this state is a benefit and in most cases results in a better-informed court. The GAL acts as the "eyes and ears of the court," a role unique in our adversarial legal system. Ideally, the GAL acts as a neutral information gatherer and reporter. The role is necessarily flexible due to the fact-driven nature of most legal proceedings. Given our state court's continued use of GALs as well as the intention of the 1996 legislation to address the public's concerns, we propose that the strengths of this practice be enhanced and weaknesses addressed beginning with the following suggestions.

Adoption of OAC recommendations is a solid beginning. It would create a "system" in family law and dependencies where none has existed. Stronger court involvement in each case, however, would complement the OAC recommendations and address the concerns by the public of GAL overreaching. We recommend the courts continue to develop and clarify policy regarding the role of GALs in family law cases within the state as well as enhanced supervision of GAL practice, including selection. For example, court review of final GAL reports with final pleadings in all cases, even agreed cases, could be conducted so that the court approves the GAL report (and thereby the investigation). The GAL work product is thus formalized and a record is preserved.

Court review of qualifications for GALs in their county and clear procedures for complaints against GAL practice should also be implemented and updated regularly. Required training curricula have now been developed by legislatively mandated committees for both guardianship and family law GALs; courts should assure that all GALs who are appointed have completed the required training.

Private attorneys can improve GAL practice, too, by litigating issues and not personalities, maintaining perspective, educating themselves about factual issues which occur (e.g., mental health and drug/alcohol abuse and treatment), encouraging more CLEs to deal with difficult cases and becoming involved with the family law section of the bar association.

The population seen by the court and served by GALs is the most difficult in terms of facts, procedures and personalities. Some courts, the OAC and the legislature began dealing with the problems and issues of GAL practice several

years ago with good result. In 1995, concerned by the lack of oversight for compensated GALs, the King County Judges and Court Commissioners formed a joint bench-bar work group, which developed guidelines, administrative policies and a code of ethics. In March 1996, the King County Superior Court judges adopted these policies. The policies include selection, qualifications, training, a complaint process and a code of ethics and were a useful tool for the OAC.

Efforts continue to help GALs solve commonly encountered problems. The Washington State Bar Association sponsored the first GAL inter-county forum this year in Seattle to provide a means for GALs around the state to meet, confer about commonly encountered problems and encourage self-evaluation and peer consultation, with a second annual forum scheduled for March 20, 1998.

In the vast majority of cases, children and alleged incapacitated persons have been well served by the appointment of GALs. With the collaboration of the judiciary, OAC, GALs and attorneys, service to these vulnerable and tender populations will continue to be improved.

Endnotes

[1]Chapter 26.09 RCW, Chapter 26.26 RCW, and Chapter 26.10 RCW.

[2]Title 11 RCW.

[3]ESSB 6257 (1996).

[4]RCW 2.56.030.

[5]Chapter 11.88 RCW

[6]Title 26 RCW cases, including dissolution of marriage, paternity, and third-party cases.

[7]CASA programs originated here in Washington state, and in 1984 the national CASA Association was founded, with its headquarters in Seattle. Although primarily interested with volunteers in juvenile dependency cases, the National CASA Association also supports the work of volunteers in family law cases.

[8]RCW 11.88.090(2)(b).

[9]RCW 11.88.090(8).

[10]RCW 11.88.090(6).

[11]RCW 11.88.030(h)(i).

[12]RCW 11.88.090(v)(ix).

[13]RCW 11.8.090(11).

[14]RCW 11.88.090(2).

[15]RCW 11.88.090(3)(a).

[16]RCW 11.88.090(3)(b).

[17]RCW 2.08; currently the only county which comes within this exception is King County.

[18]RCW 13.34.100(8)

[19]RCW 26.12.75(1)(c).

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