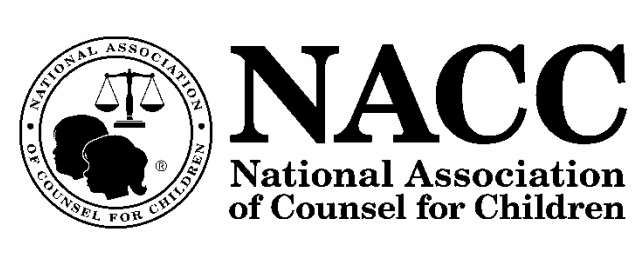

Evaluation of the Guardian Ad Litem System in Nebraska

Conducted by the National Association of Counsel for Children

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Executive Summary

When the Nebraska Department of Health and Human Services ("DHHS") believes a child has been abused or neglected, it often files a petition in court seeking authority to intervene in the family's life to protect the child. In these cases, known nationally as "dependency" cases and in Nebraska as "3(a)" cases, the court appoints a guardian ad litem (or "GAL") to advocate for the child. The GAL plays a critically important role in these cases, standing apart from DHHS and the parents to ensure that all necessary evidence and legal options are before the court, and when necessary to raise objections or appeals to help the court make the best possible decisions for the child.

Unfortunately, the findings documented in this report make clear that Nebraska's current structure for providing GAL services results in uneven performance and lack of accountability. A child's fate – whether she is reunited with her birth family in a timely manner, is shuffled through dozens of foster homes and institutions, or is promptly adopted – should not hinge upon the luck of the draw as to who is her GAL. Because children cannot be expected to routinely complain about the services adults provide them – and because they do not have sufficient political power to be listened to even when they do complain – appropriate structures must be put in place to ensure excellence in services provided and accountability in those instances where quality is poor.

There are a number of aspects of the Nebraska GAL system that function fairly well: children have a statutory right to a GAL in dependency matters; a GAL is appointed in every case; all GALs are licensed attorneys; the appointment happens very soon after the case is filed; and the GAL is present for almost all court appearances. However, scrutinizing below this surface, our findings reveal wide agreement within stakeholder groups that despite many good intentions, the structure of the GAL system in Nebraska undermines the ability of GALs to perform in compliance with reasonable practice standards. While there are individual GALs who are able to overcome the structural problems to provide good service, our findings show that, overall, GALs are not visiting their clients; they are not zealously advocating for appropriate permanency for their clients; they are not making their clients' position known to the court; they are not using independent experts to assist them in understanding their clients and in presenting alternative service plans to the court; they are not actively investigating their clients' education needs; and they are not receiving sufficient training or supervision. As one judge told us, "They just sit there."

At its heart, the Nebraska GAL system is one in which the one person meant to be an independent check on the power of the state typically serves as a rubber-stamp to the state's proposals and plans. In the words of one youth, having a GAL is "like having another caseworker." Thus, the system as it is currently structured perpetuates a particularly cruel fraud on all citizens of Nebraska: it makes it look like there is a voice for Nebraska's children in the court process, but in fact, that voice is mute.

This report was written by the National Association of Counsel for Children ("NACC") in response to a 2008 request by the Nebraska Legislature to evaluate the GAL system on 15 different measures. The

Legislature mandated that the assessment "highlight promising approaches and innovative practices within the state and offer recommendations to improve weak areas." Based on our findings, the NACC offers nine critical recommendations that, if implemented, would make Nebraska not just part of the mainstream in child advocacy services, but a national leader.

Methodology

Five counties, representing urban and rural areas, were selected for the evaluation. The evaluation utilized a mixed method approach: a process audit; analysis of quantitative data; surveys and follow-up interviews with identified groups of key stakeholders; interviews with key informants; and focus groups with young people. The process audit was comprised of two components: (1) a description of how the GAL system is designed to work in Nebraska based on a review of legal sources; and (2) interviews to further delineate how the GAL system is designed to work and the manner in which it functions in practices. Quantitative data were analyzed to answer two questions of research interest: the time between opening the child's case to appointment of the GAL and permanency outcomes for children in foster care. Nine stakeholder groups were identified for the purpose of surveys and/or interviews. Surveys and follow up interviews were conducted with GALS, County Attorneys, Parents, Foster Parents, DHHS Caseworkers, CASAs, and Foster Care Review Board Members. Judges were interviewed to achieve two purposes in a single contact: to gain information as part of the process audit and to learn from the judges their assessments of the current GAL system. Interviews were conducted with court administrators or clerk magistrates in each of the five counties. Three focus groups were conducted with young people currently in foster care and youth formerly in foster care.

Key Findings

Adequacy of the Current GAL System (Structure and Resource Allocation). The process audit revealed a lack of clarity in current statute regarding key aspects of the legal process for children with open DHHS cases and wide variability across counties in how dependency and child abuse and neglect cases are handled. Courts reported different experiences regarding the extent to which there was an adequate number of GALs to appoint to represent children served by DHHS: some judges were quite satisfied with the pool of available GALs, others expressed a desire for more GALs, and others indicated that the issue was not quantity but quality. Judges expressed mixed opinions about establishing a statewide entity to oversee GAL practice with some seeing distinct benefits and others concerned about potential bureaucratic barriers. A review of national best practice standards revealed a number of successful centralized models for the provision of effective GAL representation of children served by child welfare agencies.

GAL Caseloads. GALs, generally, were satisfied with their GAL caseloads and did not express concerns about them, with the exception of attorneys who provide GAL services at contract firms. Judges, likewise, generally believed that GAL caseloads were appropriate, with the exception of the caseloads for lawyers at some of the contract firms. A review of national best practice standards provided information on the caseload caps that a number of jurisdictions have developed.

Timing of Appointments of GALs. There was wide agreement among all adult stakeholders, verified by quantitative data, that GALs are promptly appointed after case filing. Young people, however, reported that they did not meet their GALs for months or years and were, as a result, uncertain of when their GALs were appointed. National authorities in child welfare law agree that in order to comply with federal law and to truly protect children and vindicate their rights, the GAL should be appointed immediately, promptly meet with the child, and maintain the representation for the duration of the dependency proceedings.

Supervision of GALs. We found that most GALs are either satisfied with the level of supervision they receive or believe that they do not need any. In contrast, the judges we interviewed expressed a range of concerns about the level of supervision that GALs receive. National best practice standards make clear that good supervision helps ensure quality representation and fosters an environment of professional growth. Several jurisdictions have established models of supervision that meet both goals.

Appropriateness of Court Facilities for Dependency/Abuse and Neglect Cases. The majority of GALs and judges reported that it is difficult to find a private, quiet place for GALs to speak with their child clients at the courthouse. Most did not find court facilities to be a comfortable place for children and youth. More than three-quarters of the GALs stated that at least one of their child clients had expressed concerns about being in the court environment. Half or more of all stakeholder groups did not see the court environment as a comfortable place for children and youth to be. On site observations by the evaluation team confirmed these findings. The national best practices review revealed a range of simple steps such as creating a safe and welcoming space within an existing court facility that can be taken to encourage youth participation and minimize any possible negative effects from attending court

***Compensation for GALs*.** More than half of GALs, in their survey responses, believed that the compensation that they receive as GALs is inadequate. Judges, in general, believed that the compensation for GALs was reasonable. Several judges strongly objected to the flat rate/contract system in place in some localities, stating that under these payment systems, attorneys provide the bare minimum of representation. One key informant said that the contracts are "a guaranteed recipe to ensure that GALs are not going to be good" because there is no accountability as to the number of hours of service provide or services offered. A review of national best practices standards revealed several models for determining appropriate compensation levels for GALs to attract and retain quality attorneys.

Training for GALs. Most of the responding GALs did not think the training they received provided them with all the information they need to serve as a GAL. Nonetheless, 41% of the GALs said that would not want to receive more training on their roles and responsibilities as GALs. When asked on which topics training would be most helpful, more than 40% identified the following areas: the emotional needs of children with histories of abuse/neglect; placement options when children enter foster care; and children's mental health issues. Almost two-thirds of GALs reported receiving no training before becoming a GAL, and almost one quarter reported receiving no continuing education hours related to GAL representation over the preceding 12 months. Several judges said that the training for GALs was good to very good, but expressed concerns about GALs taking full advantage of the

training. A review of national best practice standards identified several comprehensive training approaches to ensure that GALs obtain and maintain the basic competencies necessary to be effective and zealous advocates.

***GAL Access to Experts*.** The majority of GALs reported that they have access to experts to help them in making assessments of the child's needs at least "sometimes," whereas only 19% reported having access to social workers independent of DHHS to assist with child assessments. In follow up interviews, however, GALs reported rarely if ever using such experts. Most judges said that GALs never use experts. A review of national best practice standards found that a steadily increasing number of jurisdictions, lawyers representing children work side-by-side with independent social workers and other professional consultants in collaborative advocacy on behalf of the clients. The review identified a number of models for professional collaboration.

GAL Understanding of Education Issues and Access to Educational Professionals. Few GALs reported "always" having some direct communication with children's teachers; most GALs said that they only "sometimes" do so. Most of the young people said that GALs knew very little, if anything, about their grades, school transfers, or school attendance issues. Most said that that GALs were not aware of their educational successes and challenges, their special education needs, or their favorite and least favorite subjects because they do not ask. National best practice standards make clear that it is absolutely critical for foster children's attorneys to be fully informed of their clients' educational status and to zealously advocate for any unmet needs to be addressed. A review of best practices revealed the work in a number of states to develop detailed standards of practice for dependency attorneys in addressing the educational needs of their child clients.

Time to Permanency. Data show that there is considerable variation among the five counties examined in this evaluation regarding average length of stay in foster care among children who eventually return home, ranging from two years (24 months) in one county to 15 months in another county. Variation also was found among counties regarding the average length of stay in foster care for children who leave care to adoptive families. Some counties averaged just over two years (25 months) for these children while other counties averaged more than three years. When asked about the permanency outcomes for the children they represent, the GALs identified a number of factors as prolonging children's stays in foster care: judges' reluctance to return children home without there being an absolute assurance that there are no risks; failure of county attorneys to file petitions to terminate parental rights; failure to follow the requirements of the Adoption and Safe Families Act regarding filing petitions to terminate parental rights; the costs associated with GALs' filing petitions to terminate parental rights; parents' decisions to take termination of parental rights actions to trial; and too few judges. Reports from GALs and judges indicated that few GALs file petitions to terminate parental rights when it is in the best interest of the child to do so. In the federal Child and Family Service Reviews, Nebraska was not in compliance with Permanency Outcome 1 (Children have permanency and stability in their living situation) or Permanency Outcome 2 (The continuity of family relationships and connections is preserved for children). A review of national best practices in achieving permanency revealed a range of practice models and models for safely achieving reunification with parents, permanent placements with relatives, and adoption.

Coordination with Delinquency Cases. The great majority of GALs (93%) stated that they were able to coordinate with their child clients' lawyers in delinquency cases. In general, GALs reported being notified of a child's arrest and the appointment of a delinquency attorney. Judges said that when children in dependency/abuse and neglect cases cross over to delinquency, they appoint the Public Defender or a private defense attorney to represent the child, but they expect the GAL to be present at delinquency hearings and serve as the child's GAL on the delinquency matter. A national best practice review revealed that jurisdictions take different approaches to the question of what role the child's dependency attorney should play in the delinquency proceeding. The review suggests that the best practice is for the same attorney to represent the child in both matters (so long as the attorney is qualified to do so), as this ensures continuity of representation and complete transfer of knowledge and information.

The Nature of the Relationship Between the GAL and their Child Clients. Young people in focus groups most often stated that they did not know their GALs, they met with them infrequently, and when they did meet with their GALs, the meetings were rushed. Of the 16 youth who spoke with the evaluators, only one definitively said that having a GAL made a positive difference in his/her life. In contrast, GALs generally rated themselves highly on their timeliness, frequency and responsiveness in meeting with their child clients. Both GALs and young people commented on GALs sending paralegals, law students/interns, and secretaries to meet with young people prior to review hearings.

A large majority of GALs reported that they had a good understanding of the child's strengths and needs. Other stakeholders, including youth in care, were less convinced of GALs' understanding of their child clients' strengths and needs. Extremely few county attorneys, CASAs, DHHS caseworkers, and Foster Care Review Board Members stated that GALs personally meet with the child "always." Stakeholders, including judges, expressed concerns that GALs were not meeting with their clients. Neither parents nor foster parents expressed high levels of confidence in the work that GALs do. One key informant stated, "The dual role is not the biggest problem with the GALs in Nebraska. The biggest problem is that GALs don't talk to their clients or ever meet with their clients, so they don't even know what the child's position is."

GALs' responses indicated some confusion about the dual role that they are expected to play as children's advocates and legal counsel. That confusion was reflected in the comments of two judges who stated that GALs do <u>not</u> have dual roles. Other judges, however, agreed that GALs have a dual role under Nebraska law and the majority agreed that most GALs are able to balance their dual responsibilities. The majority of GALs rate themselves as "very strong" or "strong" on all legal and professional skills, ratings that suggested that GALs believe themselves to be more skilled than did the others surveyed. Judges tended to give mixed reviews of GALs' legal and advocacy skills. Both CASAs and Foster Care Review Board members evidenced disagreement with statements about GALs being effective advocates for their child clients.

The evaluation found that only a minority of GALs report providing a report to the court at every dispositional and review hearing for their child client or making written recommendations to the court for all of their child clients. Slightly more than half of the GALs reported that they did not always make

recommendations independent of the court. Most judges expressed the sentiment that GAL reports were not helpful at all or gave GAL reports mixed reviews at best. Several judges found the GAL reports to be unhelpful because they simply agreed with the Department's position. A number of respondents stated that GAL reports merely repeat information that is already in other reports.

In interviews, GALs said that they let the court know what the child wants and why they disagree with the child's position and what they think the child's best interest is. Several judges, however, said that GALs often do not alert the court to the client's wishes because they have not met with the client. Other stakeholders made the same observation. The majority of GALs indicated that they had never sought separate counsel when the child's position and what they thought was in the child's best interest differed. This sentiment seems ironic in view of the earlier reported finding that over 40 percent of the GALs said they would not want to receive more training on their roles and responsibilities as GALs.

In general, GALs reported contacting other key stakeholders (DHHS Caseworkers, CASAs, and Foster Care Review Board Members, parents, and foster parents) more often than the stakeholders reported being contacted by GALs.

Most judges said that they have ceased appointing GALs when they do not perform well, but many made a distinction between being able to do so when an attorney was in private practice and when an attorney worked for a contract firm.

A review of national best practice standards revealed a number of existing models in which attorneys are guided by clear standards on the nature of the representation of their clients, the timing and frequency of in-person meetings with their clients, their legal and advocacy obligations, and client satisfaction.

Youth Participation in their Own Court Proceedings. The great majority of surveyed GALs said that they "always" or "usually" advocate for the child's presence at court and that they "always" or "usually" promote the child's opportunity to speak to the judge. In interviews, however, many GALs expressed a lack of support for children's presence in court. In contrast to GALs, youth consistently expressed the desire to be at their own court hearings. Young people reported various experiences with respect to court participation. Some reported that the GAL told them what would happen in court and others said that the GAL did not. Most judges expressed strong support for all children coming to their court hearings. A review of national best practice standards reveals long standing support for the concept of youth coming to dependency court and speaking to the judge, particularly in regards to dispositional matters, conditions of care, and their service plan and developments in a number of jurisdictions to implement this concept.

Recommendations

Based on the findings of this evaluation, the NACC recommends that Nebraska take a number of steps to improve its system of child representation in 3(a) cases. The findings indicate that significant reform is needed to bring Nebraska's child representation system into line with national standards.

These changes are absolutely critical to ensure that all of Nebraska's vulnerable children are adequately and properly represented when they are before the court.

Short Term Reforms

1. Because attorneys for children should have clearly defined case responsibilities, Nebraska should clearly enumerate the powers and duties of the GAL in 3(a) cases through statute or mandatory, enforceable practice standards promulgated by the Supreme Court.
2. Training for GALs in Nebraska must be significantly increased and enhanced, and there must be organized opportunities for GALs to network with and learn from each other.
3. The relationship between the GAL and the child must be changed to become client-focused, not adult-focused.
4. Nebraska should establish mandatory caseload standards for GALs in 3(a) cases.
5. All GALs should be reimbursed on an hourly basis. All counties that still use the law firm/flat-fee contract system should phase this system out, given the evidence that attorneys working on an hourly basis have more reasonable caseloads and adequate compensation.
6. Youth should participate in 3(a) proceedings in court.

Longer-term, Systemic Changes to the Delivery of Legal Services to Children in Nebraska

7. Nebraska should establish a centralized system for oversight of GAL services. Responsibility for administering and funding the system of legal services to children in 3(a) cases should be shifted to an independent state entity, whether within the state Administrative Office of the Courts or the executive branch.
8. Nebraska should adopt, by statute, a client-directed model of representation. Building on Recommendation 3 above, the child's attorney should follow the Nebraska Rules of Professional Conduct just like all attorneys.
9. Nebraska should renovate court facilities to make them adequate for the needs of children and youth.