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STATE OF MINNESOTA

EVALUATION REPORT

Guardians Ad Litem

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STATE OF MINNESOTA

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February 27, 1995

Members

Legislative Audit Commission

In July 1994, the Legislative Audit Commission directed us to evaluate guardian *ad litem* services in Minnesota. Guardians *ad litem* are individuals appointed by the courts in certain family and juvenile cases to ensure that the children involved have their interests adequately represented.

Guardians are appointed in cases that are usually contentious and emotionally charged, and the outcomes are seldom satisfactory to all the parties. We think this accounts, at least in part, for why there have been complaints about guardian services. But, we also found problems with the way guardian services, which are provided through the counties, are organized, defined, and supervised. We found that many guardians--attorneys and non-attorneys--have not received adequate training. In addition, there is no systematic way to bring complaints against guardians.

While we think most solutions must come from the courts, the Legislature also needs to take action. We recommend that the Legislature clarify the role of guardians, and we recommend that the Supreme Court significantly revise and formalize existing state guidelines for guardian services.

In conducting our study, we received the full cooperation of the Supreme Court, district courts, and county courts. We particularly appreciate the help of guardians, court administrators, judges, lawyers, and public defenders who responded to our surveys and our requests for information. This report was researched and written by Jan Sandberg (project manager) and Susan Von Mosch, with help from Kathleen Vanderwall, Carrie Meyerhoff, Connie Reimer (intern), and Matthew Bower (intern).

Sincerely yours,

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Guardians *Ad Litem*

EXECUTIVE SUMMARY

A guardian *ad litem* is a person appointed by a court to represent the best interests of a child (or children) in court proceedings when they are at risk of being overlooked. There are many cases where a child's interests might be at risk, such as in some of the almost 10,000 divorces of couples with children, and in the 4,800 cases of child abuse or neglect filed in Minnesota courts in 1993.

Minnesota law requires the appointment of a guardian *ad litem* in juvenile court proceedings when abuse or neglect is an issue. In family court proceedings, guardians must be appointed when custody or visitation is at issue if the court has reason to believe the child is abused. Further, a judge may appoint a guardian for children in other cases when custody or visitation is at issue or when the court feels that the appointment is desirable.

Many concerns have been raised about the use of guardians *ad litem*. Most complaints have centered on guardian actions in family court cases, primarily in contested divorce actions. Complaints have focused on guardian bias, lack of oversight and accountability, inadequate training, and inappropriate communication between guardians and judges. Parents have also complained that there is no place to seek relief if they have a problem with a guardian.

In response to legislative concerns, the Legislative Audit Commission directed us to evaluate guardian *ad litem* services. The commission asked for an objective analysis of Minnesota's current system for providing guardian *ad litem* services and options for revising the current system. This report attempts to go beyond dissatisfaction with individual guardians and instead focuses on the broader system in which guardians function. This report addresses the following questions:

- **How are guardian *ad litem* services provided in other states?**
- **How are guardian *ad litem* services organized and delivered in Minnesota?**
- **How can guardian *ad litem* services in Minnesota be improved?**

Guardians *ad litem* became widely used after 1974 when Congress required states to pass legislation providing for the appointment of guardians in every judicial proceeding involving an abused or neglected child. However, the federal government left implementation of guardian *ad litem* requirements to the states. Most states, including Minnesota, delegated this function to counties, resulting in fragmented and decentralized systems. Our review of guardian services in other states revealed that there is no dominant national pattern for providing guardian services.

GUARDIAN AD LITEM SERVICES IN MINNESOTA

Like most states, Minnesota provides guardian services at the county level.

With guardian services organized on a county-by-county basis, Minnesota is one of 33 states where guardian services are provided locally. Minnesota's existing *Guidelines for Guardians Ad Litem* (1986) were developed by the Minnesota Judges Association to assure the quality of guardian services throughout the state. However, the *Guidelines* do not carry the authority of statute or rule, are not uniformly applied, and are inconsistent with some court rules related to guardians.

Minnesota counties use various combinations of paid attorneys, paid non-attorneys, and volunteers to serve as guardians. The type of guardian used depends on the volume of cases, local resources, and philosophy of the court. While most county guardian programs use paid non-attorney guardians, the majority of guardians in Minnesota are volunteers. We estimate that in 1993 about 850 people served as guardians *ad litem* in one or more Minnesota counties and carried over 6,300 cases, at a cost of almost \$3 million dollars (an average cost of about \$450 per case). Most guardians were women, and relatively few were minorities.

According to judges, guardians play a crucial role in the judicial system. Well-trained guardians, working in appropriate roles, gather information, help sort out issues in custody disputes or child abuse and neglect cases, determine whether children receive ordered services, and monitor cases for the court. The vast majority of judges reported being satisfied with guardians, but family practice lawyers and public defenders were less satisfied.

Program Operation

Just under one-half of Minnesota's guardian programs have coordinators, although they are generally the largest programs. We found that there is little consistency across counties in how they recruit, select, and supervise guardians. Many programs have difficulty recruiting minority guardians, and volunteer programs must constantly recruit new volunteers. Although there are ways to file complaints against other professionals, we found that:

- **There is no regional or statewide system to process complaints about a guardian, and there are no uniform statewide procedures to remove a guardian from a case or program.**

Based on case law, guardians in Minnesota have absolute immunity from lawsuits as do other officers of the court. This is similar to case law in other states.

There is confusion about guardian roles and considerable variation in how guardians are recruited, supervised, and trained.

Roles and Responsibilities

While Minnesota statutes provide for the appointment of guardians, they provide little detail on what roles guardians should fulfill. We found:

- **There is not a universally understood or consistently applied definition of the appropriate roles and responsibilities for guardians in Minnesota, leading to frequent confusion and differing expectations.**

References to guardian roles and responsibilities are scattered throughout court rules, statutes, case law, and judicial guidelines. Minnesota uses the *Guidelines* to clarify the guardians roles and duties. But for the reasons cited earlier, the *Guidelines* are not effective. Judges differ in how they use guardians *ad litem*. In some cases, guardians simply gather information and present recommendations to the court. In other cases, guardians may act as custody evaluators, or visitation expeditors. Judges, court administrators, and guardians do not always agree on what constitutes the guardians' responsibilities. Judges also differ in their expectations of guardians for communication and reporting. People told us the multiplicity of guardian roles can be confusing, especially to parents who may not always understand why guardians were appointed.

Training

Adequate basic and continuing training is essential for guardians *ad litem* to be effective. Some national standards for training have been suggested for volunteer guardians, but there are no universal training requirements for all guardians. While some Minnesota counties require and provide training before a guardian is assigned to a case, we found:

- **Thirty-three counties do not have any basic training requirements and 57 counties do not have any continuing education requirements.**

Nearly 17 percent of the state's guardians told us that no basic training was required prior to their first case assignment. Many guardians reported that they seek out continuing education opportunities, but nearly 59 percent said they were not required to take any continuing education. We also found that paid attorney guardians receive less training than other guardians. In some cases, there was a lack of consistency between the training that judges and lawyers believe guardians need and the training that guardians actually received.

Types of Guardians

The problems with guardian *ad litem* services in Minnesota are not necessarily tied to one type of guardian program, but cut across program types. County needs and resources vary considerably, and guardian use reflects these differences. The differences among counties lead us to conclude:

- **It is nearly impossible to identify one type of guardian that would best serve all jurisdictions.**

**Guardians
may be paid
attorneys, paid
non-attorneys, or
volunteers.**

Volunteer guardian programs are often rated highly, but they may be difficult to implement in some parts of the state. While we could find no reason that guardians must be attorneys, we also recognize that in some sparsely-populated rural counties with small caseloads, paid attorney guardians may be the most practical choice. Multi-county efforts may be needed to provide adequate guardian *ad litem* service, especially in areas with relatively few cases.

Some problems with Minnesota's guardian system are concentrated in certain counties or court districts. For instance, every judicial district in outstate Minnesota has at least one county that does not require basic training, but the majority of counties in the Ninth Judicial District in northwest Minnesota lack training requirements. Also, a few guardian programs, such as in Hennepin County, received more than the average number of complaints.

RECOMMENDATIONS

A centralized, statewide guardian system might address some of the problems identified in this report, such as fragmentation, but it would not solve all problems and would reduce the level of flexibility and responsiveness to local concerns present in the guardian system today. Therefore, this report does not recommend a new centralized statewide system. However, we think that guardian *ad litem* services in Minnesota could be improved if the state—the Legislature and the Supreme Court—provided more guidance to Minnesota counties and district courts.

**The Legislature
and Supreme
Court should
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court districts.**

The guardian *ad litem* system is primarily a function of the judicial branch and most of the solutions should come from the courts. But the Legislature has a role and can help improve the system. Therefore, our recommendations are directed to the Legislature, the Supreme Court, and local guardian programs. We recommend that:

- **The Legislature should clearly articulate the primary roles of guardians *ad litem* in Minnesota statutes.**

Legislation should define guardian roles broadly to include responsibility to conduct an independent investigation, advocate for the child's best interests, and monitor the case and the child's circumstances. We recommend that:

- **The Supreme Court should update and adopt the 1986 *Guidelines for Guardians Ad Litem*. The *Guidelines* should:**
 - **Outline the roles and responsibilities guardians are expected to undertake to fulfill their duties;**
 - **Clarify the roles of guardians *ad litem* and custody investigator; and**
 - **Develop procedures for how guardians should work with parents who have existing Orders for Protection.**

The *Guidelines* should articulate the specific responsibilities related to the guardian roles defined in statute. For example, to conduct an independent investigation, a guardian should interview the child's parents, social workers, and others with knowledge of the facts; visit with the child; and review school, medical, and other pertinent records. The Supreme Court is in the process of revising the *Guidelines*. Further, we recommend that:

- **In its revised *Guidelines*, the Supreme Court should:**
 - **Develop standards for guardian evaluation and removal;**
 - **Define key characteristics of the guardian *ad litem* program coordinator, including selection criteria, responsibilities, and necessary training;**
 - **Require written reports from all guardians, with background information to support any guardian recommendations; and**
 - **Require judges to write more detailed appointment orders clearly defining their expectations for guardians' roles and responsibilities in specific cases.**

The Supreme Court should revise the *Guidelines* for guardians.

Both parents and lawyers told us that parents often do not understand why guardians are appointed or what they are supposed to do. Family practice lawyers could provide valuable information to their clients on the roles and responsibilities of guardians. Therefore, we recommend that:

- **The Supreme Court should work with the Minnesota State Bar Association to provide education on the purpose and roles of guardians *ad litem* in family and juvenile court.**
- **The Supreme Court should develop general written materials describing the purpose of guardians *ad litem* and guardian roles and responsibilities and make them available to parents, lawyers, and other professionals. Program specific information should be developed at the local level.**

General guardian *ad litem* information should be based on the Supreme Court *Guidelines*. Individual guardian programs should supplement the general statewide materials with program-specific information including the name, phone numbers, and hours for the program coordinator or county contact person, and the local complaint process. We recommend that:

- **Within the guidelines set by the Supreme Court, each guardian program should have in place standards for guardian selection and procedures for guardian evaluation and removal. Whenever possible, a guardian program coordinator should assign guardians to cases.**

We also recommend that:

- **The Supreme Court should adopt a minimum hourly basic training requirement for all guardians, including attorneys, before assignment of their first case and a minimum hourly annual continuing education requirement.**

The Supreme Court should be responsible for implementing these requirements, including determining the content of guardian training and developing provisions for waivers of certain training program components based on previous training completed. Based on our review, we suggest that the Court consider requiring a minimum of 40 hours of basic training and 10 hours of continuing training annually. Further, we recommend that:

- **The Supreme Court should develop guidelines for guardian *ad litem* basic training and continuing education curricula. The training curricula should include a component on family violence and should address the issue of how to properly communicate with judges.**
- **The Supreme Court should provide basic and continuing training for guardians. The Court should allow those counties with adequate training programs already in place to continue to operate them.**

We encourage the Court to explore the feasibility of providing district-level training for those counties, such as those in the Ninth Judicial District, with few guardians and small caseloads that are unable to provide training themselves.

We agree that there is a need for increased guardian accountability. Therefore, we recommend that:

- **The Supreme Court should establish a guardian *ad litem* oversight board within each district court to provide an avenue for complaints about guardians, appeals of program coordinator decisions, and a mechanism to generally review guardian programs.**

The oversight boards could be modeled after the Lawyers' Profession Responsibility Board, appointed by the judiciary, with representation from judges, lawyers, guardians *ad litem*, and the community. The boards' responsibilities could include investigating complaints about guardians, removing guardians for cause, and hearing grievances of guardians who were removed at the local level.

As noted earlier, in Minnesota, guardians *ad litem* have absolute immunity from lawsuits. We do not think a change in guardian immunity is needed. Better definition of guardian roles and responsibilities in Minnesota statutes, revised Supreme Court *Guidelines*, and specific judicial appointment orders should specify the proper scope of guardian responsibilities for the purposes of guardian immunity.

The Supreme Court should adopt a training requirement and establish oversight boards.

Introduction

Many concerns have been raised about the use of guardians *ad litem*.

In 1993, almost 10,000 marriage dissolutions of couples with children, and about 4,800 cases of child abuse or neglect, were filed in Minnesota courts. In almost all of these cases families were under extreme stress, and in some, childrens' best interests were at risk of being overlooked. Minnesota law requires that a guardian *ad litem* be assigned in several specific situations, including:

- to each child who is the subject of a Child In Need of Protection or Services (CHIPS) petition,
- when it appears that the parent is indifferent or hostile to the child's interests,
- where the parent is absent or incompetent, and
- in proceedings in which custody or visitation is at issue if the court has reason to believe the child is abused.

Further, a judge may appoint a guardian for children in other cases when custody or visitation is at issue or when the court feels that the appointment is desirable.¹

In response to legislative concerns, the Legislative Audit Commission directed us to evaluate the guardian *ad litem* system. The commission asked for an objective analysis of the current Minnesota system, information on how guardian services are organized in other states, and options for revising the current system.

Many concerns have been raised about the use of guardians *ad litem*. Although a lack of information on the number and type of guardian cases and incomplete complaint files make it difficult to assess the extent of the problem, most complaints are connected with guardian activities in family court cases, primarily in contested divorce actions. Complaints have focused on guardian bias towards either women or men, lack of oversight and accountability, inadequate training, inappropriate communication between guardians and judges, and other inappropriate behavior. Guardians are typically appointed only in very contentious custody disputes or where evidence is likely to support allegations of abuse and neglect. Under these circumstances it is likely that one or both parents will be unhappy about the results in almost every case. We have attempted to isolate those issues that go beyond dissatisfaction with an individual guardian and have focused on the broader system within which guardians function. There has also been concern about the role guardians play in juvenile court in child abuse and neglect cases, and our study included those activities also.

¹ Unless noted otherwise, we will use the terms guardian and guardian *ad litem* interchangeably.

This report focuses on the guardian system rather than individual guardians.

Some of the issues raised by advocacy groups, especially those related to family reunification, are philosophical. Some would like to see changes in statutory requirements governing visitation and custody, particularly in the area of family violence. We did not attempt to explore the appropriateness of judicial and legislative philosophy.

Guardians may be appointed in a variety of situations not studied in this report, including: so-called “Jarvis hearings,” where guardians are used to review medication for children in institutional settings; vulnerable adults; adoption; paternity; delinquency; and probate/trust cases. Our study focused on the appointment of guardians for CHIPS petitions, termination of parental rights, and divorce and separation cases, including evaluation of child custody and visitation issues.

In our evaluation we asked:

- **What is a guardian *ad litem* and what role do guardians play in the judicial system?**
- **How does Minnesota currently provide guardian *ad litem* services in family and juvenile court and how much does it cost?**
- **What training is required for guardians *ad litem* now practicing in Minnesota, and what training are they receiving? Is there a need for more training for guardians?**
- **How are guardians *ad litem* recruited, screened, and selected, and who supervises them?**
- **What type of immunity from civil liability do guardians *ad litem* currently have? What limits on liability are appropriate?**
- **How are guardians *ad litem* used in other states? What program models do other states use?**
- **What are some options for improving the Minnesota program?**

To answer these questions, we interviewed more than 60 legislators, judges, lawyers, court administrators, program coordinators, guardians *ad litem*, and interested citizens. We surveyed county court administrators, attorneys and public defenders, judges, and guardians and gathered information from a variety of parents’ rights advocacy groups.² We read articles, reports, manuals, and other literature relevant to the use of guardians *ad litem* in Minnesota, reviewed applicable Minnesota statutes and case law, and solicited an opinion about guardian immunity from Senate Counsel. Finally, we contacted national groups and reviewed statutes from other states.

² We solicited information from groups sensitive to both women's and men's issues.

Our report is organized in five chapters. Chapter 1 provides an overview, including a brief introduction to the Minnesota system, with detailed information on how guardian services are provided in other states. Chapter 2 describes the current program structure in Minnesota, including the types of guardians and financial data. Chapter 3 reviews guardian roles and responsibilities. Chapter 4 describes guardian program administration, including guardian selection, supervision, and accountability. Chapter 5 reviews the training and continuing education given guardians in the various judicial districts and counties.

Overview and Background

This chapter provides an introduction to the concept of guardians *ad litem*, a brief overview of their use in Minnesota courts, and a review how guardian services are provided in other states. We asked:

- What is a guardian *ad litem* and what role do guardians play in the judicial system?
- What is the guardian *ad litem* system like in Minnesota?
- How are guardian *ad litem* services provided in other states? What program models do other states use?

Our analysis is based on a review of the current literature, statutes from Minnesota and selected other states, and interviews with judges and guardian program administrators.

THE ROLE OF GUARDIANS *AD LITEM* IN THE JUDICIAL SYSTEM

Guardians are supposed to advocate the best interests of the child.

Historically, the court appointed a guardian *ad litem* to protect the rights of infants or incompetent defendants in court proceedings. The guardian assumed an advocacy role to aid the child in proving or defending a case. Today guardians *ad litem* are appointed by the court to represent the best interests of a child who is a party to or involved in judicial proceedings including neglect, dependency, termination of parental rights, custody court proceedings, or in any other proceeding where the child's interests are at stake and not otherwise protected.

Previous studies have indicated that the appropriate roles for a guardian include investigation, advocacy for the best interests of the child, and counsel to the court.¹ The guardian's specific duties vary with the type of case and wishes of the court. A guardian *ad litem* may be a lawyer, but the role of guardian is separate and distinct from that of the child's legal counsel. The latter must represent the child's wishes, while the guardian advocates for the child's best interest. In general, a guardian independently assesses the child's situation and presents information for the court to consider in planning for the immediate and long-term

¹ U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *Final Report on the Validation and Effectiveness Study of Legal Representation Through Guardian Ad Litem* (Washington, D.C.: National Clearinghouse, 1994), 2-5 - 2-11.

needs of the child. Guardians are appointed by the judge and serve as an officer of the court, giving the guardian a quasi-judicial status. As with other officers of the court, guardians are usually considered immune for actions made in the course of their assigned duties or if they are acting in good faith.² Guardians have no authority beyond the specific court proceeding to which they are temporarily appointed.

A BRIEF HISTORY OF GUARDIANS *AD LITEM* IN THE UNITED STATES

Guardians *ad litem* became widely used in the United States after Congress passed the Child Abuse Prevention and Treatment Act (CAPTA) of 1974, the first comprehensive legislation dealing with prevention and treatment of child abuse.³ To qualify for federal child abuse prevention and treatment funding, CAPTA required states to pass legislation providing for the appointment of a guardian *ad litem* in every judicial proceeding involving an abused or neglected child. The guardian was to represent and protect the best interests of the child.

At the federal level, CAPTA brought with it no language about guardian qualifications, training, or duties. Federal rules did not clarify this situation, stating only that the guardian's responsibility includes representing and protecting the rights, interest, welfare, and well-being of the child. The federal government left implementation of guardian *ad litem* requirements to the states. Following passage of CAPTA, most states enacted legislation requiring that guardians *ad litem* be appointed to represent abused and neglected children involved in legal proceedings. Most states delegated the responsibility for guardian *ad litem* representation to individual counties, resulting in a wide variety of guardian models and program structures both across and within states.

GUARDIAN *AD LITEM* SERVICES IN MINNESOTA

In Minnesota, current law provides for the appointment of guardians *ad litem* in juvenile and family courts to protect or represent the interests of the child. Both mandatory and discretionary appointments may be made in either court. In juvenile court, a guardian must be appointed in cases of suspected child abuse or neglect, or when the parent is absent, or incompetent, indifferent or hostile to the child's interests.⁴ In family court, a guardian *ad litem* may be appointed in

² Immunity is discussed in more detail in Chapter 4.

³ 42 U.S.C. 5101 et seq.

⁴ *Minn. Stat.* § 260.155, subd. 4.

**In Minnesota,
guardian
programs
operate
independently
in each county.**

divorce or separation proceedings where visitation or custody is an issue.⁵ Guardians *ad litem* are required in all such proceedings if the court has reason to believe that the child is a victim of abuse or neglect.⁶

When CAPTA became law in 1974 there was no obvious state agency in Minnesota to administer guardian appointments. Guardians were already used on a limited basis in various counties, but there was no centralized state program. The burden of overseeing the mandatory appointment of guardians and program development, if any, was delegated to district courts and counties. Consequently, Minnesota has a patchwork of guardian *ad litem* programs across the state, with programs operating independently in each county. There is no central authority for providing guardian services and little consistency across jurisdictions. Each Minnesota county, in large part driven by the philosophy of the court or an administrator, determined which type of guardian best suited its needs.

Most Minnesota counties use guardians who are paid attorneys, paid non-attorneys, or volunteers. Programs may have full- or part-time coordinators; services may be provided by contract with for-profit and non-profit agencies. Programs vary in the ways that guardians are selected, trained, supervised, and evaluated. Some programs may coordinate training efforts; some guardians may work for more than one county. The Minnesota Association of Guardians *Ad Litem* (MAGAL), a member of the National Court-Appointed Special Advocates Association (NCASAA), is an independent, statewide guardian organization. MAGAL's annual conference is the only known organized statewide training opportunity currently available for guardians.

In 1986, the Minnesota Judges Association adopted *Guidelines for Guardians Ad Litem* partly in response to legislation requiring additional use of guardians in family court. To "assure quality guardian *ad litem* practice throughout Minnesota," the *Guidelines* provided substantial information for judges, program coordinators, and guardians about types of appointment, roles, duties, screening, training, and supervision. However, the *Guidelines* are not mandatory and do not carry the authority of rule.⁷ They are "a compilation of practices and policies already in use, as well as concepts suggested by those providing or utilizing guardian *ad litem* services." The *Guidelines* acknowledge that for many of the issues addressed "there is no ideal method or practice."⁸ The Supreme Court is currently revising the *Guidelines*. Chapters 2 through 5 provide more detail on guardian *ad litem* services in Minnesota.

⁵ Minn. Stat. § 518.165, subd. 1.

⁶ Minn. Stat. § 518.165, subd. 2. Chapter 2 discusses Minnesota law related to guardians *ad litem* in more detail, and Appendix A contains a listing of guardian *ad litem* statutory references.

⁷ The guidelines have been cited in Minnesota case law, most notably regarding the definition of guardian immunity, and to that extent they have authority, but this is not well understood in many counties.

⁸ Minnesota Judges Association, *Guidelines for Guardians Ad Litem* (St. Paul: June 1986), unnumbered introductory pages. Hereafter referred to as the *Guidelines*.

GUARDIAN *AD LITEM* PROGRAMS IN OTHER STATES

We contacted national associations, such as the National Court-Appointed Special Advocates (CASA) Association, and we reviewed statutes from selected states to learn how guardian services are provided in other jurisdictions. When Congress re-authorized CAPTA in 1988, it requested the first national study on the effectiveness of guardian *ad litem* programs.⁹ We also used the findings from this national study, which describes the status of guardian programs in states and counties across the nation, to compare guardian programs in Minnesota with those in other states.

Since passage of the CAPTA, each state has adopted legislation providing for the appointment of guardians *ad litem* and developed its own methods of providing guardian services. With few exceptions, state statutes have not clearly defined the qualifications, roles and responsibilities, or training required for guardians. States—and jurisdictions within states—vary considerably in the ways they provide guardian *ad litem* representation. According to one national study, “Coherence and consistency of guardian *ad litem* representation clearly is the exception in most states.”¹⁰

Minnesota, along with 42 other states, mandates the appointment of a guardian in all abuse or neglect proceedings. Minnesota also provides for the discretionary appointment of guardians in family court divorce or separation proceedings involving custody and visitation issues. In the remaining eight states, however, the appointment of guardians is either totally discretionary or required for only certain cases, such as the termination of parental rights.

There is little agreement on what type of person should serve as a guardian.

Types of Guardian Models

Many different models exist for providing guardian *ad litem* services. There is considerable debate about what components define the “best” model, and little consistency across or within states on what type of person should serve as a guardian *ad litem*.¹¹ Based on our review of how other states provide guardians *ad litem*, we conclude that:

- **There is no dominant national pattern for providing guardian services.**

⁹ U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *Final Report on the Validation and Effectiveness Study of Legal Representation Through Guardian Ad Litem* (Washington, D.C.: National Clearinghouse, 1994). U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *Appendix A: National Study of Guardian Ad Litem Representation* (Washington, D.C.: National Clearinghouse, October 1990).

¹⁰ Health and Human Services, *National Study*, 7.

¹¹ Health and Human Services, *National Study*, 39.

Originally, attorneys served as guardians *ad litem*. In the late 1970s, the judges in Seattle, Washington, began using trained volunteers or court-appointed special advocates (CASAs) to service as guardians *ad litem*. In the early 1980s, the number of volunteer guardian *ad litem* programs increased when the Administration for Children, Youth and Families included volunteer programs as a criterion for receipt of grants. Other models for providing guardian services also developed. Today, most juvenile and family courts in the United States provide guardian *ad litem* services using one of the following models:

1. **Paid attorney model.** Attorneys are hired to serve as guardians *ad litem*. This model can take two forms: private or staff attorney. In the private attorney model, the court appoints an attorney in private practice from a panel or court appointment list to serve as a guardian. The court pays for the private attorney's guardian services, usually at an hourly rate. In the staff attorney model, counties employ staff attorneys who specialize as guardians. Staff attorneys may be employed directly or through contracts with law firms or legal aid societies. In some jurisdictions, public defenders serve as guardians. Typically, staff attorneys are salaried employees.
2. **Volunteer model.** Volunteers are selected and trained by the court or an independent CASA organization. The nature of volunteer models can vary depending on the role given to volunteer guardians in different states. In some states, volunteers serve as guardians but are assisted by private attorneys who serve as legal counsel.¹²
3. **Paid non-attorney model.** Non-attorneys are selected by the court to serve as guardians. Some jurisdictions may use social workers or similarly trained professionals as guardians; others may use non-attorneys without any special training. Paid non-attorney guardians may or may not receive guardian training, depending on their education and experience, and the jurisdiction. This model is not as widely used as the first two models. The court pays non-attorney guardians, usually at an hourly rate.

Most states use attorneys as guardians.

The type of guardian model used varies from state to state; however, most states use attorneys as guardians, followed by states, including Minnesota, that use a combination of these models. Even in states with a statutory requirement for one type of system, other models may be used to supplement the primary model. Table 1.1 shows that 22 states require guardians *ad litem* to be attorneys.¹³ In some of these states, a volunteer CASA may also be appointed in addition to the attorney. State statutes usually designate whether the attorney or the volunteer CASA serve as the guardian. For instance, the courts in Kentucky, Maryland and Oklahoma may appoint volunteer CASAs in addition to attorneys, but the CASA does not serve as the guardian *ad litem*.¹⁴

¹² Only two states--Arizona and North Carolina--require a combined volunteer and attorney appointment. The court appoints both a volunteer to represent the child's best interest and an attorney to provide legal representation.

¹³ Of these, 18 states require the appointment of guardians, while four states (Colorado, Georgia, Louisiana, and Wisconsin) have discretionary appointment of guardians. Wisconsin requires the appointment of a guardian *ad litem* only in out-of-home placements, abuse restraining orders, or termination of parental rights.

¹⁴ Health and Human Services, *National Study*, 17 - 20.

Table 1.1: Guardian *Ad Litem* Models Used in the United States

	<u>Number of States</u>
Guardians must be attorneys ^a	22
Guardian may be either an attorney or a volunteer	21 ^b
OF THESE 21 STATES:	
Use attorneys	5
Use a combination of attorneys, paid non-attorneys, and volunteers	14 ^b
Use volunteers with attorneys as back-up	1
Appoint both a volunteer and attorney	1
Guardian must be a volunteer ^c	5
Require volunteer guardian and attorney as legal counsel	2

Source: U.S. Department of Health and Human Services, National Study of Guardian *Ad Litem* Representation, October 1990.

^aA volunteer court-appointed special advocate also may be appointed but does not serve as the guardian.

^bMinnesota is in these groups.

^cIn the absence of a trained volunteer, several states appoint attorneys to serve as guardians.

Twenty-one states, including Minnesota, allow either attorneys or volunteers to serve as guardians *ad litem*. Of these, 14 states, including Minnesota, appoint a combination of paid attorneys, paid non-attorneys, or volunteers to serve as guardians. Minnesota is one of eight states using paid non-attorneys, such as social workers or other paid non-attorneys to serve as guardians. In jurisdictions using more than one guardian model, judges play a significant role in deciding whether an attorney or volunteer guardian should be appointed. While this decision may depend on the availability of both types of guardians, Minnesota judges told us that they try to appoint attorney guardians to cases involving complex legal issues.

Only five states require the guardian *ad litem* to be a volunteer. In the absence of trained volunteers, several states appoint either private or staff attorneys to serve as the guardian. Some states use staff attorneys to provide legal counsel to the volunteer guardian. Finally, two states require the appointment of both a volunteer guardian and an attorney serving as legal counsel.

Program Administration

Seventeen states have developed statewide guardian *ad item* programs, while 33 states provide guardian services locally.¹⁵ Generally, statewide programs provide for some consistency in guardian qualifications, appointment, duties, and training

¹⁵ *The National Study* (1990) identified 14 statewide guardian programs—Alaska, Arizona, Delaware, Florida, Hawaii, Maine, Massachusetts, New Jersey, New York, North Carolina, Rhode Island, South Carolina, Utah, and Vermont. A review of statutes from selected states identified three states that have implemented statewide programs since 1990—Indiana, Kansas, and Virginia.

requirements. The nature of statewide programs varies from state to state with regard to administrative structure, guardian models used, and other program components. We found:

- **Even where statewide guardian programs exist, uniformity in guardian models and program components is unusual.¹⁶**

Examples of the lack of uniformity include:

- Alaska uses a combination of volunteers, and staff and private attorneys. The Alaska Office of Public Advocacy provides direct supervision, and administrative and legal support to only two of the state's nine court districts. The remaining court districts do not receive supervision or support.
- Both New Jersey and New York have statewide programs that use "law guardians," or attorneys who specifically represent children in abuse and neglect proceedings. New Jersey uses staff attorneys; with two exceptions, New York uses private attorneys.
- North Carolina requires the appointment of an attorney and a volunteer guardian in every abuse and neglect case. In practice there is some local variation in who is appointed depending on the availability of volunteers.
- Both Florida and South Carolina require the appointment of volunteer guardians. Of the other statewide programs, nine rely on the use of volunteer guardians in combination with some other model.

The administrative structure and operation of statewide guardian programs also varies from state to state. Program administration is provided by the state court system in ten states, and by the public defender's office, department of criminal justice, or other independent agencies in nine states. In most states, a state guardian *ad litem* program office has been established by statute and authorized to develop rules, provide support, such as staff legal counsel, and supervise local (county or court district) guardian programs.¹⁷ Generally, the duties of state and local program administrators focus on recruitment, supervision and evaluation of guardians, and record keeping for the guardian program.

In states without statewide guardian programs, either counties or district courts are responsible for providing guardian services. As noted earlier, Minnesota, with its guardian services organized on a county-by-county basis, is one of 33 states where guardian services are provided locally. Chapter 2 discusses in more detail how Minnesota provides guardian services.

Seventeen states have statewide guardian programs, but few have uniform components.

¹⁶ Health and Human Services, *National Study*, 7 and 13.

¹⁷ Health and Human Services, *National Study*, 34 to 37.

Roles and Responsibilities of Guardians *Ad Litem*

Many states fail to specify the roles and responsibilities of guardians *ad litem*, thus diminishing the guardian's ability to effectively represent the child's interests. After reviewing both literature and selected statutes from other states, we concluded:

- **It is rare for states to provide a detailed definition of guardian duties in state statutes; usually states define guardian roles and responsibilities broadly.**

If state statutes address guardian duties, most simply direct the guardians to represent, protect, and/or advocate for the interests of the child. About 20 states have statutes, court rules, or administrative procedures or policies that specifically address the roles and responsibilities of guardians although the level of detail varies from state to state. Generally, states define guardian responsibilities broadly: conduct an independent investigation, meet with the child and family, and monitor the case. The following are examples of statutory language related to guardian roles.

North Carolina has outlined in statute the duties of its trained volunteer guardians in juvenile court:

The duties of the guardian *ad litem* shall be to *make an investigation* to determine the facts, the needs of the juvenile, and the available resources within the family and 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.¹⁸ (Emphasis added.)

Oregon statutes also set forth broad responsibilities of the guardian *ad litem*:

Subject to the direction of the court, the duties of the court appointed special advocate shall be to: *investigate* all relevant information about the case; *advocate* for the child, assuring that all relevant facts are brought before the court; *facilitate and negotiate* to insure that the court, the Children's Services Division, if applicable, and the child's attorney, if any, fulfill their obligations to the child in a timely fashion; and *monitor* all court orders to insure compliance and to bring to the court's attention any change in circumstances that may require a modification of the court's order.¹⁹ (Emphasis added.)

¹⁸ North Carolina General Assembly § 7a-586 (a).

¹⁹ Oregon Statutes § 417.610.

Finally, Idaho statutes articulate guardian responsibilities along with the timing and method of reporting back to the court and status of the guardian in court:

Subject to the direction of the court, the guardian *ad litem* shall have the following duties ...

- (a) To conduct an independent factual investigation of the circumstances of the child ...
- (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 ...
- (c) To act as an advocate for the child ... and is charged with the general representation of the child. To that end, the guardian *ad litem* shall participate fully in the proceedings ...
- (d) To facilitate and negotiate to insure that [all parties] fulfill their obligations to the child in a timely fashion.
- (e) To monitor the circumstances of a child, ...
- (f) To maintain all information regarding the case confidential and to not disclose [information] except to the court or to other parties to the case.²⁰

Like most states, Minnesota does not define guardian roles in detail in statute.

Minnesota is among the group of states whose statutes simply charge guardians to “represent” or “protect the interests of the child.” Nowhere in Minnesota statute or rule are guardian roles and responsibilities defined in the kind of detail noted above.²¹ Instead, guardian roles and responsibilities are defined in the 1986 *Guidelines*. Chapter 3 discusses guardian roles and responsibilities.

Recruitment, Qualifications, and Evaluation of Guardians *Ad Litem*

According to our research, recruitment issues encountered in most states include the limited availability of guardians in rural areas, the inability to recruit minorities to serve as guardians, and lack of funding for recruitment activities. Based on our research it appears that:

- **Volunteer guardian programs and states with statewide programs are more likely than other states or programs to have standards for guardian recruitment.**

The National CASA Association's recommended management practices for recruitment include the use of a standardized information packet explaining the purpose of the program, and the role and responsibilities of the volunteer guardian. NCASAA recommends that recruitment efforts should try to attract male and female volunteers from diverse cultural and ethnic backgrounds and from a variety of age groups and economic levels. NCASAA also recommends

²⁰ *Idaho Code* § 16-1630 (a).

²¹ Detail is provided as to what constitutes the “best interests of the child” for the purpose of custody investigation, but this is not necessarily a guardian function.

that volunteer guardian programs screen volunteers using a written application, two reference checks, and a personal interview with the applicant. Finally, NCASAA directs volunteer guardian programs to conduct security checks by screening criminal records through local and state law enforcement agencies, and the central Child Abuse Registry. Minnesota's *Guidelines* suggest that counties use both formal (newspaper articles or want ads) and informal (personal contacts) methods to recruit guardians. To adequately screen potential guardians, the *Guidelines* also recommend the use of personal interviews, reference checks, and criminal history checks.

Aside from those states that require the guardian to be either an attorney or a volunteer, we found that:

- **Most states do not specify in statute any further qualifications for who can or cannot serve as a guardian *ad litem*.**

The most common requirements are that the potential guardian should be at least 21 years of age, be screened for any criminal record or record of investigation for child abuse or neglect, have no conflict of interests with the duties of guardian, and meet minimum training requirements. Additional general characteristics, frequently contained in rules or administrative procedures, include: the ability to communicate effectively; interest in children; mature judgment; and ability to relate to persons of different cultures. Minnesota's *Guidelines* contain a similar list of guardian qualifications.

Few states specify guardian qualifications or training requirements in detail.

The nature of guardian evaluation varies depending on the model used to provide guardian services. Nationally, virtually all of the jurisdictions using volunteer guardians reported annual or more frequent monitoring and regular caseload review conducted by the program coordinator. In contrast, only 35 percent of the counties reported regular monitoring of attorney guardians. The majority of attorneys were monitored informally by judges, or were provided no oversight or review.²² Chapter 4 discusses the recruitment, qualifications and evaluation of guardians in Minnesota.

Training Requirements for Guardians *Ad Litem*

Most of the states with statewide guardian programs have training requirements for volunteer guardians, but only five of these states require training for attorney guardians. In reviewing the existing literature, we found:

- **The vast majority of the states without statewide programs do not have statewide training requirements for either volunteer, paid attorney, or paid non-attorney guardians.**

If the state does not require training, many local (county or court district) guardian programs adopt guardian training requirements. The length of training and topics covered in local programs vary from jurisdiction to jurisdiction, and there is little consistency within a state. All states and local jurisdictions using volunteer guardians have training requirements set either by the jurisdiction or by

22 Health and Human Services, *National Study*, 36.

the CASA organization although the nature of these programs also differs across jurisdictions.²³ A few of these states also require specialized guardian training for attorneys who serve as paid guardians. Minnesota does not have a statewide training requirement for guardians *ad litem*. Instead, training requirements are set locally, and vary across jurisdictions. Training requirements for guardians in Minnesota are discussed in Chapter 5.

Immunity from Liability for Guardians *Ad Litem*

Immunity from liability is usually defined through state statute or case law. After reviewing literature, case law, and selected statutes from other states, we found:

- **At least 15 states provide some type of guardian immunity through statute, nine other states define immunity in case law, and most of the remaining states have not clearly addressed the issue of guardian immunity.**

Several states reported that attorney guardians were covered through individual policies for malpractice insurance. In Minnesota, case law has granted guardians absolute immunity similar to that granted other court officials. The national study of guardians found that even when guardian immunity is defined “at both the county and state level often [guardians] were unsure of the extent to which [they] could be held personally responsible for actions performed while representing a child.”²⁴ Immunity for Minnesota’s guardians is discussed in Chapter 4.

SUMMARY

In this chapter, we discussed the role of guardians *ad litem* in the judicial system and described how guardian services are provided in other states. Guardians are appointed by the court in civil proceedings where the interests of the child would not otherwise be adequately represented. A guardian serves as an officer of the court and is required to represent the best interests of the child.

Guardians *ad litem* became widely used after Congress required states to pass legislation providing for the appointment of guardians in every judicial proceeding involving an abused or neglected child. However, the federal government left implementation of guardian *ad litem* requirements to the states. Most states, including Minnesota, delegated the responsibility for guardian representation to individual counties resulting in a wide variety of guardian models and program structures both across and within states.

Our review of guardian representation in other states reveals that there is no dominant national pattern for providing guardian services. State and local jurisdictions across the country use a variety of guardian models, involving various combinations of paid attorneys, paid non-attorneys, and volunteers. Some states (17) have statewide guardian programs providing more consistency in program administration within a state. However, the nature of these programs

²³ Health and Human Services, *National Study*, 29 to 32.

²⁴ Health and Human Services, *National Study*, 36.

About half of the states give guardians explicit immunity from liability.

varies from state to state with regard to administrative structure and other program components.

Guardians have become an integral part of the juvenile and family court system in Minnesota. With guardian services organized on a county-by-county basis, Minnesota is one of 33 states where guardian services are provided locally. As we will show in later chapters, Minnesota has no central authority for providing guardian services. Counties use a combination of paid non-attorney, paid attorney, and volunteer guardians. Guardian programs vary in the ways that guardians are selected, trained, supervised, and evaluated.

The Organization of Guardian *Ad Litem* Services in Minnesota

In this chapter we describe how guardian *ad litem* services are organized in Minnesota and estimate their cost. We also look at how judges and lawyers evaluate guardian programs. In our study we asked:

- **Why does Minnesota use guardians *ad litem*?**
- **How are guardian services organized in Minnesota?**
- **To what degree are judges, family practice lawyers, and public defenders satisfied with guardian programs?**

We surveyed Minnesota counties and asked court administrators to describe their programs for providing guardian services.¹ We asked judges, lawyers, and public defenders to evaluate their overall experience with guardians and rate guardians on specific characteristics.² We also asked for information on the costs of programs. Finally, we interviewed court administrators, program coordinators, judges, and guardians and we visited officials in eight counties.³

In general, we found variety. Counties use guardians in a wide variety of cases, and various types of people are used as guardians. We also found that costs vary. We are not surprised by the variety, because the programs are county based and the differences among them reflect the significant demographic, social, and economic variations that exist in Minnesota. Finally, we found that while volunteer programs are highly rated, it is difficult to implement volunteer programs in some areas.

WHY DO WE USE GUARDIANS *AD LITEM* IN MINNESOTA?

The underlying reason guardians are used is of course to protect children. In some situations judges have discretion to appoint or not appoint a guardian, but in others they are required by law to appoint a guardian.

¹ Guardian training, recruitment, selection, supervision, and evaluation are discussed in more detail in later chapters.

² The data analysis was complicated by the extensive comments offered by all groups we surveyed. Where possible, we attempted to include these comments in our evaluation.

³ We visited programs in Carlton, St. Louis, Kandiyohi, Washington, Goodhue, Olmsted, Ramsey, and Hennepin counties.

The underlying reason to use guardians is to protect children.

Under Minnesota law, guardians must be appointed in juvenile court for any child involved in a child abuse or neglect proceeding.⁴ Minnesota law also requires the appointment of a guardian in certain other juvenile court cases. For example, unless the court finds that the interests of the child are adequately protected—usually by the appointment of a lawyer for the child—the court may require the appointment of a guardian in cases where the court believes the parent is absent, incompetent, indifferent, or hostile to the child’s interests. The judge may also choose to appoint a guardian in other juvenile court cases, such as in cases of delinquency.⁵

In family court, Minnesota law requires the appointment of a guardian when the judge deems it likely that abuse has occurred in any proceeding where custody or visitation is an issue.⁶ The judge may also choose to appoint a guardian in other cases of divorce or separation where visitation or custody is an issue.⁷ In these cases, guardians may be asked to advise the court on issues related to custody, support, and visitation. Several judges told us that such appointments are usually made when the case is highly contentious, and guardians usually were not appointed when parents were able to cooperate. Some program coordinators told us that they select only the most experienced guardians for family court cases.

Judges want guardians to give them an independent assessment of a case.

Judges told us that they want guardians to give them an independent assessment of a case, from the perspective of an outsider who has nothing to gain, but always putting the needs of the child first. Judges and others told us that guardians often have lighter caseloads than county protective services workers and can help monitor the progression of a case through the system. By using guardians, judges hope to prevent cases, particularly cases involving children in need of protective services, from getting lost in the system. Finally, judges told us they want cases settled outside of court, and they often perceive guardians as neutral parties who can help facilitate consensus.

GUARDIAN SERVICE DELIVERY IN MINNESOTA

Minnesota’s 87 counties are organized into ten judicial districts, as shown in Figure 2.1. As shown in Figure 2.2, the number of cases likely to use guardians is unevenly distributed across these ten districts. It is also worth noting that we were

⁴ *Minn. Stat.* §260.155, subd. 4. A petition may be filed in juvenile court in a case when the complainant believes there is a Child In Need of Protection or Services (CHIPS). We did not attempt to determine if guardians were appointed to all CHIPS cases. However, the Health and Human Services study surveyed 15 of 87 Minnesota counties, and they estimated that about 95 percent of Minnesota CHIPS cases were assigned guardians. The report also indicated that 14 of the 15 counties appointed guardians to all abused and neglected children. Hennepin County reported assigning guardians to about 80 percent of these mandatory cases. U.S. Department of Health and Human Services, *Appendix A: National Study of Guardian Ad Litem Representation*, 10, 142.

⁵ Guardians may also be appointed for a variety of other purposes, including delinquency, consent for neuroleptic medications (so-called Jarvis hearings), probate, adoption and paternity proceedings.

⁶ *Minn. Stat.* §518.165, subd. 2.

⁷ *Minn. Stat.* §518.165, subd. 1.

told by several court administrators and judges that, as cases have become increasingly complex, guardian use has increased faster than the number of juvenile and family court cases.

As with most other aspects of court cases, judges play a key role in the appointment of guardians. In fact, historically, the process has been quite informal and personal, with judges left to find a person who fit the judge's image of the ideal guardian. This has been especially true in rural Minnesota, where the number of cases, and opportunities for guardian use, is relatively low. Judges

Figure 2.1: Minnesota Judicial Districts

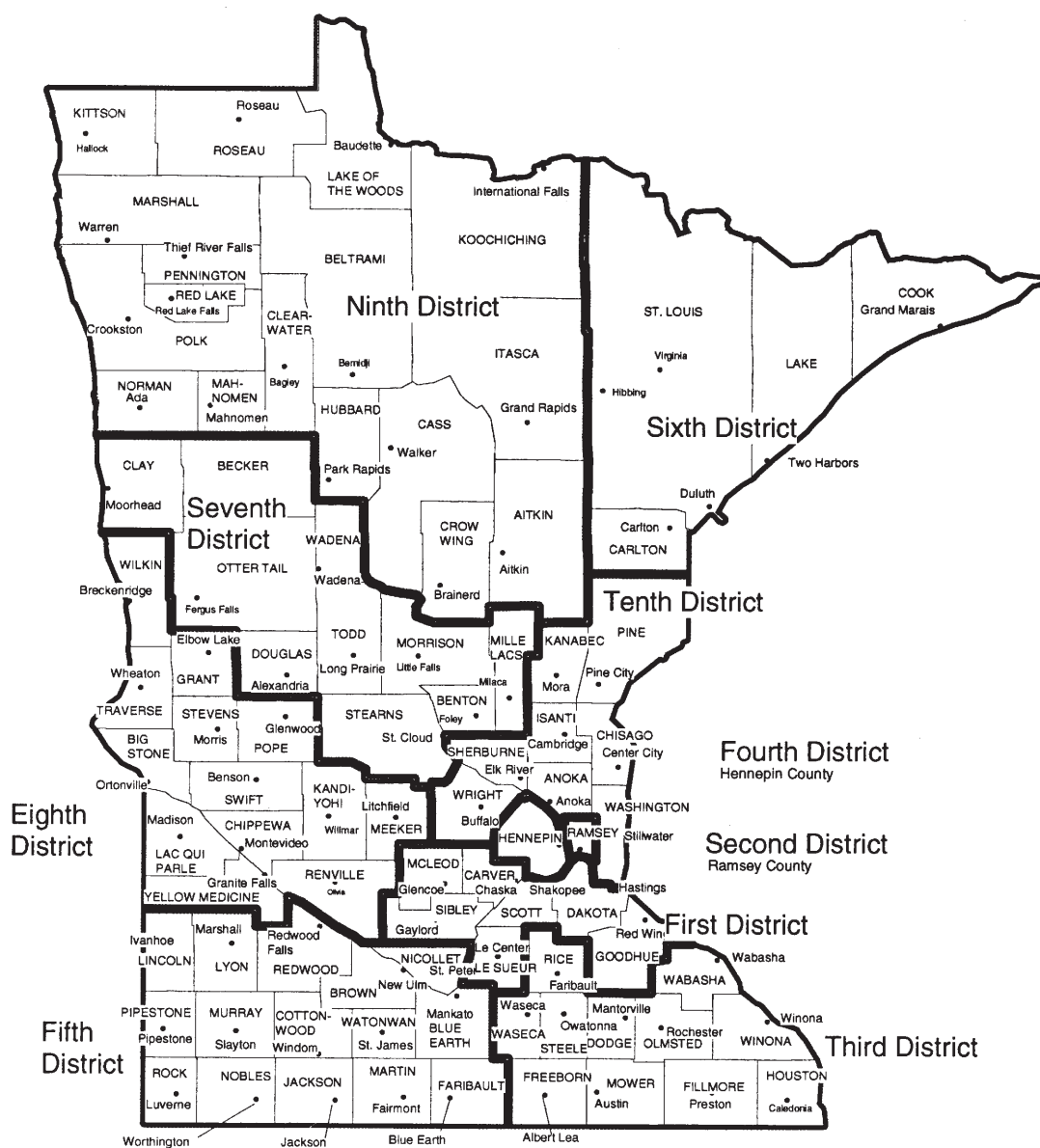
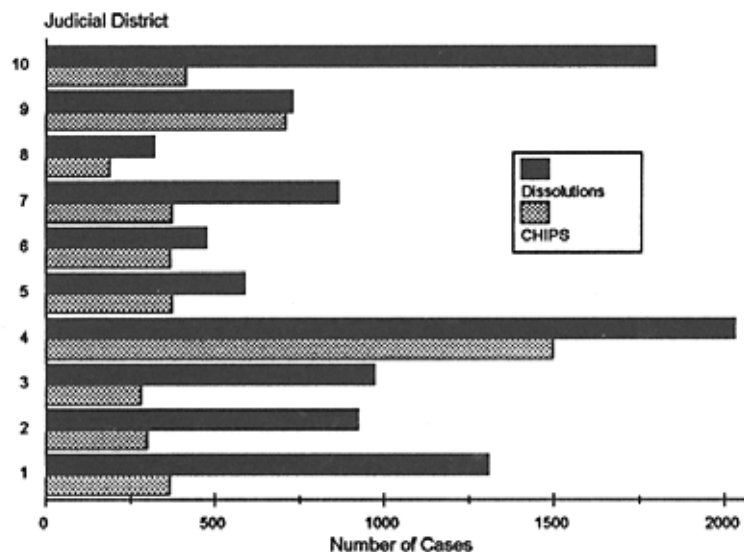


Figure 2.2: Case Filings for Dissolutions with More Than One Child and Children in Need of Protection or Services by Judicial District, 1993



Note: Dissolutions are divorces with one or more children. Cases of Children in Need of Protection or Services are also referred to as CHIPS cases.

Source: Minnesota Supreme Court.

In 1986, the Minnesota Judges Association developed a set of guidelines for guardians *ad litem*.

were, and in some places still are, highly involved in the selection and supervision of guardians.⁸

During the 1970s and early 1980s guardian programs in Minnesota developed sporadically. At the same time, as described in Chapter 1, the number of volunteer programs in other states increased. In Minnesota, the Minnesota Association of Guardians *Ad Litem* (MAGAL) organized to serve guardians throughout Minnesota. In 1986 the Minnesota Judges Association adopted a 70 page document, *Guidelines for Guardians Ad Litem*.⁹ The guidelines provide information about guardian appointment, roles, screening, training, and supervision, but they are not set in rule or statute and the Judges Association has not recommended that they should be.¹⁰ The *Guidelines* are currently being revised by the Supreme Court.

⁸ Recruitment, selection, supervision, and evaluation of guardians is discussed in Chapter 4.

⁹ Minnesota Judges Association, *Guidelines for Guardians Ad Litem* (St. Paul: June 1986).

¹⁰ The *Guidelines* did recommend defining guardian absolute immunity in statute. This recommendation accompanied a suggestion that guardians acquire liability insurance for errors and omissions, even though the doctrine of absolute immunity existed in Minnesota case law. The *Guidelines* have been cited in several Minnesota cases, primarily related to immunity, and to that extent they have authority, but this is not well understood in many counties or by most guardians.

Types of Programs for Delivering Guardian Services

The majority of Minnesota's guardians are volunteers.

Based on our survey of court administrators, we categorized programs by the type of guardian predominantly used in the program: paid attorneys, paid non-attorneys, and volunteers. But, it is worth emphasizing that some programs are mixed. For example, at the discretion of the judge, volunteer programs occasionally use attorneys as guardians for certain types of cases. If court administrators indicated that both paid attorneys and paid non-attorneys were used but did not indicate which type of guardian was used most frequently, the program was classified as a paid attorney program.¹¹ Figure 2.3 shows the type of guardian program by county. Hennepin County uses paid attorney guardians for family court cases and volunteer guardians in juvenile court and is treated as a unique system in this figure. Table 2.1 summarizes Supreme Court case data and the number of guardians by type of guardian program. We found:

- **Most county guardian programs use paid non-attorney guardians, but the majority of guardians in Minnesota are volunteers.**

Programs using volunteer guardians account for about 15 percent of all programs, but about 60 percent of all guardians. The 13 volunteer programs have, on average, significantly more guardians, more cases, and larger budgets than other types of guardian programs.

Although we classified programs into one of three categories by the type of guardian, we determined that guardian programs also differed on other factors,

Table 2.1: Case Filings for Cases of Dissolutions With Children and Children in Need of Protection or Services By Type of Guardian Program, 1993

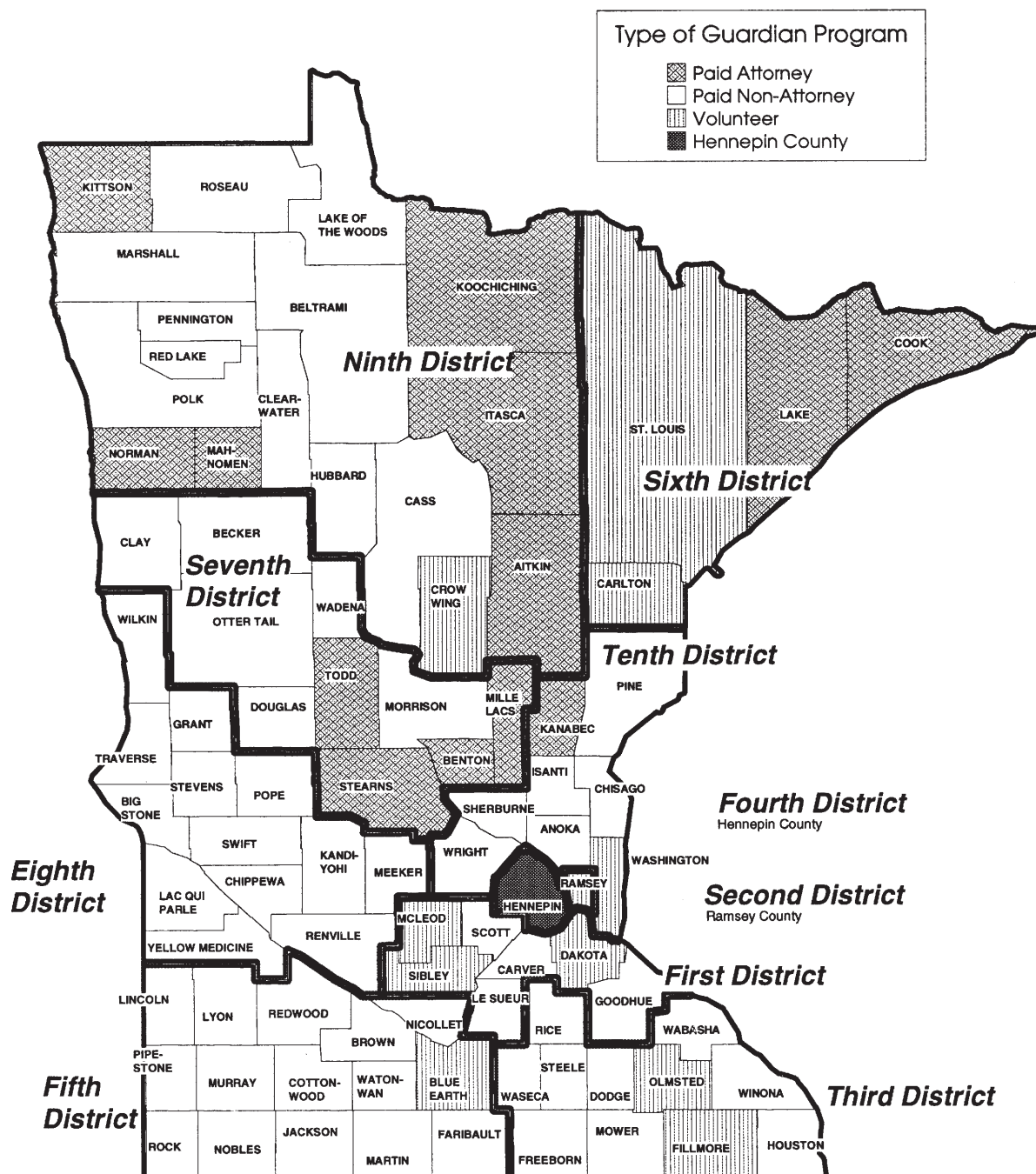
Attorney	Paid Attorney	Paid Non-Attorney	Volunteer	Ramsey Volunteer	Hennepin Attorney	Hennepin Volunteer	Minnesota
Dissolutions With Children	689	4,047	2,282	919	2,024	—	9,961
Children in Need of Protection or Services	368	1,833	832	296	—	1,493	4,822
Number of Guardians	85	315	239	173	45	185	1,042
Number of Guardian Programs	13	62	11	1	1	1	89

Note: Number of guardians is a duplicated count. St. Louis and Hennepin counties each have two programs for a total of 89 programs in 87 counties.

Source: Program Evaluation Division analysis of data from the Minnesota Supreme Court and survey of county court administrators.

¹¹ For most analyses, we treated as separate programs the guardian systems operated for Hennepin County juvenile court, Hennepin County family court, northern St. Louis County and southern St. Louis County. Northern and southern St. Louis County have separate programs and coordinators, and court statistics are reported separately for the two jurisdictions.

Figure 2.3: Distribution of Guardian *Ad Litem* Programs by County



Note: Type of guardian program defined by type of guardian predominantly used. Hennepin County uses a paid attorney guardian program in family court cases and a volunteer guardian program in juvenile court. St. Louis County has two volunteer guardian programs in northern and southern St. Louis County.

Some county guardian programs have recently changed.

including the type and extent of supervision and program coordination, training requirements, and other factors. We concluded that:

- **The type of guardian program a county uses depends on the case volume, local resources, history, and philosophy of the court.**

Supreme Court data indicate that counties with paid attorney programs reported a somewhat smaller number of Child in Need of Protection or Services (CHIPS), other juvenile, and divorce cases, on average, than counties with paid non-attorney and volunteer programs. Judges and court administrators told us that it was not necessary to maintain a formal guardian program in counties with low numbers of cases, and that they could always find a lawyer, if needed, to serve as a guardian. Moreover, they said, lawyers needed no training or supervision to act as a guardian.

Judicial districts are not homogeneous, and counties that are within a multi-county district are likely to use different types of guardians. We did not attempt to review historical files, but we were told by judges and court administrators that each Minnesota county, in large part driven by the philosophy of the court or an administrator, determined which type of guardian program best suited its needs. However, the system is not static. One county recently abandoned volunteer guardians in favor of paid non-attorney guardians, in part because of the difficulty of finding volunteers. Another county told us that they were abandoning the paid non-attorney model in favor of paid attorneys, because of high guardian turnover. Another county recently contracted with a non-profit organization to provide, coordinate and supervise paid non-attorney guardians. At least ten counties use three external organizations to provide coordinators or guardians.

About 25 percent of all guardians responding to our survey were independent contractors, while 15 percent were county or court district employees. The remaining 60 percent of respondents to our survey said they were volunteers. Some paid non-attorney guardians expressed concern about their status as independent contractors, and felt it was simply a way for counties to avoid granting them benefits. Any changes to the guardian program to increase supervision and adopt training requirements might affect the ability of counties to classify guardians as independent contractors.

PAYING FOR GUARDIANS *AD LITEM* IN MINNESOTA

Most counties were unable to provide detailed cost data for guardian programs.

We asked each county to provide detailed information on costs for guardian programs, specifically for training, salaries, and contract services, for 1993 and budgeted 1994. Most counties were unable to provide detailed cost data, five counties provided data for only one year, and four provided no data at all. In addition, we were told that some supervisory and other costs were often

commingled with other court functions, and, thus, were not completely reported. We also asked each county for the total number of juvenile and family court cases assigned guardians during 1993, and just over two-thirds of all guardian programs provided these data.

Table 2.2 shows the 1993 total guardian budget by type of guardian program. Where budget data were not reported by the county, we made estimates.¹²

According to our estimates:

- **In 1993, almost \$3 million was spent providing guardian services statewide, using the services of about 850 different guardians.¹³**

Table 2.2: Estimated Guardian Program Costs By Type of Guardian Program, 1993

	<u>Paid Attorney</u>	<u>Paid Non-Attorney</u>	<u>Ramsey Volunteer</u>	<u>Hennepin Volunteer</u>	<u>Hennepin Attorney</u>	<u>Volunteer</u>	<u>Minnesota</u>
Program Average	\$ 8,728	\$ 21,329	\$ 50,106	\$218,339	\$182,625	\$418,183	—
All Programs	\$113,467	\$1,322,460	\$551,170	—	—	—	\$2,806,243

Relatively few guardians are from minority groups, and most are women.

Court administrators told us that few guardians are from minority groups (we estimate less than 10 percent statewide), although this varies by county. Almost three-fourths of all guardians statewide are women. The Hennepin County volunteer program estimated that about 13 percent of their guardians are minorities, and only 11 percent are men.

We were told that the number of children provided guardian services is likely higher than the number of cases, since divorces often involve more than one child. It is also likely that the real costs are larger, since many counties record the costs of operating guardian *ad litem* programs in the budgets of other departments. Over \$800,000 was spent in Hennepin and Ramsey counties alone.

We found that program administration varied widely among counties. In almost three-fourths of the counties, court services or the court administrator's office administered the guardian program. In other counties, guardian programs are administered by community corrections departments, staff guardians, guardian program coordinators, judges, or external agencies. At least three private organizations provide and/or coordinate guardian services in ten counties—Catholic Charities in Winona County, a law firm in southern St. Louis County,

¹² Where data for 1993 expenditures was missing, we used 1994 data if available. For the four counties with no financial data, we estimated 1993 expenditures using a model based on the total number of dissolutions with children filings reported by the Supreme Court, whether the program reported using attorney guardians, and the estimated total number of guardian cases. We excluded Ramsey and Hennepin counties' data from the estimation process.

¹³ Counties told us they used just over 1,000 guardians, but about 15 percent of these names were provided by more than one court administrator. On the basis of our surveys and by cross-referencing names given to us by counties, we estimated that about 850 different individuals acted as guardians in 1993.

More than half of all guardian programs reported using five or fewer guardians.

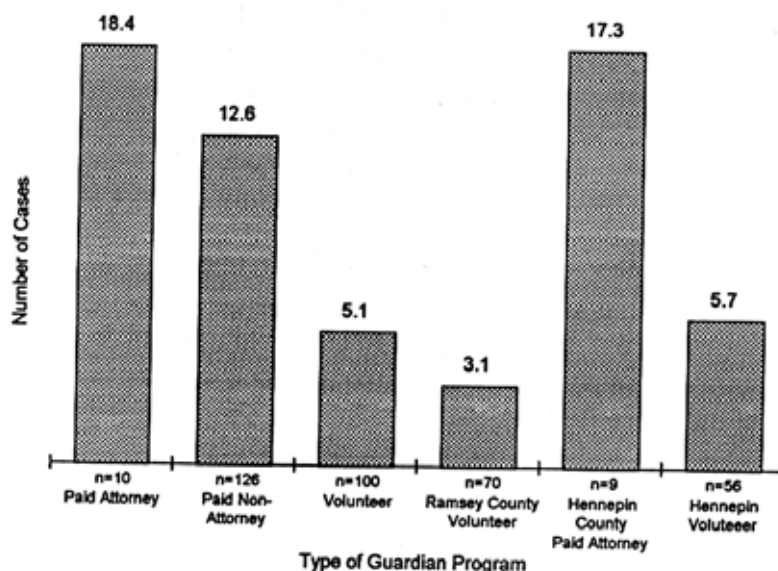
and Guardian Services, Inc. in Anoka, McLeod, Sibley, Carver, Scott, LeSueur, Rice, and Dakota counties.¹⁴ Several counties told us that they share guardians, sometimes because they share judges, and ten programs said they sent their guardians for training to another county. Most counties' guardian programs are small, especially outside the Twin Cities' metropolitan area, and more than half the programs reported using five or fewer guardians. The guardian programs in the 8th district are state funded (Kandiyohi, Meeker, Renville, Yellow Medicine, Lac Qui Parle, Chippewa, Swift, Big Stone, Pope, Stevens, Grant, Traverse, and Wilkin counties, as shown in Figure 2.3); counties fund all other guardian programs.

We found that the hourly rate for paid-attorney guardians was about the same for any type of guardian program, approximately \$50 to \$55 per hour. Non-attorney hourly rates were much more variable, ranging from \$8 to \$40 per hour, but may include the cost of coordination and supervision for counties that use an external agency to provide guardian services.

We asked guardians how many active and inactive juvenile and family court cases they carried on average. As shown in Figure 2.4, paid attorney guardians told us that they were assigned about 18 cases on average, compared to almost 13 for paid non-attorney guardians and about 5 for volunteer guardians.

We asked each county to tell us the number of cases carried by their guardians during 1993. Only 46 percent of counties using paid attorneys reported the

Figure 2.4: Self-Reported Guardian Caseload by Type of Guardian Program, 1991



Note: Data from Ramsey and Hennepin counties are evaluated separately from other types of guardian programs. Numbers were reported by guardians for active and inactive juvenile and family court cases.

¹⁴ In addition, the Family Resource Center will run the Chisago County guardian program beginning in 1995.

number of cases, compared to 74 percent of counties with paid non-attorney guardians and 64 percent of counties using volunteer programs. The lower reporting rate may be due to a lack of county oversight for attorney programs and incomplete records. We estimated the number of guardian cases for 27 programs with missing data, and calculated the cost per case as shown in Tables 2.3.¹⁵

- **We estimate that across Minnesota in 1993 guardians carried just over 6,300 cases and costs averaged \$450 per case statewide, ranging from a low of \$63 to a high of \$1,500 per case.**

Table 2.3: Estimated Cost Per Guardian Case By Type of Guardian Program, 1993

	<u>Paid Attorney</u>	<u>Paid Non-Attorney</u>	<u>Volunteer</u>	<u>Ramsey Volunteer</u>	<u>Hennepin Attorney</u>	<u>Hennepin Volunteer</u>	<u>Minnesota</u>
Average Cost Per Case	\$ 257	\$ 456	\$ 435	\$448	\$525	\$486	\$ 445
Program Low	\$ 65	\$ 63	\$ 115	—	—	—	\$ 63
Program High	\$1,500	\$1,327	\$1,303	—	—	—	\$1,500
Estimated Number of Cases	442	2,899	1,266	487	348	860	6,302

Note: Guardian case data for 27 programs was estimated. Average cost was calculated by dividing total expenditures by the estimated number of cases.

Estimated cost per guardian case varied widely.

Cost per guardian case varied widely, and we could not measure case complexity, time spent on each case, and other factors affecting case cost. Paid attorney guardians were criticized for the limited amount of time they spent on each case. Also, as stated above, incomplete reporting of supervisory costs may be a factor.¹⁶ While the rates paid to attorney guardians appear high, the cost per case is similar to that for paid non-attorneys and volunteer guardians, largely due to relatively large caseloads for attorney guardians and the costs of providing supervision and training for paid non-attorney and volunteer programs. Volunteers are technically unpaid, but some programs have liberal policies for expense reimbursement such as mileage and meals, and some even cover child care. Volunteer program costs are also increased by higher costs for recruiting and training. Almost all volunteer programs have coordinators who help assign, supervise, and evaluate guardians. Other program costs may include newsletters and recognition programs.

¹⁵ We estimated the number of 1993 juvenile court cases for those counties with missing data using a model based on data reported by the counties for the number of CHIPS, other juvenile, and termination of parental rights filings reported by the Supreme Court, and court administrator's estimate of the total number of juvenile court cases, if available.. We estimated the number of 1993 family court cases using the number of dissolutions with children, CHIPS, adoption, and termination of parental rights filings reported by the Supreme Court, the number of guardians, whether any paid guardians were used, and the court administrator's estimate of the total number of family court cases, if available.

¹⁶ In many counties, some guardian fees were recovered from parents, usually in divorce cases, and we were told that these revenues were deposited into the county general fund.

Guardian programs get mixed reviews.

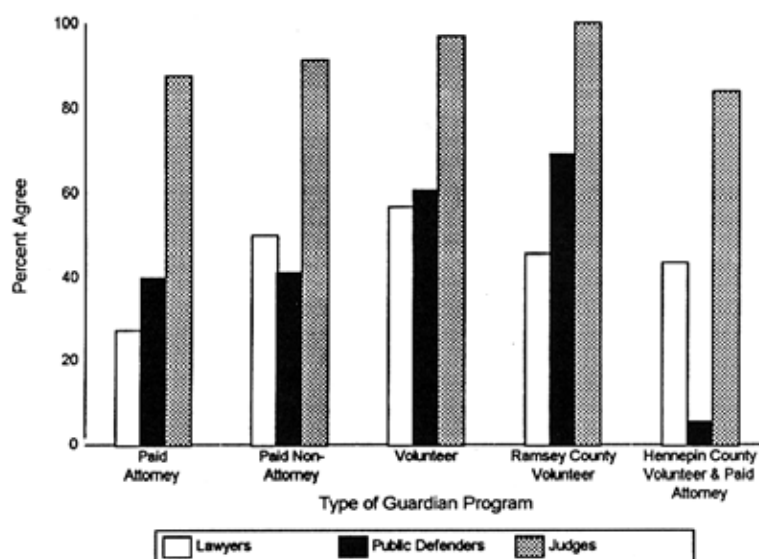
EVALUATION OF DIFFERENT TYPES OF GUARDIAN PROGRAMS

We asked judges, lawyers, and public defenders to rate their overall experience with their guardian programs, and we then analyzed their responses by type of guardian program. Public defenders are more likely to work with guardians in juvenile court; family practice lawyers are more likely to work with guardians in family court.¹⁷ As we analyzed responses from family practice lawyers and public defenders, we also examined their previous experience as guardians. We also reviewed complaints we received about individual guardians. Finally, we asked judges, lawyers, and public defenders to rate guardians with whom they work on a list of characteristics and analyzed responses by type of guardian program. We separated responses from Hennepin and Ramsey counties from the rest of the volunteer and paid attorney programs and analyzed them separately. We found:

- **Judges are generally satisfied with their guardian programs, but family practice lawyers and public defenders may disagree.**

As shown in Figure 2.5 the vast majority of judges who responded to our survey told us they were satisfied with their guardian programs, but family practice lawyers and public defenders gave guardian programs much lower ratings. Lawyers and public defenders with previous experience acting as a guardian were apparently more sympathetic to guardians, and were more likely to rate any

Figure 2.5: Percent of Lawyers, Public Defenders, and Judges Rating Guardian Programs Positively



Note: Data from Hennepin and Ramsey counties were evaluated separately from other types of guardian programs. Family practice lawyers, public defenders, and judges were asked: "How would you describe your overall experience with guardians *ad litem*?"

¹⁷ Several counties contract with public defenders to act as guardians in juvenile court.

We heard many complaints about guardians.

program positively compared to lawyers and public defenders with no previous guardian experience. Family practice lawyers and public defenders expressed similar satisfaction with guardian programs, except in Hennepin County.

Parent advocates and lawyers told us about problems with individual guardians, including bias toward either mothers or fathers, ignorance about legal procedure, and failure to adequately investigate a child's situation. There was a feeling that some guardians were narrowly focused on their own power and ability to control others. We heard many reports of guardian impropriety, and these reports came from counties throughout the state. While much of the criticism came from programs within the metropolitan area, the number of complaints seemed in agreement with the relatively large number of juvenile and family court cases that come from this area.

Programs Using Paid Attorneys

Judges responding to our survey expressed slightly less satisfaction with guardian programs using paid attorneys, but some judges believe that lawyers make the best guardians, particularly in contentious family court cases.¹⁸ Hennepin County is one of several programs that uses paid attorneys almost exclusively in family court.¹⁹ Lawyers know the court system, and this was important to judges concerned about legal process. In our survey, judges had a clear preference for attorney guardians in cases involving complex legal issues, as shown in Figure 2.6.

The average hourly rate for attorneys across the state was nearly \$55, and some administrators told us it was difficult to justify this rate when other nearby jurisdictions used less expensive non-attorney guardians. However, in counties where attorney guardians had higher juvenile and family court caseloads, differences in rates of pay were less important.

One national study indicates that guardians who are attorneys spend less time on cases than non-attorneys.²⁰ The study found that attorneys tend to spend less time with the child, their family and other professionals, and do not develop a full picture of child's situation.²¹ In Minnesota, attorney guardians were also criticized by some of our survey respondents for a lack of training in child development and family dynamics. Others commented that there is an inherent conflict of interest when an lawyer practicing before a court also acts as a guardian in the same court, and the relationship with the judge may be perceived as too familiar. We can find no reason to require that all counties use paid

¹⁸ We were often unable to distinguish which Hennepin County guardian program judges evaluated, and analyses using judges' ratings may apply to either program.

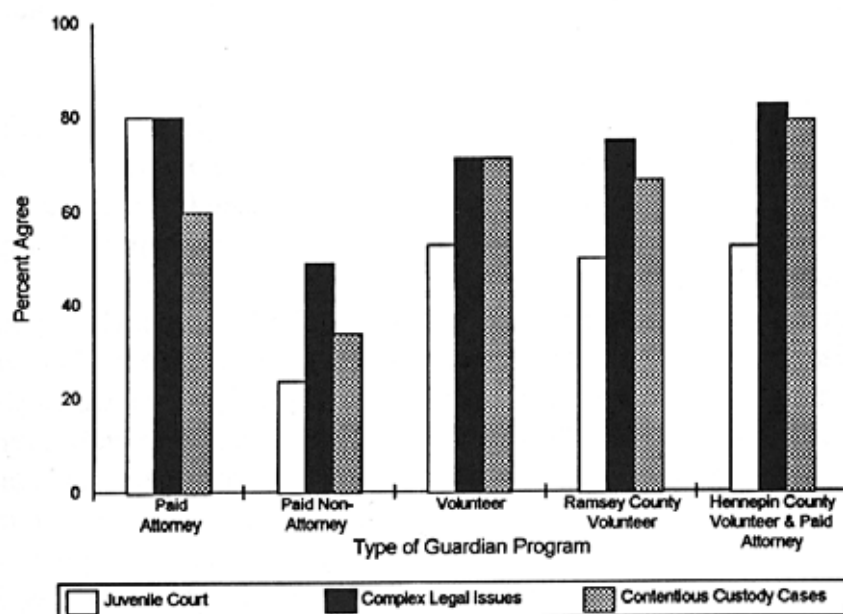
¹⁹ Hennepin County uses either one of the four attorneys under contract to the county or refers cases to one of the 42 attorneys in a guardian pool. Other counties refer cases to one or more local attorneys.

²⁰ U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *Final Report on the Validation and Effectiveness of Legal Representation through Guardian ad Litem*, (Washington: October 1990), 4-10.

²¹ We did not study time spent on each case.

Judges may prefer attorney guardians for complex or contentious cases.

Figure 2.6: Percent of Judges Saying that Guardian Should be an Attorney in Different Types of Cases



Note: Data from Hennepin and Ramsey counties were evaluated separately from other types of guardian programs. Judges were asked to rate how often guardians should always or sometimes be attorneys for five types of cases.

attorney guardian programs. However, we also recognize that in some sparsely populated counties with small caseloads, paid attorney guardian programs may be the most practical way to provide services.

Programs Using Paid Non-Attorneys

About 91 percent of judges rated paid non-attorney programs positively. Paid non-attorney programs are seen as a compromise between paid attorney and volunteer programs. Supporters of paid non-attorney programs believe such programs are relatively easy to develop and administer, that these programs are easier to coordinate and supervise than volunteer programs, that professionals should be paid for their services, and that an employment or contractual relationship increases accountability.

Lawyers generally rated paid non-attorney programs fairly low, and compared to other programs, lawyers rated non-attorney guardians less experienced, less informed about the legal system and unwilling to question witnesses. Public defenders rated programs using paid attorney and paid non-attorney about the same, although there was some variability due to previous experience as a guardian. The paid non-attorney program is an alternative to the paid attorney program in those counties with relatively small caseloads.

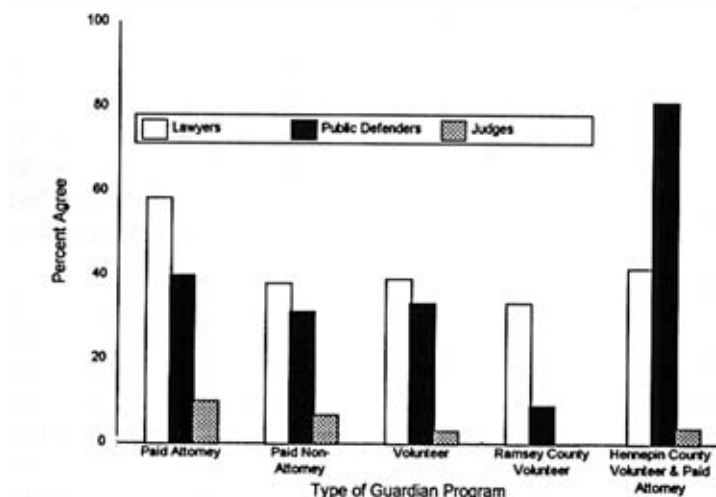
Programs Using Volunteers

As shown in Figure 2.5, most judges from counties with volunteer programs rated them positively and, excluding Ramsey and Hennepin counties, family practice lawyers rated volunteer guardians highest overall. Judges and particularly public defenders rated the Hennepin County program less positively. Volunteers often told us that volunteering shows a deep commitment to the children they serve. They also noted that volunteers tend to carry smaller caseloads, and we were told that volunteer guardians spend more time on each case, as found in one national study.

The Ramsey County program was rated as highly as any other program, and 100 percent of judges responding to our survey rated it positively. Judges and lawyers did rate guardians from Ramsey County as less likely to attend court hearings, compared to guardians from other types of programs.

In Figure 2.5, 84 percent of Hennepin County judges rated their programs positively, somewhat lower than ratings for other types of guardian programs.²² Public defenders from Hennepin County were very critical of that county's guardians. As illustrated in Figure 2.7, public defenders reported that guardians in Hennepin County do not adequately investigate cases. Hennepin County public defenders commented frequently in attached written comments about the unwillingness of volunteer guardians in juvenile court to oppose the opinions of social workers and other professionals. We were told by others within the system

Figure 2.7: Percent of Lawyers, Public Defenders, and Judges Agreeing that Guardians Do Not Adequately Investigate Their Cases



Note: Data from Hennepin and Ramsey counties were evaluated separately from other types of guardian programs. All respondents were asked to indicate how strongly they agreed with the statement, "Guardians generally do not adequately investigate their cases."

²² Fewer judges from counties using attorney programs responded to our survey, and this could affect those results.

Volunteer programs are not a cost-saving alternative to other types of guardian programs.

that guardians may be appointed late to these cases, and may rely on investigative work done by other professionals.²³ Conversely, we were told that, unlike Ramsey County, public defenders in Hennepin County are no longer under contract to act as attorneys for guardians. Ramsey County officials told us that guardians are often appointed to a case relatively late, and that the issue is one of limited resources. We were told that in Hennepin County, if all parties agree, appointments are often delayed until pre-trial.

Many volunteer programs do a good job, but they are moderately expensive. As discussed above, most volunteer programs provide training and have supervisory expenses for recruiting, evaluation, and program coordination. It is vital that any type of guardian program fit the community needs and economic constraints of the county or judicial district. In some communities, it may be difficult to develop a volunteer program. The volunteer programs we observed possess strong, committed coordinators, but such individuals may be difficult to recruit and train. The benefits can be substantial, but volunteer programs should not be considered as a quick fix or cost-saving alternative to other types of guardian programs. In cases where guardians with special skills are needed, such as lawyers or specific cultural advocates, guardians may need to be paid to ensure availability.

SUMMARY

Judges use guardians in various ways to ensure that children and their needs get adequate attention. Minnesota law requires the appointment of a guardian *ad litem* for several types of cases, and allows discretionary appointment in others. Guardian use is likely to increase in the near future, since judges value the extra voice and independent perspective that guardians are expected to provide.

We categorized programs by the type of guardian predominantly used in the program—paid attorneys, paid non-attorneys, and volunteers—but some programs are mixed. We estimated that in 1993 about 850 people served as guardians in one or more counties, at a cost of almost \$3 million dollars. Most guardians were women, and relatively few were minorities. Currently, the guardian programs in the eighth judicial district are state funded; all others compete for county resources. Most programs are administered at the county level, but cooperation among programs does exist. At least three non-public organizations contract to provide guardian services to programs in ten counties.

County needs and resources vary considerably, and guardian use reflects these differences. The differences among counties makes it nearly impossible to identify one type of program that would best serve all jurisdictions. While we could find no reason that guardians must be attorneys, we also recognize that in some sparsely populated rural counties with small caseloads, paid attorney guardians may be the most practical choice.

23 Appointment of guardians is discussed in more detail in Chapter 4.

Roles and Responsibilities of Guardians *Ad Litem*

This chapter discusses the roles and responsibilities of guardians *ad litem* in Minnesota's family and juvenile court. Specifically, we considered the following questions:

- **Do guardians *ad litem* have clearly defined roles and responsibilities?**
- **What are guardians' understanding of their role and responsibilities?**
- **Are guardians performing the roles that judges and others expect them to perform?**

In interviews, attorneys, advocates, parents and other interested citizens voiced the concern that guardian roles and responsibilities are not well defined, are interpreted differently in different court districts across the state, and parents don't know what guardians are supposed to do or what is out of bounds. Some people think guardians have too much power, lack independence from judges, and communicate inappropriately with judges. Others expressed concern that guardian reports are often oral not written, and are incomplete with recommendations not supported by facts from an investigation.

We reviewed national literature and Minnesota statutes, rules and judicial guidelines to determine the primary roles and responsibilities of guardians *ad litem*. Using surveys and interviews, we asked judges and court administrators to identify what they believe the responsibilities of guardians should be, and we asked guardians to describe their responsibilities. We also asked guardians to describe how their duties for a specific case are defined, how they submit reports to court, and how they communicate with judges.

This chapter shows that while Minnesota statutes provide for the appointment of guardians, they provide little detail on what roles guardians should fulfill. Minnesota uses the 1986 *Guidelines* to clarify the duties of guardians, but the *Guidelines* do not carry the authority of statute or rule, are not widely disseminated or uniformly applied, have not been revised or updated, and are inconsistent with some court rules related to guardians. Finally, we found that judges differ in the roles that they assign to guardians and in their expectations for communication and reporting.

OVERVIEW OF GUARDIAN ROLES AND RESPONSIBILITIES

Numerous articles have been written describing the various roles and responsibilities of guardians *ad litem*. Some authors have established specific and detailed models for guardian representation. While most of these proposals share general principles, there does not appear to be a consensus regarding the role of the guardian and what functions should be performed. One national study, that has been frequently used as a framework, gives the guardian responsibility for a variety of tasks carried out within the context of six roles. Based on this model and a review of literature, the primary roles and responsibilities of a guardian *ad litem* are to:

Guardians are supposed to advocate the best interests of the child.

1. Conduct an independent investigation to determine all facts relevant to a child's case. This includes reviewing relevant documents, interviewing people with knowledge of the facts (including parents and caretakers); and talking to and observing the child.
2. Advocate for the child's best interests by participating in all aspects of the case, and identifying and advocating for appropriate community resources when necessary.
3. Facilitate the resolution of problems by sharing information and seeking cooperative solutions.¹
4. Monitor the child's case and advise the court concerning the child's best interests throughout the judicial proceeding.
5. Present a report, complete with findings, conclusions and recommendations, to the court regarding the child's best interests.
6. Finally, guardians should maintain the confidentiality of information related to a case.²

The nature of guardian *ad litem* cases will vary depending on whether a specific case involves issues of abuse and neglect in a juvenile court proceeding or custody and visitation issues in a family court proceeding. Every case will be different, some more lengthy and complex than others. The way guardians fulfill the above roles may vary depending on the nature of the case. Appendix C briefly

¹ This should not be confused with mediation. Some national studies mention mediation as a guardian responsibility. However, one national survey found that few guardians perceive mediating as part of their role. This is also the case in Minnesota. Court officials told us that in Minnesota it is generally understood that guardians should not mediate in the legal sense of the term because it is inconsistent with the role of the guardian. To do so may require the guardian to compromise the best interest of the child.

² U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *Final Report on the Validation and Effectiveness Study of Legal Representation Through Guardian Ad Litem* (Washington, D.C.: National Clearinghouse, 1994), 2-5 - 2-11; Rebecca H. Hertz, "Guardians Ad Litem in Child Abuse and Neglect Proceedings: Clarifying the Roles to Improve Effectiveness," in *Family Law Quarterly* (American Bar Association, 1993), 341-347; National Court-Appointed Special Advocates Association, *Standards and Recommended Management Practices for CASA/GAL Programs* (January 1992), 5.

summarizes the activities of a guardian in an actual juvenile court case from a southern Minnesota county. The case study illustrates how the roles and responsibilities of a guardian were fulfilled in one specific case.

As we discussed in Chapter 1, it is rare for states to provide a detailed definition of guardian roles and responsibilities in state statutes. When state statutes address the issue, most describe guardian roles quite broadly, such as the expectation that guardians will conduct an independent investigation, meet with the child and family, and monitor the case.

DEFINITION OF GUARDIAN ROLES AND RESPONSIBILITIES IN MINNESOTA

References to guardian roles and responsibilities in Minnesota are currently found in a variety of places. Minnesota statutes provide for the appointment of guardians and identify guardians as mandatory reporters of child abuse and neglect; court rules contain guardian reporting requirements; court procedures define guardians roles in court proceedings; and the *Guidelines* provide detailed suggestions on a wide variety of issues related to how the guardian system should operate. We found:

- **There is not a universally understood or consistently applied definition of the appropriate roles and responsibilities for guardians *ad litem* in Minnesota, leading to frequent confusion and differing expectations.**

Minnesota statutes and rules provide little direction on the roles of guardians.

Minnesota laws provide for the appointment of guardians *ad litem* in both family and juvenile courts.³ However, Minnesota statutes and rules provide little direction on the roles and responsibilities of guardians once they are appointed. Minnesota statutes simply direct guardians to “protect the interests of the minor” or “represent the interests of the child.”⁴ While a statutes clearly define, with a list of twelve criteria, what constitutes the “best interests of the child” for the purposes of custody investigations, they do not require guardians *ad litem* to use the same statutory criteria when reporting to the court.⁵ In family court divorce or child custody proceedings, statutes require guardians to “...advise the court with respect to custody, support, and visitation.” The family court also may appoint a guardian to “represent the child in the custody or visitation proceedings.”⁶

Beyond these statutory provisions, Minnesota uses a combination of judicial guidelines and court rules to define guardian roles and responsibilities. The 1986 *Guidelines* provide substantial information for guardian coordinators, guardians,

³ Rules and procedures differ in juvenile and family court. Cases also proceed differently in the two courts, although cases in either may be quite lengthy. Differences that might affect guardians include status as a party to the judicial proceeding, timelines for submitting written reports, interaction with various social service agencies and development of case plans, monitoring compliance with a re-unification plan (juvenile court), and possibly filing a petition for protective services (family court).

⁴ *Minn. Stat.* § 260.155 subd. 4, (a) and *Minn. Stat.* § 518.165 subd. 1 and subd. 2.

⁵ “Best interests of the child” are defined in two places in Minnesota law, both of which relate to custody and support issues: *Minn. Stat.* § 257.025 and *Minn. Stat.* § 518.17.

⁶ *Minn. Stat.* § 518.165 subd 2.

and judges about types of appointment, roles, duties, screening, training, and supervision. The *Guidelines* sought to outline “clear expectations of the role and responsibilities of guardians *ad litem*” in family and juvenile court. In addition to detailing specific guardian duties for each stage of the judicial process in an appendix, the *Guidelines* state:

...it is the responsibility of the guardian *ad litem* to represent to the court whatever is in the best interest of the child. The primary obligation is to fully participate in any court proceeding, which includes protecting the child’s rights and interests (however, not as an attorney) and advising the court as to the course of action that will ensure that the child’s best interests will be served.

The primary duties of guardian *ad litem* include case investigation, participation in negotiations and hearings, development of dispositional recommendations, presentation of recommendations to court, regular contact with the child, protection of the child’s rights, participation in decision making meetings that affect the child, case monitoring, advocacy on behalf of the child to ensure their needs are met, and compliance with all statutory requirements... The guardian *ad litem* ... may also be in a unique position to facilitate the resolution of cases without litigation.⁷

Minnesota's *Guidelines* for guardians do not have the authority of statute or rule and are not widely or consistently used.

While Minnesota’s *Guidelines* articulate the roles of guardians, they are not codified into statute or rule. Consequently, the *Guidelines* do not carry the authority of statute or rule, and they are not binding. Our interviews with judges, court administrators, and guardians revealed that the implementation of the *Guidelines* has been uneven, at best. The *Guidelines* are not consistently distributed or used throughout the state. While judges and some guardians consider the *Guidelines* as “their bible,” others are not aware of their existence.

Based on our review, it appears the *Guidelines* have not been updated to include revised statutory language, and they appear to be inconsistent when compared to court rules. For example, the statutory references to “best interests of the child” criteria were out of date in the copy of the *Guidelines* we reviewed. While court rules require guardians to submit reports and recommendations in writing, the *Guidelines* instruct a guardian to make a “written or oral report” to the court.⁸

We found that the citations for guardian roles and responsibilities are scattered throughout statutes, court rules, and judicial guidelines. Some guardians, lawyers, and representatives of parents groups told us that the lack of clear role definition contributes to inconsistency and confusion about guardians’ duties and how they are carried out. However, representatives from MAGAL and certain guardian program administrators prefer that training courses outline guardians’ specific

⁷ Minnesota Judges Association, *Guidelines for Guardians Ad Litem* (St. Paul: June 1986), 23.

⁸ Family Court Rule 1.02. General Rules of Practice Rule 108.01 requires guardians “to submit any recommendations, in writing, to the parties and to the court at least ten (10) days prior” to the hearing; Juvenile Court Rule 62.03 subd. 3 requires guardians to “file the report forty-eight (48) hours prior” to the hearing; Minnesota Judges Association, *Guidelines*, 27.

Better role definition will increase guardians' ability to represent children's best interests.

duties, rather than codifying these duties in statutes or rules.⁹ They fear that if the guardians' duties were rigidly defined in statute, "the flexibility necessary to advocate for a specific child's best interest could be reduced."¹⁰

It is our opinion that clearer definition of guardian roles and responsibilities would increase understanding of guardian duties without impeding the flexibility of the system. For guardians to effectively represent and advocate for the best interests of children, they must have a clear understanding of their expected roles and responsibilities. During judicial proceedings, guardians will likely work with other professionals (social workers, court services staff, probation officers), clear and consistent role definition will help prevent conflict and confusion among the various professionals involved in family and juvenile court cases. We recommend that:

- **The Legislature should clearly articulate the primary roles of guardians *ad litem* in Minnesota statutes.**

We think that clear definition of the guardian's primary roles in statute will increase the guardian's ability to effectively represent the child's interest and work with other professionals. We suggest that legislation, amending Minnesota Statutes § 260.155, subd. 4, and § 518.165, define guardian roles broadly to include responsibility to conduct an independent investigation, advocate for the child's best interests, and monitor the case and the child's circumstances.

THE ROLE OF JUDGES IN THE GUARDIAN *AD LITEM* SYSTEM

Judges told us that guardians play a crucial role in the judicial system, and that the court "couldn't operate without them." Well-trained guardians, working in appropriate roles, gather information from professionals, request additional information when necessary, help sort out issues in custody disputes or child abuse and neglect cases, determine whether children receive ordered services, and remind the court when children are waiting too long in impermanent situations. Judges play a crucial role in assuring that the guardians' work is useful and appropriate. Typically, the local court and the presiding judge define the scope of authority of the guardian *ad litem* on each case assigned. We found:

- **Judges have differing practices in their use of guardians *ad litem*, particularly in roles assigned and the nature of appointment orders and communications.**

Judges across the state assign a variety of duties to guardians. In some cases, guardians act solely as guardians *ad litem*, gathering data from appropriate

⁹ Undated letter from MAGAL to Senator Ember Reichgott-Jung regarding S.F. 2094 considered during the 1994 Legislative Session.

¹⁰ Deborah A. Randolph and Susanne K. Smith, "Advocates for Children: The Role of the Guardian ad Litem," in *Bench and Bar of Minnesota*, August 1991, 31.

Judges across the state assign a variety of duties to guardians.

sources and presenting the information and recommendations to the court. In other cases, guardians act as mediators, custody evaluators, or visitation expeditors. Some of these duties, such as mediation, may conflict with the job of advocating for the child's best interest. People told us that guardians working with victims of domestic abuse have routinely violated existing Orders for Protection which stipulate no contact between the abuser and the abused.¹¹ This multiplicity of roles can be confusing, especially to parents.

An example of differing judicial practices is the use of guardians as custody investigators. Although the *Guidelines* do not define custody investigation as a guardian duty, over half of all judges responding to our survey said that "conducting custody evaluations" should be a guardian responsibility. In contrast, the Goodhue County court has a formal policy which clearly differentiates the roles of guardian and custody investigator in family court proceedings. Goodhue County court officials argue that a guardian *ad litem* cannot also be a custody investigator because statute describes two separate functions with different responsibilities. In their view, a guardian is responsible for advocating for the child's best interest, while a custody investigator should maintain objectivity in order for the custody reports to be admissible as unimpeachable, credible evidence. A custody investigator must submit a report that follows an outline defined in statutes; there are no statutory outlines for guardian reports. The guardian possesses important procedural rights which a custody investigator lacks, such as the right to initiate and respond to motions, and make oral and written statements on behalf of the child.¹² We suggest that updated *Guidelines* for guardians clarify the roles of guardians *ad litem* and custody investigators.

We examined survey results from judges, court administrators, and guardians to determine how responsibilities are defined by each group, what responsibilities judges and court administrators think guardians should be fulfilling, and whether guardians are performing the responsibilities judges expect them to perform. Our analysis results indicated that there are many areas of agreement, but there is disagreement about several issues. For instance, as illustrated in Table 3.1, we found that high percentages of judges, court administrators, and guardians identified the following activities as guardian responsibilities:

- Be familiar with statutes and rules governing family and juvenile court
- Inform the court of the child's best interests
- Assess long-range effects on the child
- Report suspected abuse to child protection
- Maintain confidentiality
- Maintain accurate, organized records
- Consult and work with other professionals.

¹¹ We have not independently verified this complaint. However, numerous sources have expressed concern to us about the lack of guardian training related to domestic abuse and the cycles of family violence.

¹² Goodhue County, "Why a Guardian Ad Litem Under Minn. Stat. § 518.165 Cannot Also be a Custody Investigator Under Minn. Stat. § 518.167," October 27, 1994.

Table 3.1: Guardian Responsibilities For All Types of Cases

	Percent of Each Group Agreeing Function is a Guardian Responsibility		
	Judges	Court Administrators	Guardians
HIGH LEVEL OF AGREEMENT			
Be familiar with statutes/rules governing family and juvenile court	91%	91%	86%
Inform the court of the child's best interests	88	86	83
Assess long-range effects on the child	90	90	93
Report suspected abuse to child protection	92	90	88
Maintain accurate, organized records	85	87	91
Maintain confidentiality	90	99	97
Consult and work with other professionals	85	92	93
LOW LEVEL OF AGREEMENT			
Read Appellate and Supreme Court decisions	15	22	19
DISAGREEMENT			
Seek case consultation	51	76	87
Provide information on a "need to know" basis only	44	72	68
Maintain contact with community resources	71	67	81

Note: Judges were asked "Which of the following do you believe should be responsibilities of *all* Guardians *Ad Litem* who practice in your court?"

Court administrators were asked "Which of the following are identified by your program as responsibilities of *all* Guardians *Ad Litem* in your county?"

Guardians were asked "Which of the following describe your responsibilities for all types of cases?"

Table 3.2 shows that high percentages of judges, court administrators, and guardians identified the following activities as guardian responsibilities in family and juvenile court:

- Read case files
- Interview pertinent parties
- Make recommendations regarding child's needs
- Visit with child
- Keep current on progress of the case

Survey analysis also revealed activities that few judges, court administrators, and guardians considered guardian responsibilities. Responsibilities in this category include:

- Read Appellate and Supreme Court decisions
- Conduct mediation
- Supervise visitation
- Monitory child support order
- Facilitate service delivery

Table 3.2: Guardian Responsibilities in Family and Juvenile Court Appointments

	Percent of Each Group Agreeing Function is a Guardian Responsibility								
	Juvenile Court			Family Court Mandatory			Family Court Discretionary		
	Court Judge	Administrator	Guardian	Court Judge	Administrator	Guardian	Court Judge	Administrator	Guardian
HIGH LEVEL OF AGREEMENT									
Read case files	87%	96%	98%	94%	95%	84%	88%	91%	80%
Interview pertinent parties	83	97	98	91	96	85	85	92	77
Make recommendations regarding child's needs	88	97	96	94	93	81	89	89	75
Keep current on progress of the case	84	92	99	91	90	85	85	90	77
Visit with child	85	91	99	89	91	85	85	88	77
LOW LEVEL OF AGREEMENT									
Conduct mediation	6	4	14	11	9	20	11	13	23
Supervise visitation	23	24	32	31	37	35	28	34	28
Monitor child support order	4	7	9	7	9	13	6	9	13
Facilitate service delivery	32	24	33	34	26	34	30	29	32
DISAGREEMENT									
Research critical issues affecting child's situation	56	90	91	63	87	80	57	83	72
Collect relevant information during investigation	78	95	95	87	95	84	81	91	75
Make recommendations regarding visitation	69	76	85	92	90	81	90	85	75
Locate and recommend services for the child	49	63	63	56	65	59	51	66	54
Attend case staffings or conferences	62	79	87	61	68	66	54	68	58
Maintain contact with service providers	73	86	98	68	82	78	64	83	69

Note: Judges were asked "For each type of appointment, please indicate which of the following should be responsibilities of Guardians *Ad Litem*."

Court administrators were asked "Please indicate for each type of appointment, which of the following are responsibilities of Guardians *Ad Litem*."

Guardians were asked "For each type of appointment, please indicate which of the following describe your responsibilities."

Finally, our analysis revealed areas where the responses of judges, court administrators, and guardians do not agree. For example, in discretionary family court appointments, 90 percent of the judges reported that making recommendations regarding visitation should be a guardian responsibility; however, only 75 percent of the guardians consider that to be one of their responsibilities. Examples of other potential guardian responsibilities for which there appears to be disagreement among judges, court administrators, and guardians include:

- Research critical issues affecting the child's situation
- Collect relevant information during investigation
- Attend case staffings or conferences
- Maintain contact with service providers
- Seek case consultation

In some areas, judges and guardians disagree on guardian responsibilities.

- Provide information on a “need to know” basis only
- Maintain contact with community resources
- Locate and recommend services for the child

These differences indicate that expectations about guardian responsibilities and duties are not shared by all parties. Based on our research, some of these responsibilities are fundamental to the guardian’s role, such as researching critical issues and collecting relevant information. If different parties within the system are operating under different expectations, it could be difficult to provide guardian services in an appropriate manner. However, if guardian responsibilities and duties are clearly defined and communicated, then all guardians could more effectively represent the best interest of the child.

We recommend:

- **The Supreme Court should update and adopt the 1986 *Guidelines for Guardians Ad Litem*. The *Guidelines* should outline the roles and responsibilities guardians are expected to undertake to fulfill their duties. The *Guidelines* should clarify the roles of guardians *ad litem* and custody investigators, and develop procedures for how guardians *ad litem* should work with parents who have existing Orders for Protection.**

Guardian roles and responsibilities will be broadly defined in statutes. The *Guidelines* should articulate the specific responsibilities guardians are expected to undertake in order to fulfill their roles as defined in statutes. For example, to conduct an independent investigation, a guardian should interview the child’s parents, social workers, day care providers, and others with knowledge of the facts; visit with the child; and review school, medical and other pertinent records. The Supreme Court is currently in the process of revising the guidelines for guardians *ad litem*. The court is working with MAGAL to define guardian roles and responsibilities. We suggest that the court consider requiring that the guardian roles be implemented uniformly in all counties and court districts.

Communication

The *Guidelines* explicitly state that “to maintain the objectivity necessary in a judicial proceedings, the guardian *ad litem* should not initiate *ex parte* contact with the judge regarding case information.”¹³ Judges often call guardians “the eyes and ears of the court” and treat them as extensions of the judge. One of the most common complaints voiced by parents and attorneys is that guardians have too much power, and that they are too close to the judge. Attorneys frequently complained that because of this special relationship, guardians held inappropriate, *ex parte*,¹⁴ communications with judges, giving the appearance that the guardian had special status and undue influence in the courtroom. While the judges we spoke with universally agreed that *ex parte* communications should never happen,

¹³ Minnesota Judges Association, *Guidelines*, 33.

¹⁴ *Black’s Law Dictionary* defines *ex parte* as “on one side only.” *Ex parte* is a legal expression applied to a proceeding or communication in which only one side of the case is presented, and the opposing side is absent. There is a presumption of partisan testimony in an *ex parte* proceeding or communication.

Many guardians communicate improperly with judges.

both judges and guardians acknowledged that such communications and contacts do take place.

We asked guardians how they communicate with the judge if there is a problem with a specific case. As shown in Table 3.3, many guardians reported that they contacted judges directly by telephone or in person when they had problems or questions about cases. In our survey, 42 percent of the guardians responding acknowledged communicating directly with judges; 14 percent said they would call a judge and 28 percent would sent a letter or note to the judge only. Two-thirds of those who said they would call a judge were paid non-attorney guardians, and most of the guardians who said they would contact a judge in writing were paid non-attorney guardians. Most paid attorney guardians and volunteer guardians reported that they would not call or write to a judge.

Table 3.3: How Do Guardians Communicate With the Judge If There Is a Problem With a Case?

	Percent ^a
Phone call to the judges	14%
Letter or note to the judge	28
Phone call or letter to judge’s clerk	16
Phone call or note to guardian coordinator	47
Phone call to judge and all affected parties	11
Note to judge and all affected parties	37
Only communicate with judge in court	25

^aThese percentages represent total responses to a question with multiple answers.

Note: Guardians were asked “How do you communicate with the judge if you believe there is a problem with a case to which you are assigned?”

While it is likely that individual guardians may communicate directly with judges at times, we found nothing within any guardian model that would encourage such communication on a system-wide basis. However, we think that guardians could benefit from training in appropriate methods of communication with judges. We recommend that:

- **Training materials should address the issue of how to properly communicate with judges.**

Appointment Orders

The presiding judge in a case appoints the guardian and determines the nature of the guardian’s duties for that particular case. The judge’s order of appointment can be instrumental in defining the guardian’s duties for a specific case. When guardians were asked how their duties for a specific case were defined, over 59 percent of the total respondents indicated that their duties were contained in the judge’s written order of appointment, over 50 percent responded that their duties were listed in a statement of ethical conduct or training materials, and 41 percent said that their scope of duties was left flexible.

Guardians' scope of duties is not always clear.

In addition, we learned that judges often use general, “boilerplate” orders in appointing guardians, without specifying in detail the guardian’s charge for the specific case at hand. This practice can lead to misunderstandings by guardians, attorneys, other professionals, and parents as to what the guardian is expected to do in a specific case. We also found that many judges use detailed, case-specific written orders of appointment, such as the sample order summarized in Figure 3.1. We suggest that:

- **Judges should write more detailed appointment orders clearly defining their expectations for guardians’ roles and responsibilities in specific cases.**

Guardian Reports

Guardians submit reports to the court in the course of making recommendations. Advocates and some lawyers expressed concern to us that guardian reports are incomplete and that their recommendations were not adequately supported by facts from an investigation.¹⁵ There was also concern that reports may not be sent to all parties to a case. Survey results reveal that about 70 percent of guardians made written reports to all parties, and about 45 percent made oral reports. Nearly 20 percent of guardians told us that they made a written report to the judge

Figure 3.1: Sample Order for Resuming Visitation

1. _____ is appointed Guardian *ad litem* for the minor child.
2. The Guardian is directed to review the Court file, review law enforcement or Social Service agency files as appropriate, and then meet with the parents, the child, any significant friends and family members, and social workers with information that may be relevant, to conduct an investigation and make recommendations to the Court in writing by _____, 19____, on the following issues:
 - a. Whether contact by [father] should be re-established with [child]; what therapy or counseling needs to occur prior to or in conjunction with any resumed contact; what incremental steps or measures should be taken to gradually implement any visitation that is recommended; and what conditions should apply to the visitation, if contact is again to occur.
 - b. What visitation between [child] and [father] would be in her best interest; with respect to that visitation, whether it should be supervised; if supervised, who would provide the supervision.
 - c. With respect to visitation with [child], what arrangements would be appropriate as far as duration and frequency of visits, who would provide transportation for the visits, and any conditions that would attach to such visits.
 - d. If supervised visits are recommended, what steps [father] must take or what developments need to occur before the Guardian would possibly recommend that unsupervised visits be permitted.

Source: The Honorable Timothy J. Baland, 7th Judicial District.

¹⁵ We were told that many years ago in at least one jurisdiction guardians prepared dual reports, one public, and one given secretly to the judge. We found no evidence that this practice continued.

One-fourth of the guardians surveyed said there were no formal guidelines for their reports.

only. Paid non-attorney guardians were more likely to make a written report only the judge.

About 67 percent of the guardians responding to our survey reported that the format of their reports was defined in a training manual or model report form. About 25 percent said that expectations for report format were conveyed informally by supervisors. Almost one-fourth of guardians told us that there are no formal guidelines for their reports, and they were most likely to be from counties relying on paid attorney and non-attorney guardians. Nearly all guardians felt that reports should contain both recommendations and summary background information.

Nearly one-third of guardians said that judges occasionally question the support for a recommendation, but about half of all guardians, particularly paid non-attorneys, said reports are accepted as written unless formally challenged by a party. Guardians reported that their recommendations were accepted by the judge, on average, over 80 percent of the time.

Judges, lawyers, and public defenders disagreed on the quality of guardian reports. About 88 percent of judges rated guardians' reports as reasonably complete, accurate, and timely. Less than one-half of family practice lawyers and public defenders indicated that reports were reasonably complete and accurate. Only one-third of the lawyers and public defenders thought guardian reports and recommendations were timely.

We recommend that:

- **In its revised *Guidelines*, the Supreme Court should require written reports from all guardians, with background information to support any guardian recommendations. Reports should be submitted in advance to the court and all parties as required by court rules.**

PARENTAL CONFUSION ABOUT GUARDIAN ROLES

Parents often do not understand why guardians are assigned or what they are supposed to do.

Both parents and lawyers told us that parents often don't understand why a guardian is assigned to a specific case, what guardians are expected to do, and how parents can work with the guardians. Several calls and letters from parents were clearly based on misinformation or confusion. Several guardian coordinators and judges told us that they used parent information brochures and seminars to better inform parents. We recommend:

- **The Supreme Court should develop general written materials describing the purpose of guardians *ad litem* and guardian roles and responsibilities, and make them available to parents, lawyers, and other professionals. Information about specific programs should be developed at the local level.**

General information about the purpose and roles of guardians should be consistent statewide with the revised Supreme Court *Guidelines*. Individual guardian programs should supplement the general statewide materials with program-specific information including the name, phone numbers, and hours for the program coordinator or county contact person, and the local complaint process. Seminars for parents on the effect of divorce on children could also include information about guardian *ad litem* services.

SUMMARY

While Minnesota statutes require the appointment of guardians *ad litem* to represent or protect the interests of child in custody and abuse or neglect proceedings, they provide little direction on the roles and responsibilities of the guardian. The Minnesota Judges Association developed *Guidelines for Guardians Ad Litem* in 1986 to clarify the duties of guardians. However, the *Guidelines* are not codified into statute or rule, are not widely disseminated or uniformly applied, have not been revised or updated, and are inconsistent with some court rules related to guardians. References to guardian roles and responsibilities are scattered throughout court rules and procedures, statutes, case law, and judicial guidelines.

Judges assign guardians varying roles, and they differ in their expectations for communications and reporting. In some critical areas, the court and the guardians have different understandings of guardian responsibilities. People told us that the lack of clear role definition results in confusion for guardians, attorneys, parents, and other professional staff involved in family and juvenile case proceedings. In our view, clearer definition of the guardians' key roles and responsibilities will assist guardians in carrying out their duties in the most effective manner and will help parents and others understand the role that guardian's play in family and juvenile court proceedings. Clear information should be provided to parents so they may better understand why a guardian was appointed to a specific case and what to expect from the guardian.

Administration of Guardian *Ad Litem* Programs

In this chapter we review how guardian programs are administered, including how guardians are recruited, screened, assigned, supervised, and coordinated. We also review the concept of guardian *ad litem* immunity from civil suit and its place in the Minnesota legal system.

We asked:

- **What are the qualifications and eligibility requirements for guardians? Are screening procedures uniform across the state? Are there enough minority guardians?**
- **How are guardians selected for appointment to cases?**
- **How are guardians supervised and evaluated?**
- **What accountability do guardians have to the court and to the other parties, including parents?**
- **What sort of immunity do guardians *ad litem* have and how does this compare with immunity for other court officials?**

We surveyed court administrators about selection criteria they use to screen guardians and we surveyed court administrators and judges about the methods they use to select guardians for appointment. During interviews with guardians, program coordinators, and judges, we asked about how they recruit guardians and what problems they encounter. We surveyed family practice lawyers, public defenders, judges, court administrators and guardians and asked them how guardians are supervised and how complaints are made. We also asked lawyers, public defenders, and judges to rate guardians on a variety of characteristics. We reviewed recent Minnesota case law and statutes, information from other states, and relevant literature. In addition, we solicited an opinion from Peter Wattson, Senate Counsel, on the issue of guardian immunity.

There is little consistency in how counties recruit, select, and supervise guardians.

As shown in this chapter, there is little consistency in how counties recruit, select, and supervise guardians. There is no system to process complaints about a guardian, unlike other professionals, and there are no uniform procedures to remove a guardian from a case or program. The Supreme Court needs to develop broad guidelines addressing recruitment, selection, supervision, and evaluation that counties can use to administer guardian programs. According to case law, guardians in Minnesota have absolute immunity, as do other officers of the court, and there is no compelling reason to modify this or to add an immunity provision to state law.

Volunteer programs usually must recruit more guardians than other types of programs.

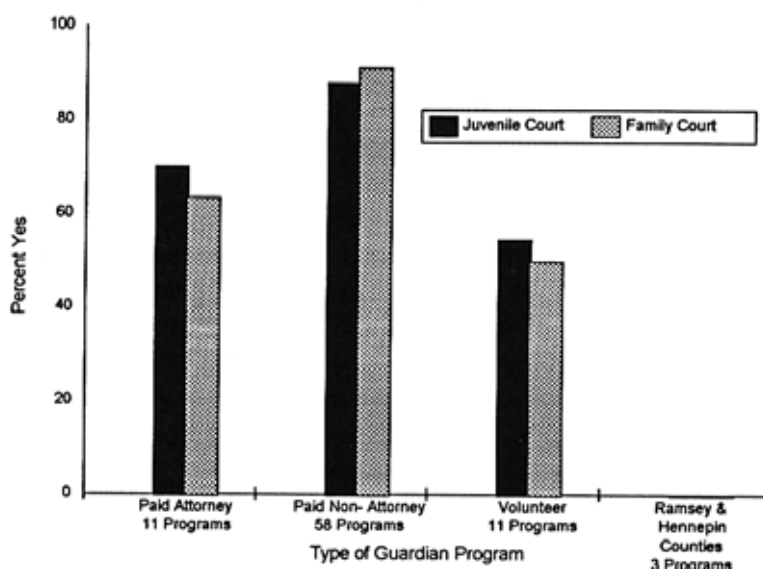
RECRUITMENT

Historically, judges recruited guardians as they were needed. Today, programs recruit guardians more systematically—placing ads in newspapers, soliciting volunteers from a variety of community organizations, and other methods. We asked program coordinators and judges how they recruited guardians and any problems they encountered. We found:

- **Volunteer programs must regularly seek new guardians, and many counties have difficulty recruiting minority guardians.**

About one-half of the volunteer program coordinators told us they did not have enough guardians, compared to about one-third of the paid attorney programs and ten percent of the paid non-attorney programs. Some coordinators criticized open solicitation of guardians as risky, and we agree that using newspaper ads does place a heavier burden on the screening process. As shown in Figure 4.1, court administrators from counties with volunteer programs were less likely to say that they had enough guardians. Because of small caseloads and the potential for “burnout”, volunteer program coordinators usually must recruit more guardians than other types of programs. One county abandoned volunteer guardians in favor of paid non-attorney guardians, in part because of the difficulty finding volunteers. Another county told us that they were abandoning using paid non-attorney guardians in favor of paid attorneys, because of high guardian turnover. Another county recently contracted with a non-profit organization to provide, coordinate and supervise paid non-attorney guardians, taking the recruitment burden off the county.

Figure 4.1: Percent of Programs Reporting that They Have Enough Guardians



Note: Data from Hennepin and Ramsey counties were evaluated separately from other types of guardian programs. Court administrators were asked, "Are there enough guardians for your county's family and juvenile court needs?"

Most counties cannot find enough qualified minority guardians.

We interviewed guardian program coordinators and judges from programs in the Twin Cities' metropolitan area and other districts with relatively large numbers of minority children, including Washington, Ramsey, Hennepin, Carlton, Kandiyohi, and St. Louis counties. We were told that they cannot find enough minority and economically disadvantaged guardians, although the reason is not clear. Some advocate groups have alleged that guardian programs may not really be trying to identify appropriate minority members, or are recruiting inappropriately. Conversely, some people from minority populations may hesitate to become an active party to judicial proceedings. In some jurisdictions, potential minority guardians are more likely to be poor, and it may not be economically possible for them to serve as guardians without compensation. In others, minority populations are very low.

We also found that most guardians are women (70 percent overall), except in programs using paid attorneys. We were told that the lack of male guardians can be a problem for some children. For example, some staff told us that teen-age boys tend to prefer working with male guardians. A commonly heard complaint about Hennepin and Ramsey county volunteer programs was that they used too many middle-class white women.

In our view, the pool from which guardians are selected and trained should be of high quality, although there is no simple way to achieve this. Programs must actively recruit guardians of diverse cultural and economic backgrounds to best meet childrens' needs. At a minimum, guardians must be trained to recognize the different cultural needs of children, including handicapped children, and program coordinators could work with district and state resources to more effectively identify potential guardians from minority communities. Volunteer programs might consider paying for guardians with specific skills or attributes, such as representing a specific minority.

SCREENING

The 1986 *Guidelines* specify no minimum educational requirement for guardians. However, they list nine guardian qualifications, specifically:

- at least 21 years of age,
- interest in children,
- availability of transportation,
- ability to maintain confidentiality,
- verbal and written skills,
- available time (averaging ten hours per month per case),
- no crimes against persons,
- good judgment and integrity, and
- stability.

The *Guidelines* emphasize the importance of life experience, particularly experience as a parent. We asked court administrators how they select guardians, including educational requirements and criminal background checks. We found:

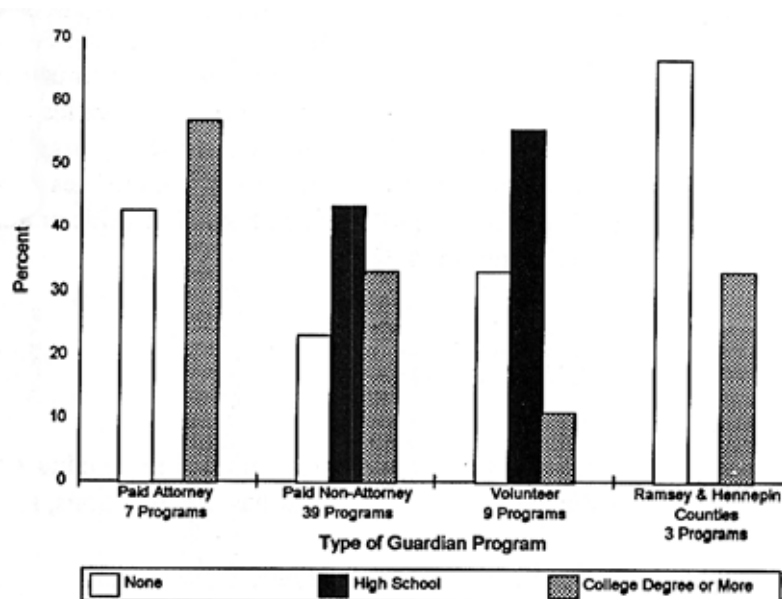
- **There is little consistency among guardian programs in the criteria used to select guardians.**

Few counties require that guardians have college degrees.

We asked court administrators what types of educational requirements they have for their guardians. Only two-thirds responded, and 29 percent of these said there were no requirements. We are not certain if the remaining counties have no requirements, or if the court administrators simply did not know. As shown in Figure 4.2, the most common minimum education requirement reported by county programs was a high school diploma. Relatively few programs, all of them using paid non-attorneys and paid attorneys, required college degrees. However, we were also told that many guardians in programs requiring high school degrees actually have higher levels of education.¹ Some critics of guardian *ad litem* programs told us that guardians should have a much higher level of education, or be educated in a specific area such as social work. However, judges told us that they can appoint guardians with specialized knowledge in those cases where this is required. Judges said that they usually value guardians because of their ability to take a very broad view, rather than because of their specialized skills.

We also asked court administrators what types of experience or personal characteristics they look for in guardians. Experience with children, communication skills, flexibility, and maturity were the characteristics most often

Figure 4.2: Guardian Education Requirements



Note: Data from Hennepin and Ramsey counties were evaluated separately from other types of guardian programs. Court administrators were asked to report the minimum education requirements under a section asking, "What criteria are used to screen candidates for guardian positions?"

¹ It was also suggested that all guardians should be attorneys, which would require a law degree.

Some counties do not require criminal history checks.

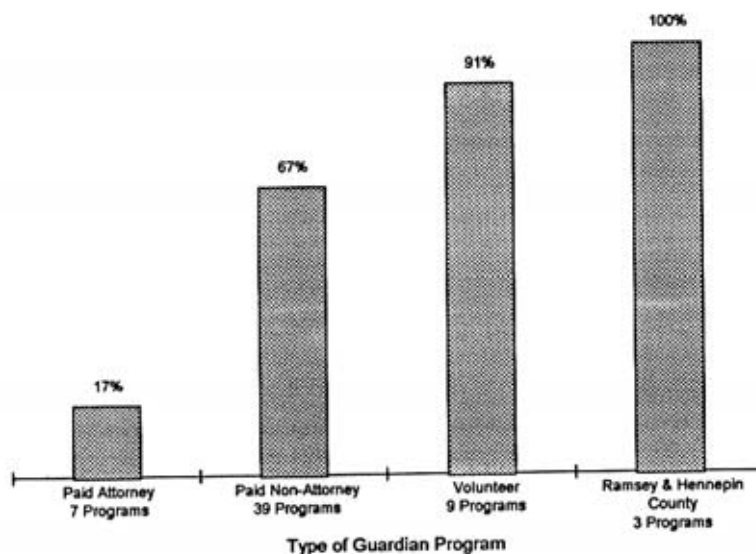
mentioned. While the language from some programs was virtually verbatim from the *Guidelines*, it appears that many programs are not using the *Guidelines* since fewer than 60 percent of court administrators provided information about qualifications. Several program coordinators told us that an extended interview process is used to screen candidates to make sure they are not carrying any “emotional baggage,” and that potential guardians are also observed during training. The *Guidelines* suggest a probation period as an additional screening technique, but only a few counties reported using this method.

About three-fourths of counties responded to our survey question about requiring criminal history checks for applicants. Two-thirds of those responding said that they perform criminal history checks. If we assume that most counties that did not respond do not perform such checks, then only about half of all guardian programs in Minnesota require criminal background checks. These programs include more than two-thirds of court cases with guardians in Minnesota. As shown in Figure 4.3, programs using volunteers were most likely and those using paid attorney guardians were least likely to report checking whether a guardian has a criminal history.

We think that guardian programs should have clear guidelines for guardian selection, and we suggest a written application, structured interview, personal references, criminal background check, observation during the training, and a probation period as recommended in the *Guidelines*. We recommend:

- **Within the guidelines set by the Supreme Court, each program should set standards for guardian selection, including education, experience and personal characteristics.**

Figure 4.3: Percent of Programs Reporting that They Perform Criminal History Checks



Note: Data from Hennepin and Ramsey counties were evaluated separately from other types of guardian programs. Court administrators were asked to answer yes or no to the question, “Are criminal history checks performed?”

We found no compelling reason for the state or individual programs to require either a college degree or other advanced academic training.² However, judges and guardian programs should retain the flexibility to appoint guardians with special skills, such as nursing, social work, or law, when they believe it is appropriate.

ASSIGNMENT

All guardian appointments are made by a judge, who writes an order specifying details for the guardian's assignment to a case.³ The method used to assign a guardian to a specific case could affect the independence of their judgment. For example, some people with whom we spoke questioned whether guardians feel they have obligations to those who select them or whether judges feel obligated to support a guardian they personally selected if there are complaints about that guardian.

We asked judges and court administrators to tell us how guardians are assigned to cases. Administrators reported that in about 40 percent of the programs, judges made an appointment without referring to a pool or list of guardians, most often in paid attorney and paid non-attorney programs. In about 14 percent of all programs the coordinator guided the appointment. In another 40 percent of programs, there was a list of available guardians from which the judge selected. Judges reported making a specific recommendation about one-third of the time, usually in paid attorney programs.

We suggest that

- **Where possible, guardians should be assigned to cases by guardian program coordinators rather than judges.**

In our view, the perception of parents and others of the independence of judge and guardian is important, and judges should try to limit their involvement in the selection of a specific guardian for a case. Programs without coordinators might select guardians in rotation from a pool of available guardians, although the skills of individual guardians and the requirements of a specific case should be considered.

The timing of guardian selection and appointment is another issue, since national literature reported that over two-thirds of volunteer guardians were appointed more than one month after the filing of a petition in CHIPS cases.⁴ Late assignments could lead to over-dependence on other professionals and reduced opportunity to conduct independent investigations. Hennepin County public defenders and others we surveyed told us about the unwillingness of guardians in Hennepin County juvenile court to oppose the opinions of social workers and other professionals. It has been suggested that guardians may be appointed late to

² As stated in Chapter 2, we found no reason to require that all guardians be attorneys.

³ See Chapter 3 for more detail on judges orders.

⁴ U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *Final Report on the Validation and Effectiveness of Legal Representation through Guardian ad Litem*, (Washington: October 1990), 4-10.

these cases and must often rely on investigative work done by other professionals. While we did not specifically study the timing of guardian appointments, late assignment should be avoided. For some programs, this may be an issue of resources and guardian availability.

SUPERVISION

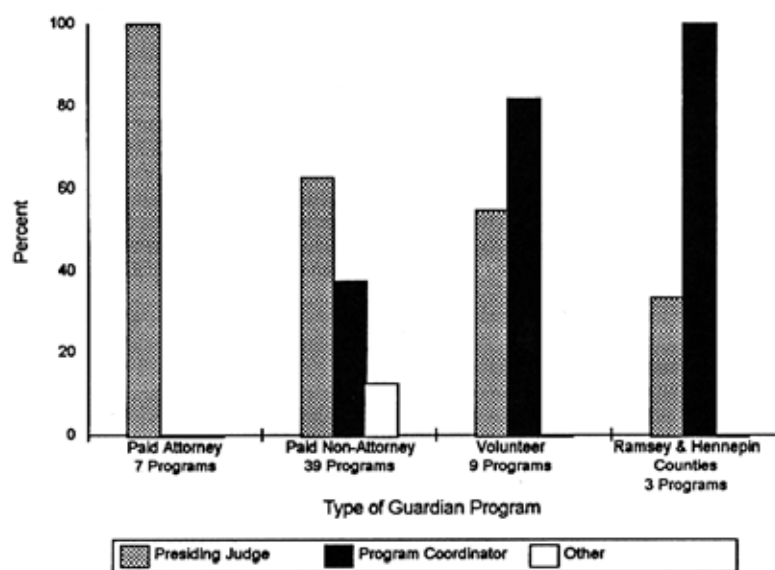
We asked court administrators to describe who supervised guardians and the method used. We found that:

- **Judges are often actively involved in guardian program supervision, but for paid attorney programs and some paid non-attorney programs, judges provided the only supervision.**

Judges provide the only supervision for some guardian programs.

As shown in Figure 4.4, court administrators reported that judges provided supervision and evaluation for paid attorney programs. Supervision for paid non-attorney guardians included program coordinators, peers, consultants, non-profit agencies and for-profit companies. Judges also helped supervise paid non-attorney programs, and for about 50 percent of the programs they provided the only supervision. All but one volunteer program had coordinators who provided supervision, although about half reported that the judge also helped supervise. Volunteer programs reported that guardians were evaluated by program coordinators, but judges evaluated most paid attorney and some paid non-attorney guardians. About 20 percent of paid attorney and paid non-attorney

Figure 4.4: Percent of Programs Reporting Different Types of Supervision



Note: Data from Hennepin and Ramsey counties were evaluated separately from other types of guardian programs. The category, "Other," excludes any supervision by a judge or program coordinator.

programs reported using periodic case review for guardian evaluation, compared to over 60 percent of the volunteer programs.

We asked judges, family practice lawyers, and public defenders how well they believed guardians are supervised. We found:

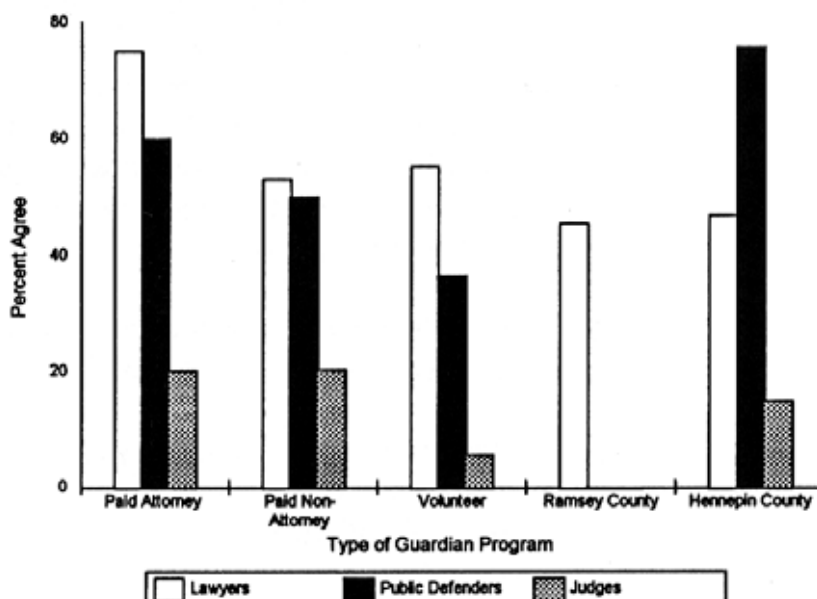
- **Judges believe most programs, especially volunteer guardian programs, are well supervised, but lawyers and public defenders generally disagree.**

As shown in Figure 4.5, judges were unlikely to say that guardians in any type of program were unsupervised, and they rated most volunteer programs, especially Ramsey county, as well supervised. Public defenders were most positive about supervision in volunteer programs, and about half of those responding agreed that guardians in paid attorney and non-attorney programs were seldom adequately supervised.⁵ Lawyers' responses showed less variation, although they perceived paid attorney programs as least supervised. These results are generally consistent with the responses to the court administrator survey.

Parents and lawyers commented that judges often work too closely with guardians, that guardians may be recruited by a judge, and that judges may feel obligated to “protect” a guardian they selected and appointed. A lack of independent supervision contributes to this perception. Moreover, the degree of

Unlike judges, many lawyers and public defenders think guardians are not adequately supervised.

Figure 4.5: Percent of Lawyers, Public Defenders, and Judges Agreeing that Guardians Are Seldom Adequately Supervised



Note: Data from Hennepin and Ramsey counties were evaluated separately from other types of guardian programs. Respondents were asked to indicate how strongly they agreed with the statement, "Guardians are seldom adequately supervised."

⁵ Public defenders showed the same negative opinion toward Hennepin County as was discussed above in Chapter 2.

supervision that judges are able to provide is questionable, given high caseloads and busy schedules. While judges read guardian written reports, if any, it is less likely that they review guardian case files or critique written reports outside the courtroom. In fact, such evaluation might be considered inappropriate because of the degree of independence necessary between judges and guardians.

Most volunteer and several paid non-attorney programs specifically provide for guardian supervision. Such programs have full- or part-time coordinators and well defined policies and procedures. They may develop mentorships between new and experienced guardians or periodically review case files. The role of the judge in most of these programs is restricted to formal guardian appointment (and writing the specific order), occasional involvement in training, and working with the program coordinator.

GUARDIAN BEHAVIOR, THE COMPLAINT PROCESS, AND REMOVAL OF GUARDIANS FROM SPECIFIC CASES AND GUARDIAN PROGRAMS

We asked judges, lawyers, and public defenders about guardians' professional conduct, responsiveness to parents, and exhibition of bias. We found:

- **Most respondents said that guardians conduct themselves professionally, but there is some disagreement about which type of guardian is most likely to act inappropriately.**

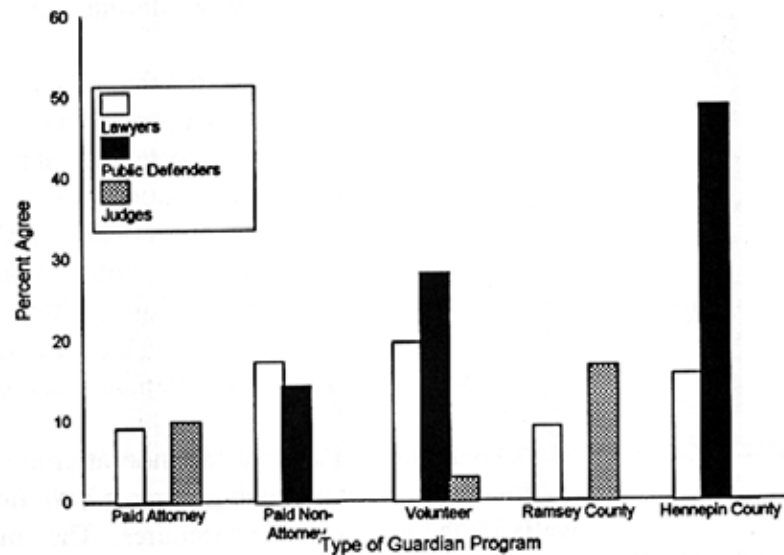
Overall, less than less than one-fourth of family practice lawyers, public defenders, and judges agreed that guardians did not conduct themselves professionally. Lawyers and public defenders were somewhat more likely to identify volunteer programs and paid non-attorney programs as problematic, as shown in Figure 4.6.⁶

Not all counties have a formal process for filing complaints about a guardian.

More than 80 percent of judges responded that guardians do not exhibit bias, as shown in Figure 4.7. Over half of all lawyers and public defenders disagreed with this statement, although they seemed more positive toward paid non-attorney and volunteer programs. Lawyers, public defenders, parents, and others sent us considerable anecdotal information about specific allegations of guardian bias against women, men, minorities, and the poor. Generally, allegations stated that bias resulted in slanted reports with no substance for the guardian's recommendations. As discussed earlier, bias was a concern of program coordinators in the recruitment and selection process. It may be especially difficult to identify and recruit guardians with minority and economically disadvantaged backgrounds, making the role of training even more important. Reviewing guardian reports, even on an intermittent basis, is one supervisory technique that can help identify and alleviate some of these problems.

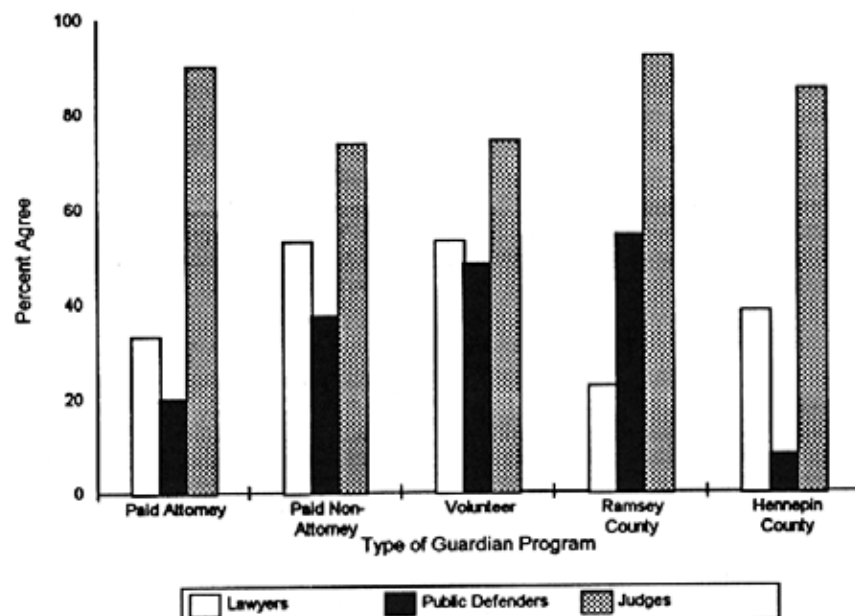
⁶ Public defenders in Hennepin County were very negative.

Figure 4.6: Percent of Lawyers, Public Defenders, and Judges Agreeing that Guardians Do Not Conduct Themselves in a Professional Manner



Note: Data from Hennepin and Ramsey counties were evaluated separately from other types of guardian programs. Respondents were asked to indicate how strongly they agreed with the statement, "Guardians often do not conduct themselves in a professional manner."

Figure 4.7: Percent of Lawyers, Public Defenders, and Judges Agreeing that Guardians Do Not Show Bias



Note: Data from Hennepin and Ramsey counties were evaluated separately from other types of guardian programs. Respondents were asked to indicate how strongly they agreed with the statement, "Most guardians do not show obvious bias toward involved party."

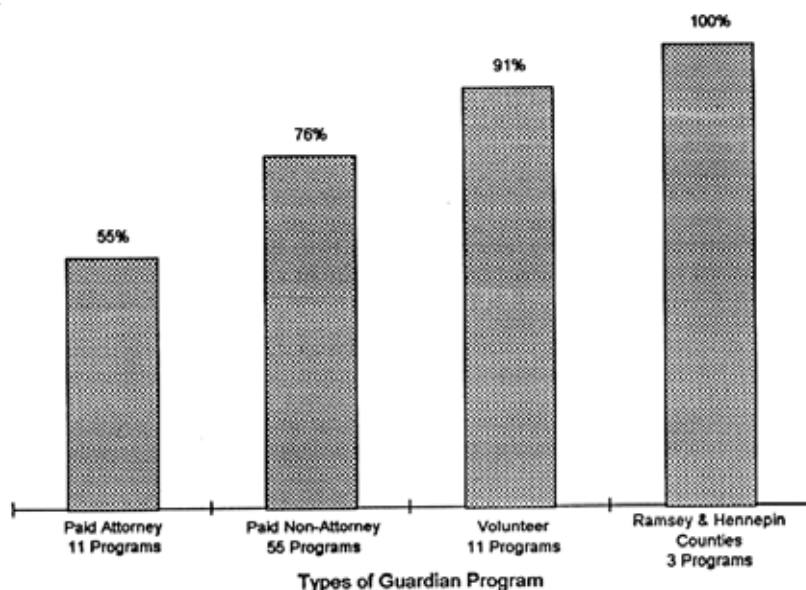
We asked court administrators and judges to describe the process they used to handle complaints about guardians. We found:

- **All volunteer programs and about one-third of paid non-attorney programs have a formal complaint process, but only the judge who appointed a guardian can remove that guardian from a specific case.**

Parent advocacy groups often expressed concern about the mechanism for complaining about a guardian. Complaints included a guardian's general qualifications or his or her actions in a specific case. As shown in Figure 4.8, court administrators with paid attorney and paid non-attorney programs were least likely to report having a complaint process, and for most of these programs, complaints went directly to the judge who appointed the guardian. Programs with a formal complaint process reported using court services or administration or program coordinators, alone or in combination with judges, to review complaints. Complaints were usually submitted in writing to the program coordinator, court administrator or the judge, usually through a lawyer.

With the exception of the Hennepin County paid attorney program, the largest guardian programs did report having a formal process for complaint. Several program coordinators told us that individual guardians might not be assigned cases if the coordinator did not feel their performance was adequate. Once a guardian is assigned to a case, only the judge has the power to remove the guardian, and we were told that removal has been infrequent.⁷ Generally parents

Figure 4.8: Percent of Programs Reporting that They Have a Formal Process for Complaints



Note: Data from Hennepin and Ramsey counties were evaluated separately from other types of guardian programs. Court administrators were asked, "Is there a mechanism parents or others may use to complain if they are dissatisfied with the actions of the guardian?"

Some counties do not have a formal process for complaints against guardians.

⁷ Most programs do not keep records of complaints or removal, and we cannot accurately estimate either.

Some parents are not comfortable complaining to the judge about a guardian.

do not have any input into the selection of a guardian, although they can petition the judge for removal of a guardian from a specific case.

We were told that parents are not comfortable bringing complaints about a guardian to the judge who appointed the guardian and who is presiding over the case. However, parents do not have another, formal mechanism to have their complaints heard. Procedures to complain about a guardian do not exist as they do for other professionals such as lawyers. The Office of Lawyers Professional Responsibility has declined to review attorneys acting as guardians.⁸

An independent mechanism for guardian supervision and evaluation is necessary to identify potential problems with guardian performance and correct borderline behavior. There are times when individuals behave in an unprofessional manner, and there should be a mechanism for complaints, correction, and removal. We recommend that:

- **The Supreme Court should develop standards for guardian evaluation and removal in its revised guidelines, and each guardian *ad litem* program should have in place specific procedures for administering these standards.**

The program coordinator should have authority to discipline, suspend, and remove guardians from their program (as opposed to a specific case) after a regular review. Coordinators should also be involved in any process to remove a guardian from a specific case, although the final authority should rest with the judge. The standards for such removal should be clearly defined and as consistent as possible across districts. Retaining flexibility at the local level allows counties to use boards, independent agencies, or other means to facilitate administration.⁹

We agree that the issue of guardian accountability is important. While we think that increased supervision and clarification of guardian roles will increase accountability, we suggest:

- **The Supreme Court should direct that a guardian *ad litem* oversight board be established within each district court to provide an avenue for complaints about guardians, appeals of program coordinator decisions, and a mechanism to generally review guardian programs in that district.**

A guardian oversight board at the district level could be modeled on the Lawyers Professional Responsibility Board.

There is currently no such board available, at the district or state level, even for attorney guardians.¹⁰ This board could be modeled on the Lawyers Professional Responsibility Board, appointed by the judiciary, with a membership representing judges, lawyers, guardians *ad litem*, and community members. The board's responsibilities could include reviewing and investigating complaints about guardians, removing guardians from programs for cause, and hearing grievances of guardians who are removed at the local level.

⁸ Letter from Marcia Johnson, Office of Lawyers Professional Responsibility, June 28, 1994, in reference to a complaint against a Hennepin County guardian *ad litem*.

⁹ Local level can be county, multi-county, or judicial court district, depending on how guardian programs are organized.

¹⁰ We were told that the Lawyer's Responsibility Board will decline to hear cases of attorneys acting as guardians, as cited above.

THE COORDINATION OF GUARDIAN PROGRAMS

Just under half of Minnesota guardian programs have coordinators, although they are generally the largest programs. Twelve out of 13 volunteer programs have coordinators and about 40 percent of paid non-attorney programs told us that they have coordinators. The presence of a program coordinator, whether at the county, multi-county, or district level, promotes impartiality and accountability and minimizes the perception of undue guardian influence with the court. A coordinator performs an important function in recruiting, facilitating training, and supervising new and experienced guardians.

Coordinators are an important component of guardian programs. We recommend:

Program coordinators can promote impartiality and accountability.

- **Key characteristics of the coordinator role should be defined in the guardian guidelines developed by the Supreme Court, including selection criteria, responsibilities, and necessary training.**

Program coordinators could maintain records for the guardian program, including financial information, number of cases and children served, data on guardian training, evaluation, and complaints. These data could be used to periodically monitor guardian services in the state. Defining standards for the coordinator role should help create more consistency across programs, but still retain flexibility at the local level for program administration. Some programs may be so small that it is not feasible to have a coordinator at the county level and in these cases many of the coordinator duties may be performed by the court administrator or at the regional or court district level.

IMMUNITY

Guardians' immunity from civil liability is an important issue for some critics of the current guardian *ad litem* system, who say that, with immunity, guardians have free rein to make recommendations affecting families without any accountability for a vigorous and absolute investigation or freedom from bias. As noted earlier, some parents have said they are not comfortable bringing complaints to the judge, and currently do not have another, formal, mechanism to have their complaints heard. They contend that a civil lawsuit would be a mechanism for parents to ensure guardian accountability.

An Overview of Immunity

Civil lawsuits are a mechanism to redress injuries due to the negligent actions of another person. Degrees of negligence define the extent to which behavior departs from a standard of ordinary care, and may include ordinary and gross negligence. Ordinary negligence is defined as an absence of such care and

Some parents equate guardian immunity with a lack of accountability.

diligence as a person of ordinary care would exercise under the same or similar circumstances.¹¹ Ordinary care is defined as the care that an average reasonable man exercises to prevent harm to the person or property of others.¹² Gross negligence involves total or nearly total disregard for the rights of others and indifference to the consequences of an act.¹³ The result of a determination of negligence might be the awarding of damages, if injury is demonstrated, or reversal of a previous judicial order or decision. Malicious and willful acts involving behavior with intent go beyond the usual definitions of negligence and may make the actor criminally liable.

Immunity, or protection from civil suit, may be “absolute” or “qualified.”¹⁴ Absolute or complete immunity refers to the right to be free from the consequences of the litigation’s results and from the burden of defending oneself altogether. Qualified immunity only shields a person from liability for actions taken or not taken in good faith within the scope of an office. Thus, qualified immunity does not have the effect of immunizing an individual from suit, but only affords an affirmative defense against the claims made in the complaint.¹⁵ Under absolute immunity, a lawsuit could be summarily dismissed so long as a person is acting within the scope of his or her appointment or authority, with no need to demonstrate the reasoning for an action or failure to act. Qualified immunity helps protect against an adverse judgment, but requires an investment of money and time to defend the case.

Public officers are often given immunity from liability for persons who may be injured as the result of a mistaken decision, no matter how wrong that decision might be, provided that the mistake was made within the scope of the official’s authority, that the official was acting in good faith, and without willfulness, malice, corruption, or oppression in that office.¹⁶

A guardian is usually regarded as an officer of the court.

A guardian *ad litem* appointed to represent a child is usually regarded as an officer of the court, charged with the duty to identify and protect the rights of the child, and to inform the court of those rights. Guardians’ status derives from their appointment by the court, although the court does not direct their activities, but merely sets them in action. Other officers of the court may include appointed witnesses, court administrators, and public defenders. The degree to which guardians are immune from lawsuit varies across the United States, as discussed below.

¹¹ Common law in some jurisdictions also recognize slight negligence, which involves the failure to exercise a great degree of care. *Webster's Third International Dictionary of the English Language Unabridged* (G. & C. Merriam Company, Springfield, Massachusetts: 1971), 2142.

¹² *Webster's*, 1589.

¹³ *Webster's*, 1002.

¹⁴ This discussion focuses on liability for negligent acts and omissions, for which an aggrieved party could bring a civil lawsuit. We found no source that suggested guardians would ever be granted immunity from prosecution for criminal activity.

¹⁵ 63A Am Jur 2d, Public Officers and Employees § 360.

¹⁶ 63A Am Jur 2d, Public Officers and Employees § 362.

Immunity In Other States

Guardian immunity in other states is defined through statute or case law, if it is defined at all. A 1991 report by the U.S. Department of Health and Human Services reviewed guardian programs nationwide and found that: “most states have not considered the issue and lack clear policy and guidance from legislators and judicial precedence.”¹⁷ We did not attempt to exhaustively review statutes and case law, but relied on several national studies which included reviews of immunity.

Statutory Definitions of Immunity

One national study identified twelve states that provide some type of immunity through statute.¹⁸ We found additional immunity language in Idaho statutes, and another article referred to statutory language in Colorado and Georgia.¹⁹ Most of these statutes refer to coverage for the guardian (or guardian program personnel) to cover acts, errors, or omissions for actions undertaken within the scope of his or her duties. Of these 15 statutory references, about half appeared to provide for absolute immunity. The remaining statutes provide immunity so long as the guardian acts in good faith and/or is not guilty of gross negligence. The Health and Human Services report also noted that attorney guardians are often assumed to be covered by malpractice insurance, and many states mostly use attorney guardians.

Immunity in Case Law

A recent national review of guardian liability summarized case law for cases involving negligence, and concluded that:

the courts held or recognized that where a guardian functions as an “arm of the court” and is an integral part of the judicial proceedings, the guardian is entitled to quasi-judicial immunity, reasoning that a guardian must be free to engage in a vigorous and autonomous representation of the child, and immunity is necessary to avoid harassment from parents who may take issue with the guardian’s actions.²⁰

Various cases cited discussed the role of the guardian, the expectations of the court, and mechanisms for ensuring guardian accountability, including the role of

¹⁷ U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *Appendix A: National Study of Guardian Ad Litem Representation*, (Washington, D.C.: October 1990), 39.

¹⁸ The Health and Human Services study cited Alaska, Delaware, Florida, Hawaii, Indiana, North Carolina, and South Carolina. The same study found that Arizona, Maryland, Oklahoma, Texas and Virginia have immunity for volunteer guardians.

¹⁹ Susan L. Thomas, “Liability of guardian ad litem for infant party to civil suit for negligence in connection with suit”, *American Law Reports, 5th Series* (1993), Volume 14, 932.

²⁰ Thomas, “Liability of guardian ad litem....”, 938. The article cited cases from Colorado, Delaware, Georgia, Maine, Minnesota, Missouri, New Mexico, Ohio, and South Carolina. We also identified Iowa, Illinois, and Mississippi case law.

Case law from other states has generally found that guardians have absolute immunity.

judicial review in a case on appeal. The same review also found that guardians generally had no duty to the parents of a child, as opposed to the child himself.²¹

Guardians themselves often do not know the extent to which they are immune from civil suit for negligence. One national study found that guardians were about as likely to report that they thought they had qualified (12 percent) as absolute immunity (10 percent); about one-third thought they had no immunity and almost 40 percent of respondents did not know.²² The study underscores the complexity of the immunity issue, since most of the respondents in this survey were lawyers.²³

In general, the immunity conferred on guardians through case law seems broader than that specifically defined by statute. The issue of good faith immunity has been raised in case law, but generally courts have ruled that guardians, in the absence of specific state law to the contrary, have absolute immunity from liability for negligence. The effect of that immunity is that cases are summarily dismissed if the only allegation is one of negligence.

Immunity In Minnesota

Statutory Definitions of Immunity

Minnesota statutes are silent on the issue of guardian immunity. However, the *Guidelines*, citing a 1985 case, state that guardians are absolutely immune.²⁴ The *Guidelines* also recommend that guardians carry liability insurance either as individuals or through the county guardian program.²⁵ The *Guidelines* do not in themselves have the weight of law, but have been cited in several cases.²⁶ Finally, the *Guidelines* specifically recommended that absolute guardian immunity be written into statute. Nothing was ever put into statute, and in 1988 Minnesota courts clearly defined guardian immunity in case law, eliminating the need to define immunity in statute.²⁷

Immunity in Case Law

Minnesota case law is clear on the issue of immunity. A 1988 case found that a guardian *ad litem*, acting within the scope of his duties, is entitled to absolute immunity from claims arising from alleged negligent performance of his statutory responsibilities.²⁸ The court noted that this immunity was the same as that extended to other quasi-judicial officers and to the court itself, and dismissed the

²¹ However, a guardian might be liable for monetary damages to a child, in cases where such damages resulted from culpable omission or neglect. Thomas, *American Law Reports*, 944.

²² U.S. Department of Health and Human Services, *Final Report*, 4-14.

²³ The balance of respondents were volunteers. This study did not look at any paid non-attorney models and as such has limited usefulness in comparison with Minnesota.

²⁴ Minnesota Judges Association, *Guidelines for Guardians Ad Litem* (St. Paul: June 1986), 38.

²⁵ The court cases suggest that guardians could be sued if, by action or inaction, there was monetary damage to a child, such as might occur if the guardian controlled a child's financial affairs.

²⁶ *Welfare of J. S.*, 470 N.W.2d (Minn. App. 1991) and *Tindell v. Rogoshske*, 421 N.W.2d 340 (Minn. App. 1988).

²⁷ *Tindell v. Rogoshske*, 428 N.W.2d 387 (Minn. 1988).

²⁸ *Tindell v. Rogoshske*.

Minnesota case law clearly defines guardian immunity as absolute.

case based on the pleadings. This case has been cited, and supported, in other cases in Minnesota and elsewhere. As recently as April 1994, a federal case cited *Tindell* and cases from Missouri, New Mexico, and Ohio in sustaining the absolute immunity of an Illinois guardian *ad litem* when her actions were closely related to her assigned judicial duties.²⁹

Minnesota courts have also addressed a variety of other issues, including whether guardian reports must be accepted by the court and when a guardian must be appointed. Some of these issues have been addressed in statute, especially the identification of the type of cases to which guardians must or may be appointed.

In a 1993 case, the Minnesota Supreme Court extended absolute immunity to public defenders.³⁰ In that decision the court cited *Tindell* as persuasive, and noted the need for independence and the existence of judicial review as a remedy for any injustice. Moreover, the Court stated that:

the cost in money and resources to defend against malpractice suits is at least as important, if not more important than the cost of any possible damage awards...Substantial time, energy and money are consumed in discovery.³¹

The court went further, and tied this burden to the impact on the program, not just the individual. The court concluded that without immunity, limited public defender program resources would be negatively impacted, including a likely increase in caseloads, and recruitment of new public defenders could be hindered.

After reviewing the issue of immunity and negligence as defined in Minnesota case law and case law and statute in selected other states. We found:

- **Minnesota case law is similar to case law in other states, although such case law is broader than statutory definitions of immunity in some other states.**
- **The Legislature does not need to statutorily define immunity in order to simply codify existing case law.**

Case law on immunity is quite clear and easily identified. If case law were complex or located in a variety of sources, codification might be helpful. However, the court has been quite clear and consistent on this issue. If the Legislature chooses to restrict guardian immunity, it should consider ensuring consistency with immunity currently enjoyed by other officers of the court such as public defenders. There are mechanisms available to rectify problems within the guardian system. Improving training, providing supervision and evaluation, and creating a district review board will put guardians on a more professional level.

²⁹ *Scheib v. Grant*, 22 F.3d 149 (7th Cir. 1994), 156.

³⁰ *Dziubak v. Mott*, 503 N.W.2d 771 (Minn. 1993).

³¹ *Dziubak v. Mott*, 776.

Limiting guardian immunity could have a chilling effect on vigorous representation of the child's best interests.

One option for Minnesota would be to give guardians only qualified immunity. Under this option, lawsuits could proceed, requiring guardians and guardian programs to expend resources and time to defend a case. This issue is in part one of perception, that if a negligence case cannot be summarily dismissed, the party with the best lawyer is more likely to win or force an undesirable settlement. And if the aggrieved party is driven as much by emotion as reason, lawsuits may become a weapon against an individual or a jurisdiction. This could then have a chilling effect on vigorous pursuit of guardian investigations and make it even more difficult to recruit guardians. The courts in Minnesota and elsewhere have cited concern about inhibiting guardian activity in ruling that guardians have absolute immunity. Restricting guardian immunity would set guardians apart from other officers of the court who currently have absolute immunity.

As noted above, we were told by advocates about allegations that individual guardians exceeded their authority and exacerbated what were already difficult situations. We have no way of determining the true extent of such problems, because programs often do not keep accurate statistics on the number and type of cases assigned to guardians or the number and type of complaints. It is beyond the scope of this report to recommend that specific guardians receive additional training, closer evaluation, or be dismissed. However, to allow fair treatment in all counties, it is necessary that all guardian programs be designed to facilitate adequate scrutiny.

Current guardian immunity refers to the guardian working within the boundaries of an appointment. We do not think a change in guardian immunity is needed, but:

- **Better definition of general guardian roles and responsibilities in Minnesota statutes, updated Supreme Court guidelines and specific judicial orders, would better identify what it is appropriate for guardians to do for the purpose of guardian immunity.**

Guardians need to know what is expected of them and be held accountable through supervision and review to an acceptable level of performance. Failure to adequately define the guardian role is a disservice to the guardian, children, and parents. Costly civil suits are the least desirable of all solutions to what is essentially a problem of individual and program accountability.

SUMMARY

We found that recruitment methods are varied and that programs have difficulty finding minority guardians. Selection criteria are not uniform, even within similar types of guardian programs, and many court administrators were unwilling or unable to specify their standards. Like other aspects of Minnesota's guardian programs, supervision and evaluation of guardians is inconsistent across the state. Judges play an important role in many guardian programs.

Many of the problems of parents and others may not be amenable to systemic solutions.

In our view, many of the problems parents and others have may not be amenable to systemic solutions. Some problems are confined to individual guardians, they may relate to the family turmoil that necessarily exists before a guardian would be appointed to a case, or they may result from a misunderstanding of the guardian's role on the part of parties to the case. While a few guardian programs are more frequently criticized than others, we think that updating the *Guidelines* developed by the Supreme Court, adopting them as rule, and allowing some local flexibility in their interpretation and administration, will result in stronger guardian programs throughout the state.

Training and Continuing Education

National literature indicates that training is essential for the effectiveness of guardians *ad litem*, whether the guardian is an attorney or non-attorney, paid or volunteer. Without adequate training guardians may not understand issues involved in court proceedings involving abuse, neglect, custody, and visitation. Training also helps educate new guardians about their roles and responsibilities in judicial proceedings. Training can also help guardians who are not attorneys understand some of the technical aspects of judicial proceedings. In this chapter we review training and continuing education requirements for guardians *ad litem* in Minnesota. We asked:

- **What training is required for guardians *ad litem* and what training are they receiving?**
- **Is there a need for more systematic or mandatory basic training and continuing education for guardians *ad litem*?**

Using surveys, we asked court administrators and guardians about basic training and continuing education requirements for guardians in their jurisdictions, how many hours of training were required, and what was the nature of that training. We asked judges to identify what training guardians need, and we asked guardians what training they had received and what training should be provided.

As shown in this chapter, we found there are no universal standards for basic training or continuing education for guardians *ad litem*. In Minnesota, each county delivers training for guardians in its jurisdiction, resulting in a lack of uniform standards or consistent requirements for both basic training or continuing education. Many counties do not require any training for its guardians, and many guardians reported not receiving any training. The lack of consistent training standards can lead to uneven quality in guardian services around the state, and confusion for guardians and lawyers working in more than one county.

Each county delivers training for its guardians, resulting in inconsistent standards and requirements.

AN OVERVIEW OF GUARDIAN *AD LITEM* TRAINING

We contacted national associations and reviewed selected state statutes and guidelines to determine the nature, if any, of nationally-accepted guardian *ad litem* training requirements. The National Court-Appointed Special Advocates Association (NCASAA) has developed minimum standards for its member

organizations and recommended practices for other volunteer guardian *ad litem* programs. In Minnesota, the *Guidelines* developed in 1986 make suggestions for a minimum amount of guardian training. Based on a review of the NCASAA recommendations and *Guidelines* we found that:

- **While some standards exist for certain types of guardians, there are no universal requirements for the basic training or continuing education of all guardians *ad litem*.**

The NCASAA standards are designed to encourage consistent quality in volunteer guardian programs. At a minimum, NCASAA requires its member programs to have a written training curriculum. Volunteers must successfully complete a minimum of 15 hours of initial training which includes instruction on the court and child welfare systems, child abuse and neglect, relevant state and federal laws, permanency planning, cultural awareness, and guardian *ad litem* roles and responsibilities.¹ The Minnesota Association of Guardians *Ad Litem*, Inc. (MAGAL), a statewide organization for guardians, is a member of NCASAA. Guardian programs in eight Minnesota counties (Blue Earth, Carlton, Crow Wing, Hennepin, Olmsted, Ramsey, St. Louis, and Washington) are members of NCASAA and subject to its minimum standards.

As shown in Table 5.1, NCASAA also strongly recommends that volunteer guardian *ad litem* programs (1) provide 40 hours of initial training using its Comprehensive Training Program,² (2) a minimum of 10 hours continuing or in-service training per year, and (3) ongoing training on how guardian *ad litem* programs operate for attorneys involved in cases with volunteer guardians. While NCASAA training standards focus on juvenile court proceedings, they can also be applied to family court.

Minnesota's *Guidelines* state that prior to assignment of a first case, guardians "should be provided training that will equip them with the information and skills to allow them to carry out their responsibilities." The *Guidelines* suggest that "a formal orientation program of 18 to 24 hours would familiarize guardians *ad litem* with the local court process and position responsibilities" and that "ongoing training is essential for the guardian *ad litem* to maintain his/her professional skills."³ But aside from encouraging guardians to receive continuing education and participate in monthly in-service training, the *Guidelines* do not recommend specific continuing education requirements for guardians.

**Current
Guidelines
suggest that
guardians
receive 18 to 24
hours of formal
orientation.**

¹ National Court-Appointed Special Advocates Association, *Standards and Recommended Management Practices for CASA/GAL Programs*, January 1, 1992, 2-3.

² NCASAA's Comprehensive Training Program for guardians in juvenile court was developed in Minnesota. It began as a research project sponsored by the Minnesota Supreme Court Permanent Families Task Force. The task force determined that one way to address the issue of permanence for children was to respond to concerns raised about effective training of volunteer guardians. Nine major skills areas were defined and incorporated into the curriculum. With financial support from the National Council of Juvenile and Family Court Judges and the Edna McConnell Clark Foundation, the training program was pilot tested and adopted as a national model by NCASAA.

³ Minnesota Judges Association, *Guidelines*, 20.

Table 5.1: Existing Standards and Recommendations for Guardian Training

	Basic Training	Continuing Education
National Court-Appointed Special Advocates Association:		
Requirements for member volunteer guardian programs	15 hours	
Recommendations for other volunteer guardian programs	40 hours	10 hours
Minnesota <i>Guidelines</i> :		
Recommendation for Minnesota guardian programs	18-24 hours	

Sources: NCASAA, *Standards and Recommended Management Practices for CASA/GAL Programs*, January 1, 1993; Minnesota Judges Association, *Guidelines for Guardians Ad Litem*, June 1986.

Minnesota's *Guidelines* do not recommend specific continuing education requirements for guardians.

We also examined national standards and Minnesota *Guidelines* for training curriculum and found:

- **There is more agreement on the curriculum for basic training than there is on standardized hourly training requirements.**

The NCASAA Comprehensive Training Program focuses on the following areas of instruction:

- Roles and responsibilities of a volunteer guardian *ad litem*
- Confidentiality and data practices
- Cultural awareness — understanding differences
- Child abuse and neglect — family and child dynamics
- Child development — states of growth and behavior
- Planning for a permanent, stable setting — child welfare system, community resources
- Communication and information gathering — report writing, interviewing techniques
- Juvenile court process — laws, operation of court system
- Advocacy — how to improve conditions for children

NCASAA also recommends that initial training include an opportunity to visit the courtroom to observe proceedings and that all new guardians receive copies of pertinent laws, regulations, and policies.

The Minnesota *Guidelines* suggest that initial training programs include many of the same topics recommended by NCASAA. In addition, the *Guidelines* suggest the guardian *ad litem* training curriculum include:

- Out-of-home placement issues with an emphasis on finding a permanent, stable home
- Types of petitions
- Role of various disciplines in family and juvenile court cases
- Custody issues
- Disabilities, such as chemical dependency, mental retardation, mental illness
- Minority rights
- Special needs of children
- Use of resources
- Program policies

In contrast to NCASAA's training program, the Minnesota *Guidelines* do not emphasize training related to advocacy skills or confidentiality and data practices. Also, while Minnesota's *Guidelines* stress training on minority rights, they do not specifically mention cultural awareness.

BASIC AND CONTINUING TRAINING REQUIREMENTS FOR GUARDIANS IN MINNESOTA

As noted earlier, responsibility for guardian training, like other guardian *ad litem* program components, has been delegated to individual counties. We surveyed judges, court administrators, and guardians to determine what training is required and what training is actually being provided in Minnesota counties. We found:

- **There are no uniform standards or requirements among Minnesota counties for either basic or continuing training for guardians *ad litem*.**

According to court administrators,

- **Thirty-three Minnesota counties do not have any basic training requirements for guardians.⁴**

Fifty-four Minnesota counties have some basic training requirements for guardians in juvenile and family court. Even among those counties with training requirements, the number of hours required for training varies from county to county. Table 5.2 shows that most (31) of the counties with basic training requirements require a minimum of 40 hours of training. Basic training requirements in family and juvenile court range from 4 to 50 hours. As shown in Figure 5.1, when examined by judicial district, there are no district-wide training requirements and counties with training requirements in the same judicial district

⁴ One county, Cass, has 40 hours of optional basic training.

Table 5.2: County Requirements for Guardian Training

	Basic Training	Continuing Education
Counties with no training requirements	33 ^a	57
Counties with some training requirements	54	30
Counties requiring: ^b		
40 hours of basic training	31	
20 hours of continuing training	5	
10 hours of continuing training	5	

^aCass County has optional basic training.

^bThese data represent the minimum hours required by most counties.

Many counties have no training requirements for guardians.

often have different minimum standards.⁵ The lack of training requirements in counties in the Ninth Judicial District, where most courts rely on paid attorneys or paid non-attorneys to provide guardian services, is particularly pronounced.

Some counties have different training requirements for family and juvenile court guardians. For instance, guardians in Hennepin County's juvenile court must complete 40 hours of training, while family court guardians, who are usually attorneys, complete seven hours of training.⁶ Hubbard County requires family court guardians to complete 50 hours of training compared to 40 hours of required training for juvenile court guardians. Kandiyohi County requires all of its guardians to complete 36 hours of training for juvenile court; family court guardians complete an additional six hours of training.

When the numbers of guardians serving in each county are examined, we estimate that:

- **Nearly 16 percent of Minnesota's guardians *ad litem* work in counties that do not have any requirements for basic training.**

About 58 percent of the guardians work in counties that require 40 or more hours of basic training and approximately 84 percent work in counties with some type of basic training requirement.⁷

When guardians were asked how many hours of basic training was required prior to their first case,

- **Nearly 17 percent of the state's guardians *ad litem* reported that no basic training was required prior to their first case assignment.**

⁵ Ramsey County, whose boundaries are coterminous with the Second Judicial Court District, is an exception.

⁶ Hennepin County recently changed its training requirement for family court guardians. Beginning in 1995, paid attorney guardians in family court must complete 65 hours of basic training.

⁷ The estimate of guardians working in counties requiring 40 or more hours of training excludes 45 guardians *ad litem* serving in Hennepin County's family court.

Paid attorney guardians received less training than other types of guardians.

In contrast, nearly 57 percent of all guardians reported completing 40 or more hours of required training, while 83 percent of all guardians said they received some basic training. On average, guardians in Minnesota counties with training requirements reported completing 30 hours of training before accepting their first case. Volunteer guardians received more basic training than other types of guardian and paid attorney guardians received the least amount of training. Volunteers guardians in Hennepin and Ramsey counties reported an average of 38 and 37 hours of basic training respectively, followed by other volunteer guardians with 30 hours of basic training, paid non-attorney guardians with 25 hours, and paid attorneys guardians, including those in Hennepin County, with 4 hours.

One national study found that private attorneys serving as guardians *ad litem* received less training than volunteer guardians.⁸ Some court administrators told us that they either do not provide training to attorneys or that attorneys are not required to complete training. Some guardians and advocates expressed concern about the lack of specialized guardian training for attorneys, who comprised about 13 percent of the guardians we surveyed. Our survey results affirm the lack of training for attorneys. When asked about guardian training:

- **Over 44 percent of the practicing attorneys who serve as guardians reported that no training was required prior to their first case as a guardian.**

In contrast, only 14 percent of the guardians who were not attorneys said no training was required prior to their first case. Nearly 42 percent of the attorney guardians said they were required to complete 40 or more hours of training, compared to 60 percent for the guardians who were not attorneys.

Counties use a variety of methods to provide guardian training.

In addition to variation in guardian training requirements, counties use a variety of methods to provide basic training. One county requires only four hours of basic training, consisting entirely of in-service training. This compares to formalized 40-hour training programs with written curriculums. For example, Hennepin County juvenile court, Ramsey and Washington counties, and a number of other counties use a modified version of the NCASAA Comprehensive Training Program. Several counties contract with other counties for guardian training. For instance, Carlton, Nicollet, Kandiyohi, and Washington counties provide training for guardians from other counties, usually those with few guardians and small caseloads. In some counties, training is provided by the guardian *ad litem* program coordinator or an experienced guardian. Finally, private providers of guardian services, such as Guardian *Ad Litem* Services, Inc., train their own guardians. Responses from court administrators indicate that basic training requirements can differ from county to county even though the training is provided by the same private provider.

Although Minnesota counties are not consistent in requiring a minimum amount of basic training, this does not mean that comprehensive training programs are not

⁸ U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *Final Report on the Validation and Effectiveness Study of Legal Representation Through Guardian Ad Litem* (Washington, D.C.: National Clearinghouse, 1994) 4-18 to 4-20.

available within the state. While we did not evaluate individual training programs, we were told about many training programs in Minnesota that program coordinators and guardians consider satisfactory models. Some examples include the training programs used in Ramsey and Washington counties, Hennepin County juvenile court, and Goodhue County.

We asked court administrators about continuing education requirements for guardians, and we found that:

- **Fifty-seven Minnesota counties do not have continuing education requirements for guardians.**

As shown in Table 5.2, thirty Minnesota counties require guardians to participate in continuing education. Court administrators from 23 of these counties identified specific requirements ranging from 6 to 60 hours of continuing education annually, for an average of 20.5 hours annually. The counties that require guardians to participate in continuing education account for an estimated 62 percent of all guardians in the state; two-thirds of these were from Hennepin and Ramsey counties. We also found that several counties, which did not require basic training, have requirements for continuing education.⁹ Some court administrators told us that, although they do not require continuing education, they encourage guardians to participate in additional training opportunities.

We also surveyed guardians about their continuing education requirements. While many guardians reported that they seek out continuing education opportunities, and we found that:

- **Nearly 59 percent of the guardians *ad litem* said they were not required to take any continuing education.**

Approximately 41 percent of the guardians responded that some continuing education was required annually. The most common response was ten hours of required continuing training annually reported by 16 percent of all guardians. Guardians received an average of 6 hours of continuing training annually. Volunteer guardians, including Hennepin County volunteers, received 8 hours of continuing training on average, followed by paid non-attorney guardians with 6 hours, and Ramsey County volunteer guardians with 5 hours of continuing training. Paid attorney guardians, including those in Hennepin County, did not report any continuing training.

TRAINING CURRICULUM FOR GUARDIANS IN MINNESOTA

We used the training curriculum suggestions contained in the 1986 *Guidelines*, supplemented with topics from the NCASAA curriculum (such as cultural awareness and advocacy skills), to identify priorities for both basic and continuing

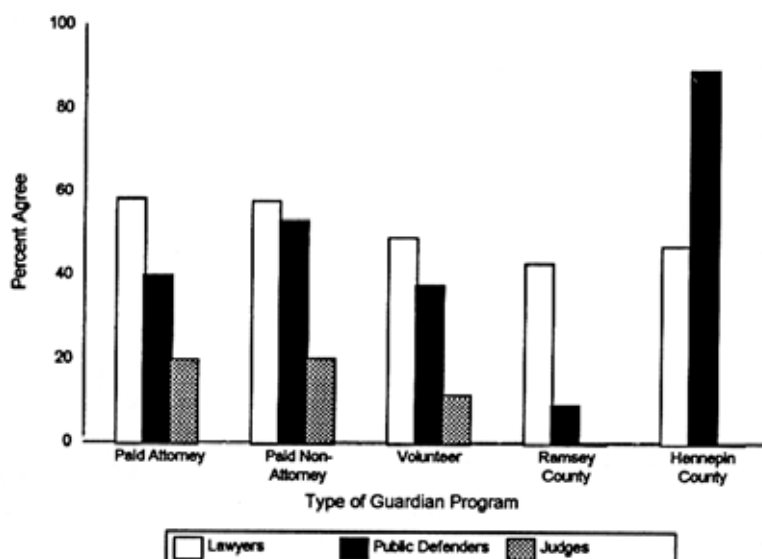
⁹ These counties are LeSueur, which reported requiring 20 hours of continuing training annually, and Cottonwood, which did not specify its continuing training requirement.

Judges think that guardians are adequately trained, but one-half of family practice lawyers and public defenders disagree.

training. We asked judges and lawyers to identify areas in which they thought guardians needed training, and we asked guardians what types of training they had received and desired.¹⁰

Judges, family practice lawyers, and public defenders disagreed on whether or not guardians were adequately trained and well informed about legal issues. While most judges responding to our survey agreed that guardians are adequately trained, one-half of family practice lawyers and public defenders said that guardians are not adequately trained. These general trends hold true across different types of guardian programs, with the following exceptions. As shown in Figure 5.2, all judges in Ramsey and Hennepin counties agreed that guardians are adequately trained, and over 89 percent of the public defenders in Hennepin County said that guardians are not adequately trained.

Figure 5.2: Percent of Lawyers, Public Defenders, and Judges Agreeing that Guardians Are Not Adequately Trained



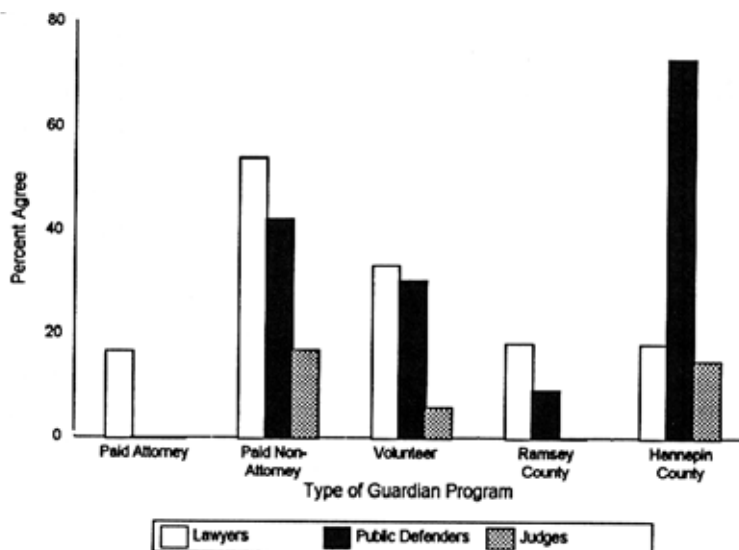
Note: Data from Ramsey and Hennepin counties are evaluated separately. Judges and attorneys were asked to "indicate how strongly you agree or disagree with the statement: guardians are usually not adequately trained."

Source: Office of the Legislative Auditor.

Similarly, nearly all judges agreed that guardians are well informed about legal issues, but 30 percent of the family practice lawyers and 42 percent of the public defenders responded that guardians were not well informed about legal issues. When examined by type of guardian as shown in Figure 5.3, judges, lawyers, and public defenders agreed that paid non-attorney guardians, followed by volunteer guardians, were not as well informed about legal issues as paid attorney guardians. Nearly 73 percent of the public defenders in Hennepin County responded that guardians are not well informed about legal issues.

¹⁰ We also asked court administrators to identify the number of hours of training received for each topic area. But, incomplete responses to this question made this data unusable.

Figure 5.3: Percent of Lawyers, Public Defenders, and Judges Agreeing that Guardians Are Not Well Informed About Legal Issues



Note: Data from Ramsey and Hennepin counties are evaluated separately. Judges and attorneys were asked to "indicate how strongly you agree or disagree with the statement: generally, guardians are not well informed about the legal system."

Source: Office of the Legislative Auditor.

The judges' confidence that guardians were adequately trained is also reflected in their responses to what training guardians need. Only one-half to two-thirds of the judges replied that new guardians need basic training in areas directly related to their roles and responsibilities, courtroom procedures and legal process, and other related topics. Similarly, less than 15 percent of the judges thought guardians needed continuing training.

We found that many of the topics in which judges and lawyers believe guardians need basic training are topics in which guardians reported that they currently receive training. But there were also some inconsistencies between basic training that judges and lawyers believe guardians need and the training guardians reported receiving. For instance, according to national literature, one of the primary roles of a guardian *ad litem* is to serve as an advocate for the best interests of the child. Yet, Minnesota's *Guidelines* do not list advocacy skills as part of its suggested guardian training curriculum. As shown in Table 5.3, only 36 percent of the judges replied that guardian training in advocacy skills is needed, and only two-thirds of the guardians reported receiving training in advocacy skills. Other inconsistencies include:

- While judges, family practice lawyers, and public defenders consider training in alcohol/chemical abuse an area where guardians need training, only 61 percent of the guardians received training in this area.

- Seventy-five percent of the guardians reported receiving training in program policies and interviewing children, topics closely related to guardian duties, but only 45 percent of the judges thought training was needed in these areas.

Table 5.3: Guardian Ad Litem Training Needed and Received

Training Topic	Basic Training				Continuing Education			
	Training Needs Cited By ^a			Training Received by Guardians ^b	Training Needs Cited By ^a			Training Received by Guardians ^b
	Judges	Family Practice Lawyers	Public Defenders		Judges	Family Practice Lawyers	Public Defenders	
Advocacy skills	36.4%	52.7%	40.9%	66.9%	5.7%	22.9	18.2	39.5%
Alcohol and chemical abuse	63.6	73.6	68.6	60.8	5.0	31.4	40.9	49.6
Child development	49.3	64.3	57.2	73.3	14.3	48.4	47.8	50.1
Conflict resolution	42.9	60.5	58.5	57.6	11.4	43.0	50.3	40.5
Courtroom procedures/legal process	65.0	70.2	64.2	81.3	8.6	35.7	43.4	40.5
Cultural awareness	51.4	62.4	62.3	71.2	9.3	29.5	52.8	65.1
Custody issues	46.4	67.4	64.8	66.9	12.1	52.7	47.2	43.5
Disability/cultural awareness	47.1	60.5	61.0	63.2	9.3	29.1	47.2	50.9
Effects of child abuse and neglect	53.6	65.5	51.6	75.7	7.1	48.1	47.2	59.7
Family dynamics	50.0	63.2	60.4	64.3	10.0	40.7	50.3	43.2
Interviewing children	45.0	67.4	59.1	75.5	13.6	57.0	49.7	40.5
Interviewing skills	50.7	60.5	54.1	78.7	10.0	41.9	29.6	37.9
Minority rights	50.7	55.8	57.9	61.6	6.4	20.9	35.2	34.7
Out of home placement	52.9	56.6	61.0	73.3	10.0	35.7	47.2	39.5
Permanency planning	43.6	48.4	52.5	66.7	12.9	26.7	42.1	41.1
Program policies	45.7	49.6	50.3	75.7	3.6	17.4	20.8	39.5
Public speaking	24.3	31.4	37.1	21.9	3.6	8.1	11.3	9.9
Role and responsibilities of guardians	63.6	77.1	69.8	83.5	10.0	48.4	56.96	49.9
Roles of other professionals	62.9	62.4	64.2	69.9	3.6	27.1	41.5	34.7
State laws and regulations	52.9	64.0	58.5	73.9	8.6	37.2	38.4	50.1
Stress management skills	36.4	42.2	35.8	38.7	8.6	21.3	21.4	24.3
Time management	30.7	40.7	33.3	33.3	5.7	14.7	13.8	14.1
Types of petitions	62.9	57.8	59.1	71.5	5.0	17.4	17.0	24.5
Use of resources	41.4	54.7	49.7	71.2	10.0	25.6	23.9	42.7
Writing skills	41.4	47.7	44.7	44.0	4.3	15.5	15.5	21.9

^aPercentage of judges and attorneys who believe guardian *ad litem* training is needed in each topic.

^bPercentage of guardians *ad litem* who reported receiving training in each topic.

Note: Judges and attorneys were asked to “check the appropriate box to indicate the areas in which you believe (a) All new Guardians *Ad Litem* need BASIC training, (B) Most acting Guardians *Ad Litem* need ADDITIONAL training.”

Guardians were asked to “check the appropriate box to indicate those areas in which:

You received BASIC training before beginning to act as a Guardian *Ad Litem*

You received or had available ADDITIONAL or CONTINUING training

- **Two-thirds of family practice lawyers and public defenders identified custody issues as an area in which guardians need training, and two-thirds of the guardians said they received training on custody issues. However, less than one-half of the judges agreed that guardians need training in this area.**

These differences could reflect the absence of uniform training standards among counties across the state. They might also indicate that the lack of clearly articulated roles and responsibilities for guardians in counties across the state.

When examined by type of guardian, more of volunteer guardians received training in nearly every curriculum topic than either paid non-attorney or paid attorney guardians. For example, over 80 percent of volunteer guardians received training in roles of guardians, types of petitions, courtroom procedures, and cultural awareness. In contrast, fewer paid attorney guardians reported receiving training than other types of guardian. Except in the areas of state laws and regulations and writing skills, less than 50 percent of the paid attorney guardians received training in the areas examined. Generally, the proportion of paid non-attorney guardians receiving training fell between volunteer guardians and paid attorney guardians.

When guardians were asked in what areas they wanted to receive basic training, their responses focused on the legal process, such as types of petitions, courtroom procedures, state laws and regulations, and minority rights. The type of basic training desired varied by type of guardian. Paid attorney guardians indicated an interest in training on the roles of guardians and other professionals, advocacy skills, alcohol/chemical abuse, child development, family dynamics, and minority rights. In contrast, volunteer and paid non-attorney guardians said they wanted training in types of petitions, state laws and regulations, courtroom procedures/legal process, and out-of-home placement.

In the area of continuing education, most guardians said they received continuing training in cultural awareness, the effects of child abuse, disability/cultural awareness, and child development. We also found that:

- **About one-half of the guardians who reported receiving continuing education in various curriculum topics were not required to take continuing education.**

Our survey results indicate that about two-thirds of the volunteer guardians, including those in Hennepin County, and paid non-attorney guardians said they participated in continuing training that either was not required or that went beyond the minimum number of hours required.

The one curriculum item not mentioned in either the NCASAA program or in Minnesota's *Guidelines* is domestic abuse. In our interviews and in survey responses from guardians and attorneys, people have repeatedly expressed concern about the lack of guardian training on issues of family violence. The federal Child Abuse and Prevention Act required states to appoint guardians *ad litem* in cases involving child abuse, so most training has focused on the effects of child abuse and neglect. Based on our review of existing training programs, we found:

Paid attorney guardians want training on social issues and other guardians want training on legal procedures.

- **Guardians have received little basic or continuing training on domestic abuse and its effects on children and victims.**

The guardian *ad litem* system is properly a function of the judicial branch of government and most of the solutions to problems we found should come from the courts. We recommend that:

- **The Supreme Court should adopt a minimum hourly basic training requirement for all guardians *ad litem*, including attorneys, before assignment of their first case and a minimum hourly annual continuing education requirement.**

Based on our review of national training standards and existing hourly training requirements and curricula in Minnesota, we suggest that the Supreme Court consider requiring a minimum of 40 hours of basic training and 10 hours of continuing training annually. The Supreme Court should be responsible for implementing these requirements, including determining the content of such training and developing provisions for waivers of certain training program components based on previous training completed. Further we recommend:

- **The Supreme Court should provide basic and continuing training for guardians. The Court should allow those counties with adequate training programs already in place to continue to operate them.**
- **The Supreme Court should develop guidelines for guardian *ad litem* basic training and continuing education curricula. The guardian *ad litem* training curricula should include a component on family violence.**

Most of the guardians *ad litem* in Minnesota receive some basic training. All of the outstate Minnesota judicial districts have at least one county that does not require any basic guardian training. The Ninth Judicial District in northwest Minnesota, however, represents the largest block of counties without any basic training requirement. The guardians working in these counties are either attorney or non-attorney guardians. We encourage the Supreme Court to explore the feasibility of providing district-level training for those counties with few guardians and small caseloads that are unable to provide it themselves, focusing first on the Ninth Judicial District.

Finally, we recommend that:

- **The Supreme Court should work with the Minnesota State Bar Association to provide education on the purpose and roles of guardians *ad litem* in family and juvenile court.**

As noted earlier, some parents are confused about the roles of guardians. Family practice lawyers could provide valuable information to their clients on the roles and responsibilities of guardians *ad litem* and what a parent should expect if a guardian is appointed to represent the best interest of their child(ren).

The Supreme Court should consider requiring a minimum of 40 hours of basic training and 10 hours of continuing training.

SUMMARY

Adequate basic and continuing training is essential for guardians *ad litem* to be effective. While some national standards for training have been suggested for volunteer guardians, there are no universal training requirements for guardians. In Minnesota, responsibility for guardian training has been delegated to court districts and counties, resulting in a lack of uniform standards or requirements for either basic or continuing training. We found that 33 counties do not have minimum requirements for basic training and 57 counties lack standards for continuing education. Nearly one-fifth of all guardians reported that no basic training was required prior to their first case assignment and over one-half (59 percent) are not required to take any continuing training. Volunteer guardians received more basic training than any other type of guardian and paid attorney guardians received the least amount of training.

While judges appear to have confidence in guardians and believe they are adequately trained, nearly one-half of all family practice lawyers and public defenders agreed with the statement that “guardians are usually not adequately trained.” People told us that attorney guardians, while knowledgeable about the law, should receive training on complex social issues which bring many families into the courtroom. Many non-attorney guardians also expressed a desire for more training in legal procedures. Specifically, as noted in Chapter 3, non-attorney guardians need additional training on how to communicate properly with judges. We recommend that the Supreme Court develop minimum hourly requirements and guidelines for guardian *ad litem* basic and continuing training.

Summary of Relevant Minnesota Statutes

APPENDIX A

<i>Minn. Stat. § 43A.02</i>	Department of Employee Relations. Definition of “judicial branch” includes the guardian <i>ad litem</i> program employees in the eighth judicial district.
<i>Minn. Stat. § 43A.24</i>	Eligibility for state paid insurance and benefits. Guardian <i>ad litem</i> program administrator in the eighth judicial district is eligible for state paid benefits.
<i>Minn. Stat. § 144.343, subd. 6</i>	Appointment of a guardian <i>ad litem</i> for a minor using the court’s substitute notification procedures to obtain an abortion without notifying a parent.
<i>Minn. Stat. § 245.4871, subd. 22</i>	Children’s Mental Health Act. Defines legal representative to include guardian <i>ad litem</i> .
<i>Minn. Stat. § 253B.03, subd. 6c (2)</i>	Civil Commitment Act. Rights of patients. Neuroleptic medications may be administered if a guardian <i>ad litem</i> appointed by court with authority to consent gives written, informed consent. Also known as Jarvis hearings.
<i>Minn. Stat. § 257.071, subd. 1, subd. 4</i>	Children; Custody; Legitimacy. Children in foster homes; placement; review. Children being placed in foster homes have the right to be represented by a guardian <i>ad litem</i> . Also applies to developmentally disabled and emotionally handicapped child placements.
<i>Minn. Stat. § 257.0762, subd. 1</i>	Ombudsperson for Families. Duties and powers. The ombudsperson shall work with local state courts to ensure that guardians <i>ad litem</i> from communities of color are recruited, trained, and used in court proceedings to advocate on behalf of children of color.
<i>Minn. Stat. § 257.60</i>	Parentage Act. Parties. If the child is a minor and is made a party to a legal proceeding, a general guardian or guardian <i>ad litem</i> shall be appointed to represent the child.

Minn. Stat. § 257.64, subd. 4 Pretrial orders and recommendations in paternity proceedings.
The guardian *ad litem* may accept or refuse to accept the court's recommendation under this section.

Minn. Stat. § 257.69, subd. 2 Right to counsel; costs.
Guardian; legal fees. The court may order guardian *ad litem* fees to be paid by the parties.

Minn. Stat. § 259.65, subd. 1 Change of Name, Adoption. Appointment of attorney and guardian *ad litem*.
In any adoption proceeding, the court may appoint a guardian *ad litem* or an attorney, or both, for the person being adopted.

<i>Minn. Stat.</i> § 260.155, subd. 4, 4a, 5, 6, 8	Juveniles. Primary statute for appointment of guardians <i>ad litem</i> in juvenile court.
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Minn. Stat. § 260.161 subd. 2 Public inspection of records.
Guardian *ad litem* has access to any report or social history furnished to the court.

Minn. Stat. § 260.171, subd. 4 (c), (d) Release or detention.
Guardian *ad litem* may make an initial visit to a child in a juvenile secure detention facility or shelter care facility. Child may telephone the guardian *ad litem*.

Minn. Stat. § 260.181 subd. 2 Dispositions; general provisions.
Prior to making a disposition, terminating parental rights or appointing a guardian for a child, the court may consider any report or recommendation from a number of parties, including a guardian *ad litem*.

Minn. Stat. § 260.191, subd. 1e Dispositions; children who are in need of protection or services or neglected and in foster care (CHIPS petitions).
The court shall order the appropriate agency to prepare a written case plan developed after consultation with any number of parties, including a guardian *ad litem*.

Minn. Stat. § 260.231, subd. 3, 4 Procedures for terminating parental rights.
Parental rights of a minor or incompetent parent may not be terminated on consent of the parent unless the guardian *ad litem* joins in the written consent of the parent to termination those rights.

<i>Minn. Stat.</i> § 260.251, subd. 2, 5	Costs of care. Guardian fees. The court may inquire about the ability of parents to pay for guardian services and may order the parents to pay the guardian fees.
<i>Minn. Stat.</i> § 260.51	Interstate Compact on Juveniles.
<i>Minn. Stat.</i> § 260.56	Fee for guardians inter state compact on juveniles.
<i>Minn. Stat.</i> § 466.01, subd. 6	Tort Liability, Political Subdivisions. Definitions. Defines municipal employee to include court administrators and their staff, guardians <i>ad litem</i> , and others within the court system whose salaries are paid by the county.
<i>Minn. Stat.</i> § 501B numerous references	Trusts. Relates to the appointment, rights, and fees of guardians <i>ad litem</i> .
<i>Minn. Stat.</i> § 508.18	Registration; Torrens. Appointment of guardian <i>ad litem</i> for minors and others.
<i>Minn. Stat.</i> § 518.165, subd. 1, 2, 3	Marriage Dissolution. Primary statute for appointment of guardian <i>ad litem</i> for minor children in family court.
<i>Minn. Stat.</i> § 518A.07, subd. 2	Uniform Child Custody Jurisdiction Act. Guardian <i>ad litem</i> may make a motion for a finding of inconvenient forum.
<i>Minn. Stat.</i> § 518A.18	Guardian's rights as a party. Guardians <i>ad litem</i> , and other parties, may submit testimony of witnesses in another state.
<i>Minn. Stat.</i> § 524.1-201, 524.1-402, 524.1-403, 524.3-203	Uniform Probate Code. Definition of guardian in probate court, "excludes one who is merely a guardian <i>ad litem</i> ." Appointment of a guardian <i>ad litem</i> to represent a minor, incapacitated, or unborn person. Rights of guardian to waive notice. Guardians <i>ad litem</i> may not exercise the same rights as conservators.
<i>Minn. Stat.</i> § 529.01	Uniform Custodial Trust Act. Definition of guardian does not include "a person who is only a guardian <i>ad litem</i> ."

Minn. Stat. § 540.08	Judicial Procedure, District Court. Parties to Actions. If the parents to not bring an action for the injury of a minor, an action may be brought by a guardian <i>ad litem</i> .
Minn. Stat. § 611A.03, subd. 2	Crime Victims: Rights, Programs, Agencies. Guardians <i>ad litem</i> have rights to notifications of plea agreements.
Minn. Stat. § 611A.04, subd. 3	Order of restitution. The juvenile court is not required to appoint a guardian <i>ad litem</i> for a juvenile offender before docketing a restitution.
Minn. Stat. § 611A.53, subd. 1, 1a, 2	Eligibility for Reparations. Eligibility of guardians <i>ad litem</i> are reparations.

Minn. Stat. § 626.556, subd. 2, 3, 10	Reporting of Maltreatment of Minors. Guardians <i>ad litem</i> are among those mandated to report child maltreatment. The court shall consider the need to appoint a guardian <i>ad litem</i> and, if appointed, the guardian shall be present at the hearing on the order to show cause.
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Survey Methodology

APPENDIX B

We collected information from five groups of professionals who work with guardians and guardian programs on a regular basis. We developed four surveys and sent them to county court administrators, family practice lawyers, public defenders, judges, and guardians. Each survey had a different focus, although some components were similar among two or more of the four survey instruments.

We did not survey parents, because we felt it would be too intrusive to do so for those currently participating in juvenile or family court proceedings. Follow-up of closed cases was beyond the scope of this study. We did contact several groups interested in guardian issues, and conducted interviews with some groups and collected written information from others.

Court Administrator Survey

Data on programs currently providing guardian services was requested from county court administrators or their designee from all 87 Minnesota counties. We counted a total of 89 programs by treating two programs in St. Louis County and two programs in Hennepin County separately. We also asked for the names of all guardians used by their program, and used these names as part of the database for mailing the guardian survey. We obtained at least partial data from all counties on the six-page survey.

Family Practice Lawyer Survey

We obtained mailing labels from the Minnesota Bar Association for 572 lawyers in the Family Law Division. We mailed each lawyer a two-page survey, cover letter, and return envelope. A total of 261 family lawyer surveys (46 percent) were returned. Three surveys had no county identification and could not be used. Attorneys attached comments to over one-third of the returned surveys.

Public Defender Survey

We obtained mailing labels from the Minnesota Board of Public Defense for 395 public defenders. We mailed each public defender a two-page survey, cover letter, and return envelope, similar to that sent to family practice lawyers. A total of 158 public defender surveys (40 percent) were returned. Three surveys had no county identification and were unusable. Public defenders attached comments to 24 percent of the returned surveys.

Judge Survey

We obtained the names and addresses for 258 district court judges from the Minnesota Supreme Court and mailed each a four-page survey, cover letter, and return envelope. Surveys from 155 judges (60 percent) in 60 counties were returned, although 11 surveys contained little or no data and could not be used. A total of 144 usable responses (56 percent) from 59 counties were included in the analysis. Response rates by court district ranged from the mid-40 percent range in Districts 2, 4, 8, and 9 to 82 percent in District 5. Forty-eight and 49 percent, respectively, of Ramsey and Hennepin County judges responded to the survey, as did 56 percent of judges from counties using paid attorney guardian programs, and 68 percent of judges from counties using either paid non-attorney guardian programs or other volunteer programs. About 20 percent of judges attached additional comments, notes, and letters to their survey.

Guardian Survey

We asked court administrators for the number of guardians working in their programs and their names. Most programs provided us with the total number of guardians, but only 70 programs sent us a list of guardian names. We cross checked these lists against names from the Minnesota Association of Guardians Ad Litem and created a list of 550 non-duplicated names to use in mailing. Where we could not obtain individual guardian names, we sent a set of surveys to the program coordinator and requested that a survey and return envelope be sent to each guardian. We mailed almost 1000 two-page surveys with a cover letter and return envelope., of which 383 usable surveys from guardians in 74 counties were returned.¹ Guardians included their names on 237 of these surveys.

By cross-referencing names and numbers given to us by court administrators and the returned surveys, we estimated that about 15 percent of all guardians serve in more than one county and represent about 20 percent of all names reported to us. Programs reported a total of 1042 guardians working in their programs, we estimate that there were about 850 different persons acting as guardians *ad litem* in Minnesota within the last year.

We estimate that the overall response rate was about 45 percent. Judicial district response rates varied slightly, from a low of 31 percent in the Fourth District (Hennepin County) to 61 percent in the Eighth District. About 61 percent of the guardians from counties using paid non-attorney guardian programs responded, compared to 43 percent for the Ramsey County volunteer program, 30 percent from the Hennepin County volunteer program, 50 percent from other volunteer programs, and about 20 percent for all counties using paid attorney guardian programs, including Hennepin County. This relatively low response rate for guardians from paid attorney programs should be considered when interpreting guardian survey data.

Copies of all survey instruments are available from the Office of the Legislative Auditor, First Floor South Centennial Building, 658 Cedar Street, St. Paul MN 55155; phone 612-296-4708 or FAX 612-296-4712.

¹ Four surveys did not list a county and were not usable.

Sample Guardian *Ad Litem* Case History

APPENDIX C:

DATE	ACTIVITY
8/92 - 8/93	Family with four children involved with social services for past year following initial report of garbage house conditions. Services included social worker, parent aide, in-home counseling, parenting classes, special education and respite care; several incidents of physical abuse reported to social worker. CHIPS petition filed by social services August 31, 1993; Guardian appointed August 31, 1993; guardian contacted assessment worker, updated on complaint, history, visits foster home.
9/2/93	Guardian contacted deputy, reviewed video of children's interview, observed home condition; GAL attended preliminary hearing, met with children's attorney, met parents; dispositional hearing scheduled for 12/1/93
9/5/93 - 9/14/93	Met with mother & social worker regarding case plan; visited home (later burned because of conditions); final hearing adjudication withheld; met with social worker and mother reviewing children's illnesses
9/15/93	Guardian met with father's probation officer—father will attend domestic abuse program and receive therapy for a mental disorder
9/20-12/02	Phone calls with mother (2); visit parent's new trailer home; visits with children (2); social worker conferences (2); school conference
12/03/94	Dispositional Hearing with recommendation for continued Social Service custody; met with foster mother to discuss her concerns about children's sexual behavior
1/06/94	Visited parent's home; submit GUARDIAN DISPOSITIONAL HEARING REPORT recommending continuation
1/12/94	Dispositional Hearing; case continued until 6/8/94
1/26-2/28/94	Met with child psychologist; met with parents and social worker to discuss concern about inappropriate parental behavior leading to children acting out sexually; met with foster parents and social worker to discuss children's sexual behavior

2/8-2/23/94	Call parents; conference with social worker about father (SW to arrange meeting with father's psychiatrist); decision to increase hours parents visit weekly with children; meeting with father's psychiatrist, in-home worker, social worker, probation officer; Administrative Review — plan reunification of two older children and parents 3/29/94
3/2-3/17/94	Contact teachers; school meeting; visit parent's home
3/23/94	Team meetings of teachers, in-home worker, mother's psychologist, child's psychologist, foster parent, social worker — consensus goal to reunite all children and parents by 6/8/94 (family currently receiving 12 services). Parents have accomplished seven goals, need to address several other issues including some assessments
4/2-5/12/94	Visited with younger children and foster mother in foster home; visited parent's home — no problems
6/3/94	DISPOSITIONAL REPORT to court recommending placement with parents with protective supervision for 90 days
6/8/94	Court remanded children to parents with protective Social Service supervision
6/30-7/6/94	Visited parent home to observe; identified safety issues which need to be changed; visit to parent home — safety issues addressed
7/20/94	Concern from social worker about abuse of child; child protection investigator determined it was past abuse
8/24/94	Discovery of child medical problem ongoing raises question of neglect
9/14/94	GUARDIAN REPORT for review of prior Disposition Order from 6/8/94 included concern about medical condition which led guardian to recommend 90 days protective supervision
9/22/94	Court ordered protective supervision for 6 months; no appearances
9/29/94	Parents submit written objection to supplemental disposition
10/4/94	Guardian reviewed progress since August neglect concern, children healthy and parents had met all goals in plan. Several outside support systems will remain in place—two county aides to visit on regular basis. GUARDIAN FOLLOW-UP REPORT submitted with recommendation that protective supervision be terminated
10/13/94	Court orders dismissal of case and jurisdiction as to children dismissed. FILE CLOSED.

Note: Pages 87-88 are a condensation of a seven-page report from a southern Minnesota county. Guardian (GAL) reports are capitalized. Italicized dates indicate court activity.

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To: Jan B. Sandberg, Office of the Legislative Auditor

From: Peter S. Wattson, Senate Counsel
296-3812

Subj: Immunity of Guardians Ad Litem

You have asked several questions regarding the extent of immunity given to guardians ad litem. I shall address each of them in turn.

1. Is there any more recent case law, state or federal, related to immunity for guardians ad litem?

Yes. The most recent case is *Babbe v. Peterson*, 514 N.W.2d 726 (Iowa 1994) decided April 20, 1994. In a case of first impression, the Iowa Supreme Court ruled that guardians ad litem perform quasi-judicial functions and for that reason should be granted absolute immunity. The court cited *Tindell v. Rogosheske*, 421 N.W.2d 340 (Minn.1988), as supporting the general rule of absolute immunity for guardians ad litem. As the court said:

The general rule is that guardians ad litem, who are appointed by the court, perform quasi-judicial functions and for that reason are granted judicial immunity. See, e.g., *McCuen v. Polk County*, 893 F.2d 172 (8th Cir.1990); *Babcock v. Tyler*, 884 F.2d 497 (9th Cir.1989); *Cok v. Cosentino*, 876 F.2d 1 (1st Cir.1989); *Gardner v. Parson*, 874 F.2d 131 (3d Cir.1989); *Myers v. Morris*, 810 F.2d 1437, 1466-67 (8th Cir.), cert. denied, 484 U.S. 828, 108 S.Ct. 97, 98 L.Ed.2d 58 (1987); *Kurzawa v. Mueller*, 732 F.2d 1456 (6th Cir.1984); *Short by Oosterhous v. Short*, 730 F.Supp. 1037 (D.Colo.1990); *Collins v. Tabet*, 111 N.M. 391, 806 P.2d 40 (1991); *Tindell v. Rogosheske*, 421 N.W.2d 340 (Minn.App.) *aff'd*, 428 N.W.2d 386 (Minn.1988).

Missouri has likewise recently granted guardians ad litem absolute immunity. *State ex Rel Bird v. Weinstock*, 864 S.W.2d 376 (Mo.1993).

Recent cases in federal courts in Illinois and Colorado have endorsed the general rule that guardians ad litem have absolute immunity. *Scheib v. Grant*, 22 F.3d 149 (7th Cir.1994)(Illinois); *Short by Oosterhous v. Short*, 730 F.Supp. 1037 (D.Colo.1990).

The one court whose recent decision has varied from this pattern is the Supreme Court of New Mexico in the case of *Collins v. Tabet*, 111 N.M. 391 806 P.2d 40 (1991). There, the Court held that a guardian ad litem is absolutely immune from liability for actions taken pursuant to an appointment by a court, but only to the extent that the appointment contemplates "investigation on behalf of the court." To the extent that the appointment contemplates and the guardian ad litem undertakes advocacy on behalf of the minor, the guardian is not immune and may be held liable under ordinary principles of malpractice. Since there was a sharp factual dispute between the parties regarding the role that the guardian ad litem was initially appointed to perform and how he discharged that role, the Court remanded the case to the trial court for further inquiry and perhaps a decision by a jury on the nature of the guardian's appointment and the extent to which the guardian acted as an advocate for the child, rather than merely as an investigator for the court.

The liability of a guardian ad litem for negligence is discussed in an article in 14 ALR5th 929 (1993).

2. Is immunity for guardians ad litem comparable to that under which judges function?

Yes. It is the same. See *Tindell v. Rogosheske*, 421 N.W.2d 340 (Minn.1988).

3. Apparently this type of immunity covers negligence. What about gross negligence or malice?

Both qualified immunity and absolute immunity cover negligence. Qualified immunity does not cover gross negligence or malice, but absolute immunity does. 63A Am.Jur.2d, Public Officers and Employees § 360.

4. Working within the boundaries of one's assigned duties appears to be a condition for immunity. What if boundaries are not defined, either by the judge's order, in statute, or in rule?

If there is a dispute over the terms of the guardian ad litem's appointment, that dispute would have to be resolved by a lawsuit. For an example of how the question would be dealt with in a lawsuit, see *Collins v. Tabet*, 111 N.M. 391, 806 P.2d 40 (1991).

5. Immunity for guardians in Minnesota is apparently conferred through case law. What are the advantages and/or disadvantages of putting immunity into statute?

Jan B. Sandberg, Office of the Legislative Auditor
January 24, 1995
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The primary advantage of putting immunity into statute is that it would be easier for lay people to locate, but the primary reason why some states have written immunity into their statutes is to provide a qualified immunity that is different from the absolute immunity conferred through case law. One would expect the political process to be less inclined to give guardians ad litem the same benefits of immunity as are enjoyed by judges. So, one who desires to limit immunity would want to put it into statute, whereas, one who desires to continue absolute immunity would probably want to leave it out.

If I can be of further help, please let me know.

PSW:ph



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SUE K. DOSAL
STATE COURT ADMINISTRATOR

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February 16, 1995

James R. Nobles, Legislative Auditor
Office of the Legislative Auditor
Centennial Building
St. Paul, MN 55155

Dear Mr. Nobles:

Thank you for this opportunity to respond to your examination of Minnesota's guardian *ad litem* services.

Both the Minnesota judicial system and the legislature have a strong interest in assuring that guardian *ad litem* services are delivered in an efficient and effective manner; that guardians are recruited, screened, and trained to fulfill the responsibilities with which they are charged, and that adequate mechanisms for the supervision and discipline of guardians are available. This report examines thoroughly the development of guardian *ad litem* services in the State of Minnesota and identifies key issues which require our attention.

Historically, the choice of the guardian delivery model and issues relating to training, supervision, discipline, and removal of guardians have been local prerogatives dependent upon the varying human and fiscal resources available to the counties, which have been charged by the Legislature with the funding responsibility for these programs. While this delivery system has functioned reasonably well in the Child in Need of Protective Services (CHIPS) cases, in recent years we have witnessed greater criticism of guardians *ad litem*s as their services have been increasingly used in family law cases. The need for an objective evaluation of the best interest of the child regarding custody, visitation, and support, especially in the light of zealous advocacy by the parental parties to a dissolution action, is essential to the judge who must decide what the future will hold for the child. Undoubtedly, much of the criticism arises, not from the guardian's performance *per se*, but from the circumstances in which the need for the appointment of a guardian occurs. At the same time, the perception by some of a special relationship between the guardian and the judge, the lack of supervision by someone other than the judge making the appointment, the failure to clearly articulate the role and responsibilities of the guardian in all judicial appointment orders, and the insufficiency of complaint mechanisms regarding guardian behavior are issues which concern the

judiciary and which we agree should be addressed.

As you are aware, many of the recommendations made by your office in this report are the subject of current court initiatives. In particular, the need for uniform policies on the roles and responsibilities of guardians, providing essential direction for guardians, judges, and litigants, has been of particular concern to the court and it has begun taking steps to meet those needs. In addition, the judiciary has recognized the immediate need for uniform, statewide guardian ad litem basic and continuing education, especially as new policies and practices are implemented. Issues relating to selection, supervision and monitoring of the work of guardians, particularly where established program coordinator positions do not exist also must be addressed. These issues have been identified in the judiciary's FY96-97 budget request.

The recommendation mandating written guardian *ad litem* reports requires mention. While we recognize the value and importance of prior notice of the guardian's recommendations and sources of information to parties and their attorneys, the requirement that all reports be in writing poses a significant resource problem, particularly to volunteer programs and especially in Hennepin County. Issues of resource limitations undoubtedly may limit or affect the timing of the implementation of this and other report recommendations.

The judiciary is committed to finding adequate solutions to the problems identified in your report to ensure that the effective, efficient, and responsible delivery of guardian *ad litem* services is enhanced to the benefit of the litigants, attorneys, guardians, courts, and, most especially, to the children who are subject to the jurisdiction of the state judicial system.

Sincerely,

A handwritten signature in black ink, appearing to read "Sue K. Dosal", written in a cursive style.

Sue K. Dosal
State Court Administrator

SKD:sjr