

Guardians Ad Litem Appointed to Represent the Best Interest of Children in Maine Domestic Relations Cases



**Final Report
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EXECUTIVE SUMMARY

The Maine Judicial Branch (MJB) has sought the assistance and expertise of the National Center for State Courts (NCSC) to provide it with contextual information and best practices in Guardian ad Litem (GAL) work as the MJB makes efforts to work with the Maine Legislature to improve the complaint resolution process and the availability of highly qualified GALs for children and families in Maine.

Although they have different names in different states, GALs are appointed in courts across the country to provide information and recommendations to the court, to the litigants, and to the litigants' attorneys on matters related to the custody of and access to children in those cases in which the parents and/or other primary caregivers are unable to make their own agreements.

ROLE OF THE GAL

This report discusses persons appointed to perform a role similar to GALs appointed in Maine pursuant to Title 19-A, Maine Revised Statutes, Section 1507 in divorce and domestic relations proceedings when parental rights and responsibilities and/or visitation are contested. These GALs perform investigations and make recommendations to the courts on parental rights and responsibilities and parent-child contact.

This role is widely acknowledged to be a challenging one, as the recommendations made by these professionals involve intensely personal family disputes and the care of children. It is not uncommon for one or both parents to disagree with the recommendations, the process followed, or the fees charged by the GAL. Thus, it is vital to have clearly defined professional standards and explanation of roles, clear court orders for scope of services and fees, and a fair and deliberate complaint process.

RESOURCES

Similar to a number of state court systems, the MJB has received no resources to run a "GAL program" other than direct payments to legislatively mandated guardians in child protection cases (assigned pursuant to Title 22 of the Maine Revised Statutes). The MJB has not received state funding to create, implement, or oversee a GAL program in domestic relations cases.

Unlike other states without dedicated resources for GALs, Maine has established a capable GAL program in family matters cases. At the outset, GALs must meet professional licensure requirements in law or a counseling-oriented field or be certified under the Maine Court Appointed Special Advocate program and attend an entry level training process. During their tenure, GALs are appointed using a uniform appointment order, and are required to conform to published standards and to engage in continuing education.

In 2006, the Office of Program Evaluation & Government Accountability of the Maine State Legislature,¹ and in 2008, the Judicial Branch Advisory Committee on Children and Families² studied issues related to the use of GALs in Maine. After a comprehensive study, changes were recommended that required the infusion of a substantial amount of fiscal resources. The Legislature has not found funding in either circumstance and, therefore the MJB has continued to operate and attempt to improve the GAL program, through additional training and oversight within existing resources.

In the context of this historical backdrop, the MJB is attempting to improve the GAL complaint resolution process and to clarify the roles and expectations of GALs. The Maine Administrative Office of the Courts secured funding from the State Justice Institute to retain the NCSC to provide the MJB with an overview of various models of GAL systems in a number of states overseeing a GAL program with limited state dollars. This overview will guide the Supreme Judicial Court in its efforts to assure that parties have access to an effective and professional GAL system in Maine.

DEVELOPING STANDARDS

Only a few states have adopted standards, practices, form appointment orders, and complaint processes for GALs serving in domestic relations cases. To its credit, the MJB is one of the few state court systems that have done so. The Supreme Judicial Court of Maine has adopted the Maine Rules for Guardians Ad Litem that establish qualifications and standards for practice and which govern their appointment and placement on and removal from a GAL roster. The Rules establish minimum initial and continuing education requirements and also establish a complaint process.

The NCSC team identified and interviewed a number of other states that have established programs to oversee GALs in domestic relations cases. In preparing this report, the NCSC team canvassed other courts across the country to consider national practices related to program oversight, qualifications, training, and complaint processes for GALs. In particular, state court systems in Colorado, Massachusetts, Minnesota, and New Hampshire, and county court systems in Washington and Arizona have oversight mechanisms, standards, and complaint processes in place that would be informative to court leaders in Maine.

The MJB has also asked the NCSC to identify standards promulgated by national organizations. The NCSC could not locate any national standards that apply to GALs who conduct investigations in domestic relations proceedings. National standards for professionals involved in court disputes over the custody of children do exist for psychologists conducting clinical

¹ <http://www.maine.gov/legis/opega/Reports.html>

² http://www.courts.state.me.us/reports_pubs/reports/index.html

evaluations, for attorneys providing legal representation of children, and for GALs for children in abuse and neglect cases. These standards and guidelines have been adopted by the Association of Family and Conciliation Courts, the American Psychological Association, the Uniform Laws Commission, the American Bar Association, and the National Court Appointed Special Advocates Association. These standards are attached to this report in Appendix A. However, their value is limited in that Maine's GALs, assigned pursuant Title 19-A, Maine Revised Statutes, Section 1507, do not perform these roles.

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I. Overview

Child custody investigation is a process through which a trained and qualified person gathers and reports factual information that will assist the court in making custody, visitation, or other decisions related to the best interests of a child in those cases in which the parents and/or other primary caregivers are unable to develop their own custody or visitation arrangements. The individual who performs the child custody investigation is known in some jurisdictions as a Guardian ad Litem (GAL), as a child and family investigator, or as a child custody evaluator.

The GAL's role is widely acknowledged to be a challenging one, as the investigations and recommendations made by these professionals involve intensely personal family disputes and the care of children. It is not uncommon for one or both parents to disagree with the recommendations, the process followed by the GAL, or the fees charged. This is why it is important that GALs have defined professional standards and possess rigorous professional training and experience.

Equally important, court orders must establish the GALs' roles, the purposes of their investigation, and the focus of their investigation. GALs and parents must know at the beginning of the process what the fees will be or how they will be determined. The court must have in place a fair and deliberate complaint process for those situations in which disputes arise over the conduct of the GAL or recommendations or the fees charged to the parents.

The Maine Judicial Branch (MJB) has sought the assistance and expertise of the National Center for State Courts (NCSC) to provide it with contextual information and best practices in GAL work as the MJB makes efforts to work with the Maine Legislature to improve the complaint resolution process and the availability of highly qualified GALs for children and families in Maine.

II. Guardians ad Litem in the State of Maine

A. Introduction

In 2012, the Maine State Legislature "sought the input of the Judicial Branch in the creation of such a system." To solicit public input, the Supreme Judicial Court invited the public, interested parties, and stakeholders to a (May 31) meeting to solicit comments and suggestions toward improving the GAL complaint process. The Court also accepted written public comments through the end of July 2012.

Then, in August, Hon. Leigh I. Saufley, Chief Justice of the Maine Supreme Judicial Court

convened two groups: 1) the Guardian Ad Litem Task Force, Complaint Resolution System³, charged “to assist the Supreme Judicial Court in designing and presenting to the 126th Maine Legislature, a transparent, accessible and credible system for resolving complaints against Guardians ad Litem who are appointed in the State Courts” by making recommendations to the Supreme Judicial Court before the end of September 2012; and 2) the Guardian Ad Litem Rules Committee formed as a stakeholder group to assist and comment on proposed revisions to the existing Maine Court Rules for Guardians ad Litem. The Rules were last reviewed in 2004, and thus, it was time to update the Rules and ensure conformity to subsequent statutory changes. The Committee was directed to submit a report to the Supreme Judicial Court by the close of 2013.

Upon completion of its review of information from the public, task force recommendations, and the report from the NCSC, the Supreme Judicial Court plans to report recommendations for “a transparent, accessible and credible system for resolving complaints against Guardians ad Litem who are appointed in the State Courts” to the Maine Legislature and to make additional changes to create a more robust and effective GAL process.

This report provides a brief summary of the development and current state of the Maine GAL System, followed by a review of systems used in other states that were selected based upon robustness of standards, oversight and complaint processes, as well as information about funding sources for the provision of GAL services.

B. Brief Historical Overview of Guardians ad Litem in Maine⁴

Over 35 years ago, the Maine Legislature first authorized the use of GALs in Maine cases. There are several significant federal and state legislative events and policy considerations that have increased nationwide awareness of child maltreatment. In addition, these changes in federal law affected the course of the MJB’s mission, and shaped the role of GALs in Maine’s courts.

In 1974, the federal Child Abuse and Prevention Treatment Act (CAPTA) was enacted.⁵ CAPTA requires all states, in order to qualify for federal grant funds, to appoint a GAL in all child protection cases. The following year Maine responded by passing a provision requiring appointment of a GAL in all Title 22 child protection cases. P. L. 1975, ch. 167 (effective April

³ The GAL Task Force completed its work and submitted a report to the Supreme Judicial Court. *See* Recommendations for an Improved Process for Complaints Regarding Guardians Ad Litem. September 2012. http://www.courts.state.me.us/reports_pubs/reports/pdf/gal_rpt-2012.pdf

⁴ Much of this overview as taken from *The Judicial Branch Advisory Committee on Children and Families: Recommendations for a Guardian ad Litem Program for the State of Maine*, Winter 2008.

⁵ U.S. Code Title 42, Chapter 67. Originally enacted in P.L. 93-247; most recently amended and reauthorized on December 20, 2010, by the CAPTA Reauthorization Act of 2010 (P.L. 111-320).

21, 1975).

Six years later, the federal Adoption Assistance and Child Welfare Act of 1980 was enacted. The effect of this Act was to minimize out-of-home placements, reunify children with their parents, and establish an 18-month deadline for permanency. Chapter 1071 of Title 22 of the Maine Revised Statutes incorporated Public Law 1975, chapter 167. The resulting increase in court events, necessitated by both the shortened timelines and the increased accountability of courts and parties for permanency, made GALs critical to the timely making of recommendations.

By 1997, further federal legislation, the Adoption and Safe Families Act (ASFA), highlighted the need for permanency for children, necessitating more frequent assessment of the safety and well-being of children in out-of-home placements, and requiring GALs to make more time-sensitive recommendations regarding children's best interests. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89 (1997). In that same year, the Maine Legislature enacted 19-A M.R.S. § 1507, authorizing the discretionary appointment of GALs in Title 19-A domestic relations cases. P.L. 1995, ch. 694, § B-2, (effective Oct. 1, 1997).⁶

In 1999, pursuant to 19-A M.R.S. § 1506 and 22 M.R.S. § 4005, the Maine Supreme Judicial Court issued Rules and Standards for Guardians appointed in both Title 22 and Title 19-A cases. The MJB assigned oversight of GALs to the Chief Judge of the District Court.⁷

C. Current Status of Guardians ad Litem in Maine

The Maine Supreme Judicial Court has issued and amended Rules and Standards for Guardians appointed in both Title 22 and Title 19-A cases. These rules and standards include application criteria, training, continuing education requirements, standards of conduct, and a complaint resolution process.⁸

1. Credentials, Screening, and Rostering

To be qualified to serve as a GAL, the applicant must possess a valid license to practice law; or

⁶ The Maine Legislature did not make a funding appropriation to provide for oversight of the GAL process. P.L. 1995, ch. 694, § B-2, (effective Oct. 1, 1997).

⁷ In 1998, the Family Division was established within the MJB, with the mission to "provide a system of justice that is responsive to the needs of families and the support of their children." 4 M.R.S. § 183 (Supp. 2007). Under the direction of the Chief Judge of the District Court, Family Division staff members assist with GAL training, tracking, and oversight.

⁸ The current version of these rules can be found on the MJB website at http://www.courts.state.me.us/maine_courts/family/gal/rules.html.

to practice as a LSW, LCSW, LPC LCPC, LMSW, LMFT, LPC, psychologist or psychiatrist in the State of Maine; or be certified as a Maine Court Appointed Special Advocate (CASA). M.R.G.A.L. II(2)(C)(i). Pursuant to Rule II, the Chief Judge of the District Court (Chief Judge) is required to screen applicants for compliance with the criteria set forth in the rules,⁹ M.R.G.A.L. II(2)(B)(C).

2. Training

The Rules established by the Maine Supreme Judicial Court provide that GALs are required to attend a core GAL training, with a curriculum of at least 16 hours that must include specified learning outcomes and activities designed to meet these outcomes, and must cover Titles 19-A and 22, dynamics of domestic abuse and its effect on children, dynamics of divorce and its effect on children, child development, the effects of abuse, neglect, and trauma on children, substance abuse, legal issues and processes, the duties and obligations of the GAL as an agent of the court, and interviewing techniques.¹⁰ The Chief Judge is charged with approving the curriculum and certifying completion. M.R.G.A.L. II(2)(C)(ii) & (E).

In addition to core training, Maine GALs are required to “attend and complete any continuing professional education events or seminars designated as mandatory by the Chief Judge [and]... in each 12 month period ... a Guardian must annually participate in a total of at least 6 hours of continuing professional education programs.”¹¹ M.R.G.A.L. II(2)(E).

Since the first two-day core training in May 1999, the MJB’s Family Division, under the direction of the Chief Judge, has sponsored annual trainings for GALs.¹² Beginning in 2011, the Family Division has sponsored the core GAL training on a bi-annual basis. In the last few years, these trainings have focused on the required topics enumerated in M.R.G.A.L. II(2)(C)(ii) as well as fundamentals such as investigation, relationship building with children and families, report

⁹ The Chief Judge of the District Court has the authority to waive the licensure or qualification requirements. M.R.G.A.L. II (2)(C)(i)(4).

¹⁰ “For a Guardian acting under the auspices of the CASA program, successful completion of CASA training satisfies this requirement. CASA Guardians who accept appointment in non-CASA cases must complete the core training requirements.” M.R.G.A.L. II(2)(C)(ii).

¹¹ Continuing education must focus on one or more of the following:

“Titles 19-A and 22, dynamics of domestic abuse and its effect on children, dynamics of divorce and its effect on children, child development, the effects of trauma on children, substance abuse, legal issues and processes, the duties and obligations of the Guardian as an agent of the court and interviewing techniques.” M.R.G.A.L. II(2)(E).

¹² Since the initial training, the Family Division has sponsored fourteen GAL Core trainings. The training has now expanded to four (4) days, has been offered every other year, and includes the Court Appointed Special Advocate Program (CASA). The four-day training is comprehensive and includes presenters and trainers from the judiciary, the legal community, the social work community, the psychological/medical community, and the “kids-in-care” community.

writing, testifying, children's needs (from a developmental perspective), the impact of domestic violence on children and families, and providing culturally and socially competent child advocacy.

In addition to the core training, the Family Division solicits and receives the required annual GAL continuing education disclosure form, tabulates continuing education credits, provides a report to the Chief Judge, and maintains an accurate roster of GALs.

3. Standards

GALs are required to comply with the statutory requirements applicable to the particular case and with the terms of the judge's Order of Appointment of GAL pursuant to 19-A M.R.S. § 1507 and 22 M.R.S. § 4005; see also M.R.G.A.L. II(3)(A). In addition, they are required to adhere to the Standards of Practice for Guardians ad Litem in Maine Courts (found as Appendix A to the GAL Rules, including Paragraphs 1 & 2 of the Preamble of these rules), M.R.G.A.L. App A, and with the sections entitled Standards of Performance, Abuse of Position, Discrimination, and Conflict of Interest of the Judicial Branch Code of Conduct.

4. Complaint Resolution

Complaints against GALs in ongoing cases are referred to the presiding judge under M.R.G.A.L. II(4). When complaints, other than a complaint in a pending case, are received by the Chief Judge, the Chief Judge screens the complaint and may discuss it with the GAL or other participants in the matter in confidence under M.R.G.A.L. II(4). Following the Chief Judge's consideration of all available information, the Chief Judge may dismiss the complaint without further action or review the complaint pursuant to Rule II, M.R.G.A.L. II(4)(A).¹³ If the Chief

¹³ B. Review Procedures.

The Chief Judge may conduct a review of a GAL in response to a complaint, or on his or her own motion. If the Chief Judge initiates a review of a GAL for any reason(s), the Chief Judge shall notify the GAL of the pending review in writing.

A review panel appointed by the Chief Judge shall review all pertinent information, including interviews with or written statements from the GAL, the complainant, parties, counsel, and court personnel. The panel shall be comprised of one GAL who is listed on the roster, one attorney, and one member of the public.

Upon request, the GAL may review the complaint and other information developed by the review panel. The GAL may provide the panel with a written response.

Thereafter, the review panel may terminate the review without action or may notify the GAL in writing of any proposed action.

Judge determines that it is in the best interests of the MJB to do so, the Chief Judge may remove or suspend a GAL from the roster prior to initiation or completion of the review procedure under M.R.G.A.L. II(5).

D. Brief Snapshot of Current Guardian ad Litem Roster and Complaint Volume

There are currently 286 GALs in Maine. Most (81%) are attorneys. Approximately 15% of rostered guardians are licensed mental health providers. A small number of guardians (4%) do not possess either of these professional licensures. *Recommendations for an Improved Process for Complaints Regarding Guardians Ad Litem, Report to the Supreme Judicial Court by the Judicial Branch Guardians Ad Litem Task Force* (GAL Task Force Report) at Section I., pp. 1-2.

Currently, *Maine Rules for Guardians Ad Litem* vest responsibility for ongoing evaluations and oversight of Maine GALs in the Chief Judge. The Chief Judge may dismiss the complaint, conduct a review of a GAL in response to a complaint, or rule on his or her own motion. The Chief Judge appoints a three-person review panel to investigate and issue a written decision. In emergency situations, the Chief Judge may remove a GAL from the roster. In 2011, the Office of the Chief Judge of the District Court received fourteen complaints about GALs. *GAL Task Force Report* at Section I, p. 2. *See also* http://www.courts.state.me.us/maine_courts/family.

E. Role of the Guardian ad Litem in Maine

Today, GALs in Maine are called upon to assess parenting abilities in situations where families

If the GAL requests a hearing before the panel on the proposed action, the GAL must request one in writing within 14 days of the date of the notice of proposed action.

The review panel shall issue a written decision.

Proceedings of the review panel are normally confidential. Only the Chief Judge, the panel, the complainant, the GAL, and in the case of an appeal, the Supreme Judicial Court, shall have access to the proceedings or decision.

The panel may, by majority vote, open the hearing or the decision to the public after considering the complainant's and Guardian's positions, the public interest in access to information, any special need to protect the confidentiality of witnesses or testimony in the particular proceeding, the presence in the proceedings of matters that are otherwise confidential by law, the extent and nature of public awareness of the proceedings or their subject matter, and any special factors that may be relevant in the particular situation.

The Chief Judge, or the Single Justice of the Supreme Judicial Court, upon a finding that the complaint gives rise to a probable fundamental violation of the licensing standards of the GAL's underlying profession, may make a referral for further action to the appropriate Board or Commission.

M.R.G.A.L. II(4)(B).

are under extreme stress and in high conflict. In Title 19-A cases (contested divorces in which a minor child is involved), the court may appoint a GAL for the child when the court has reason for special concern as to the welfare of a minor child. 19-A M.R.S. §§ 904, 1653, 1803. The GAL is charged with interviewing the parents or guardians, interviewing the child,¹⁴ and making recommendations to the court regarding the best interest of the child according to the criteria enumerated at 19-A M.R.S. § 1653. In Title 22 (child protection) cases, the court must appoint a GAL for every child.¹⁵ The GAL is charged with interviewing all parties, interviewing the child(ren), interviewing other relevant stakeholders, reviewing relevant medical/mental health records, and making recommendations to the court regarding the best interest of the child specifically with regard to safety, well-being, and permanency.¹⁶

The MJB has adopted a Form Order for Appointment of Guardian Ad Litem.¹⁷ In the Order, the judge or magistrate must set forth the responsibilities of the GAL in the particular case, the responsibilities of the parties, and the parties' responsibilities for paying the costs of the GAL's services.

III. Overview of State-Specific Guardian Ad Litem Practices

This report provides an analysis of GAL standards, oversight practices, and complaint processes in selected states that have adopted standards and processes. The NCSC reviewed responses to a survey from a number of states regarding best interest investigations for children in divorce and custody proceedings. The NCSC team also performed phone interviews with representatives from a sample of states that met one or more of these criteria:

- (1) Nationally recognized for promising practices in divorce and custody case handling practices.
- (2) Geographically located in New England.
- (3) Centralized court systems, similar to Maine.

The NCSC reviewed these states' practices, standards and oversight mechanisms for GALs. States implement their GAL processes in a variety of ways. Table 1 displays a sample of twelve states and some high-level characteristics of their GAL models in divorce/custody cases. More detailed information on state practices is provided in Section III of this report.

¹⁴ As well as any other tasks enumerated in the statute or the court's Order of Appointment of Guardian ad Litem.

¹⁵ 22 M.R.S. § 4005

¹⁶ The precise focus of the recommendations to be made by a GAL is prescribed by statute based on the stage of the specific case (e.g., jeopardy). 22 M.R.S. § 4005.

¹⁷ FM-125, Rev. 08/09.

In most states, the GAL is charged with conducting an investigation and providing information in a report to the court to inform the court's decision. In all of the states examined, the GAL is tasked with making recommendations to the court regarding the best interest of the child. In Massachusetts, GALs make recommendations when the court expressly authorizes them to do so.

While appointing a GAL in child protection cases in these states is often mandatory, appointment of a GAL is not mandatory in divorce or custody cases in any of the states other than Wyoming. Similarly, while courts absorb the costs of the GAL for child protection cases, it is most often the parties' responsibility to pay the GAL for divorce and custody cases.

States in the sample use varying methods of credentialing GALs and providing program-level oversight. Some states do not have any mechanism to provide training and rostering requirements or to provide ongoing program oversight. Two states use an independent board to handle qualifications of GALs and oversee their GAL programs. Others use a judicial branch oversight model, where a Supreme Court, a Chief Judge, or a board of judges at the state or county level defines standards for qualified GALs and oversee the GAL program. In Minnesota and in Thurston County, Washington, part of this program oversight includes annual evaluations of individual GALs. In addition to ongoing monitoring, some states have established formal complaint processes enabling a party to file complaints against a GAL. Other states rely on professional licensing boards and have no guardian-specific complaint process. More details on these processes are included in Section IV of this report.

Table 1. Overview of State Guardian Ad Litem Practices in Divorce and Custody Cases

State	Does GAL make recommendations?	Compensation Model	Program Oversight and Credentialing	Complaint Process
Maine	Yes	Parties pay	Yes, through Maine Judicial Branch.	Formal process through the Chief Judge and a review panel appointed by the Chief Judge.
Arizona	Yes	Parties pay	Yes, depending on the county, through county-level judicial administration.	No statewide process; counties may develop their own processes.
Colorado	Yes	Parties pay; if indigent, the Colorado Judicial Branch may pay.	Yes, through the Chief Justice of the Supreme Court and the State Court Administrator. The Colorado Judicial Branch has developed a training curriculum for guardians ad litem (named Child and Family Investigators in Colorado).	Formal process using online form. Handled jointly by district administrator and State Court Administrator's Office. Complaints may proceed to the Office of Attorney Regulation Counsel (attorneys) or the Office of the Child's Representative (for indigent parties).
Massachusetts	Yes, if authorized by the court.	Parties and state pay	Yes, through the Chief Justice of the Trial Court Department, the Chief Justice of Administration and Management and the Administrative Office of the Courts.	Process run through the Chief Justice of Trial Court Department.
Minnesota	Yes	Parties pay; if indigent, GAL Board may pay.	Yes, through the Guardian ad Litem Board. ¹⁸	Formal process through the GAL program manager in judicial branch; GAL Board Administrator is final arbiter.
New Hampshire	Yes	Parties pay	Yes, through Executive Branch Guardian ad Litem Board.	Formal process through the Executive Branch GAL Board.
Washington	Yes	Paid or (CASA) volunteer; parties pay unless indigent.	Yes, through county-level judicial administration.	Most counties have formal processes, many use a judicial branch board or committee to resolve complaints.

¹⁸ Judicially funded but not under administrative control of the Minnesota Judicial Branch.

IV. Relevant State-Specific Guardian ad Litem Practices

Some of the states in the sample (Connecticut, Florida, Rhode Island, Vermont, and Wyoming) have established standards, procedures, and oversight for GALs or evaluators for child protection cases, but have not established them for custody proceedings. This is mostly due to statutory and funding restrictions. Jurisdictions that do have standards and procedures for divorce and custody cases are described in this section of the report. These are the state court systems in Colorado, Massachusetts, Minnesota, and New Hampshire, and local court systems in Arizona and Washington.

The NCSC has compiled available information on GAL practices in these jurisdictions related to Program Oversight, Role/Responsibilities/Duties of the GAL, GAL Rosters, Qualifications, Education and Training Requirements, Case Appointment, Form Orders, Communication with Parents, Fees, Performance Evaluation, Complaint Process, Fee Disputes, and Sanctions.

ARIZONA

In Arizona, GALs in divorce and custody cases are called Court Appointed Advisors (CAA). CAAs may or may not be attorneys. In Maricopa County, CAAs must have a master's degree and are required to perform clinical evaluations. Two particularly effective practices, established in Maricopa County, Arizona are: (1) Setting fees based on equivalent work rates for mental health professionals; and (2) A newly developed judicial committee that reviews complaints and takes action accordingly.

Program Oversight

Program oversight is provided by the local court judges.

Role/Responsibilities/Duties of the CAA

Arizona's CAAs may testify or submit a report setting forth recommendations regarding the best interests of the child and the basis for their recommendations. The CAA may also be called as a witness for the purpose of cross-examination regarding the advisor's report without the advisor being listed as a witness by a party.

Roster

Arizona does not have a statewide GAL roster. Some of the smaller or rural counties may not have formal rosters. Many of the qualified CAA's are known to the court community and are willing to be appointed.

In Maricopa County, a committee of judicial officers reviews all of the applications of candidates for the CAA roster. The committee determines which applicants are included on the roster and

the county contracts for their services.

Qualifications

The court may appoint as a CAA for a child only a qualified individual or a non-profit or governmental organization of qualified individuals.¹⁹ To be qualified, an individual must have received training or have experience in the type of proceeding in which the appointment is made, according to any standards established by Arizona law or rule. An attorney appointed as CAA may take only those actions that may be taken by a CAA who is not an attorney.²⁰

Education and Training

To be qualified as a CAA, an individual must have received training or have experience in the type of proceeding in which the appointment is made, according to any standards established by Arizona law or rule.

In Maricopa County, the CAAs must meet the minimum requirements of the contract, which include a master's degree in social services, nursing, psychology, education, counseling, or other related field, and a minimum of five years of experience working with children who are at risk of abuse or neglect. There is an informal CAA training to acquaint the CAAs with the specifics of the job and to introduce new CAAs to veteran CAAs. There is no formal mentoring program.

Appointment

As outlined in Arizona's Rules of Family Law Procedure, Rule 10,²¹ the court may appoint a CAA to represent the best interests of the child in a family law case pursuant to A.R.S. § 25-321²² if it finds any of the following:

- (a) There is an allegation of abuse or neglect of a child.
- (b) The parents are persistently in significant conflict with one another.
- (c) There is a history of substance abuse by either parent or family violence.
- (d) There are serious concerns about the mental health or behavior of either parent.
- (e) The child is an infant or toddler.
- (f) The child has special needs.
- (g) Any other reason deemed appropriate by the court.

Fees

The court may allocate fees and expenses between the parties in accordance with all Arizona law

¹⁹ Organizations such as CASA.

²⁰ http://www.azcourts.gov/portals/20/ramd_pdf/R-05-0008CorrOrd10-27-05.pdf

²¹ See pg. 15. http://azdnn.dnnmax.com/Portals/0/NTForums_Attach/1102341637958.pdf

²² See

<http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/25/00321.htm&Title=25&DocType=ARS>

and rules.²³

In Maricopa County, in the case of the non-attorney CAAs, the court looked at the rates of other master's level social workers and then set a flat fee based upon that rate and the average number of hours they expected the CAA to expend on a case. Smaller counties or rural counties may not have this type of guidance.

Complaint Process

Each county may have differing complaint processes and some of the smaller or rural counties may not have a process in place.

Maricopa County is piloting a judicially-led complaint process. If a judge receives a complaint about a CAA, he/she determines if the nature of the complaint is such that there is concern with regard to other cases to which the CAA has been appointed. If so, the first action is to suspend the CAA's case assignments until the investigation is complete. The judge obtains details from the party making the complaint. Inquiries are made to members of the bench to determine if there have been similar or other complaints about the CAA in question. Further research is conducted to see if any of the statements made are confirmed with objective data. The judges then speak with the CAA. The actions that can be instituted as a result of the investigation depend on the findings of the investigation, the nature of the complaint, the CAA's history, and feedback from the bench. The results range from no action taken to termination of the contract and reassignment of the CAA's cases.

COLORADO

In Colorado, GALs are called Child and Family Investigators (CFI). Processes were overhauled in November 2011 and again in December 2012. Oversight of the appointment process, fees, and standards of practice for CFIs is provided by the Chief Justice. Oversight over the complaint process is provided by the trial court judges and the judicial district administrator, and, when a CFI is a privately paid attorney, by the Office of Attorney Regulation Council, and when a CFI is a state paid attorney, by the Office of the Child's Representative. Colorado has established fee caps and has established standards for CFI communication with the parties, with counsel, and with the court.

Program Oversight

The Chief Justice of the Supreme Court and the State Court Administrator oversee the program. The Chief Justice, by Chief Justice Directive 04-08, has defined the role and duties of a CFI, has established the trial court's responsibilities when appointing a CFI, and has adopted a form order

²³ http://www.azcourts.gov/portals/20/ramd_pdf/R-05-0008CorrOrd10-27-05.pdf

of appointment.²⁴

The trial court judge's responsibilities for the program include:

- Appointing a qualified CFI, and issuing an order defining the subject matter and scope of the CFI's investigation.
- Making clear to all parties, orally and in writing, how the CFI fees will be apportioned and paid and enforcing its orders for payment by all available means.
- Ensuring the confidentiality of CFI reports.
- Monitoring any complaints concerning that person's services.²⁵

Role/Responsibilities/Duties of the CFI

The CFI is tasked with investigating, reporting, and making recommendations in the child's best interests on issues as specifically directed by the court. The CFI is effectively the neutral investigative arm of the court, responsible to the court, and not to either parent. After issuing a report, the CFI may be called as a witness to testify. If a more extensive evaluation is needed, a Parental Responsibility Evaluation must be ordered by the court and performed by a mental health professional.²⁶

Chief Justice Directive 04-08 establishes the role and duties of the CFI.

The Role:

- The CFI serves as an investigative arm of the court. He or she is to gather information, formulate recommendations, and report to the court concerning a child's best interests with regard to whatever issues were set forth in the court's order of appointment.
- The CFI shall not serve inconsistent dual roles. The CFI shall not serve as a formal mediator, provide psychotherapy, nor provide legal advice.

Duties:

- Maintain competence through training.
- Acknowledge when an issue is beyond his or her competence.
- Collect data and conduct an investigation sufficient to allow the CFI to provide competent opinions.
- Have age-appropriate communication with the child/children involved.
- Report child abuse to the proper agency and the court.

²⁴ Chief Justice Directive 04-08, amended 12/12;

http://www.courts.state.co.us/Courts/Supreme_Court/Directives/Index.cfm

²⁵ Chief Justice Directive 04-08, amended 12/12;

http://www.courts.state.co.us/Courts/Supreme_Court/Directives/Index.cfm, Section IX.

²⁶ C.R.S. 14-10-127;

<http://search.jurisearch.com/NLLXML/getcode.asp?userid=GUEST9&interface=&statecd=CO&codesec=14-10-127&sessionyr=2012&Title=14&datatype=S&noheader=1&nojumpmsg=0>.

- Prepare a clear, concise, and timely report.
- Provide copies of his or her file to counsel or a party not represented.
- Shall not conduct psychological testing or drug and alcohol evaluations.
- Maintain confidentiality.²⁷

Roster

The procedure to become an “approved CFI” requires the person who wants to be considered to apply to the judicial district in which they seek to practice. The State Court Administrator’s Office (SCAO) runs a criminal background check with the Colorado Bureau of Investigation. Inclusion in this roster only indicates eligibility for consideration of appointment by a judicial district or the Office of the Child’s Representative.

Qualifications

The CFI must submit an affidavit documenting experience, education, or skills as it pertains to “relevant areas” including but not limited to:

The effects of divorce, single parenting, and remarriage in children, adults, and families; Dynamics of high conflict divorce; Child development, including cognitive, personality, emotional and psychological development; Child and adult psychopathology; Family dynamics and dysfunction; Domestic violence; Substance abuse; Child abuse; Parenting capacity; Diversity issues; Available services for the child/children and parties including medical, mental health, educational, and special needs; The legal standards applicable in each case in which the CFI is appointed; Interview techniques for interviewing children and others.²⁸

Education and Training

New CFIs must complete 40 hours of training in relevant areas prior to accepting appointments. Attorneys and mental health professionals and other members of the community who are working as CFIs must complete no less than 15 hours of continuing education in relevant areas every three years.²⁹

Appointment

Judicial districts and the Office of the Child’s Representative determine final eligibility for

²⁷ Chief Justice Directive 04-08, amended 12/12;

http://www.courts.state.co.us/Courts/Supreme_Court/Directives/Index.cfm, Section VIII.B and C.

²⁸ Chief Justice Directive 04-08, amended 12/12;

http://www.courts.state.co.us/Courts/Supreme_Court/Directives/Index.cfm, Section VIII. C.6.

²⁹ http://www.courts.state.co.us/userfiles/file/Administration/Executive/CFI/04-08_Memo_Effective_1_2_13.pdf

appointment of any CFI. A number of judicial districts have regular or annual CFI meetings where the magistrate or district judge will communicate expectations, affirm the guidelines contained within Chief Justice Directive 04-08, discuss any issues or questions, and review any recent statutory or case law changes.

Form Order

Chief Justice Directive 04-08 sets forth an “Order Appointing Child and Family Investigator, Pursuant to §14-10-116.5, C.R.S.” The order enables the judge or magistrate to identify specific issues for the CFI to investigate, report, and make recommendations. It sets forth the presumptive fees and also enables the judges or magistrate to set a flat fee and/or an hourly rate for each party and a date by which payment must be made.³⁰

Communication

When first appointed, the CFI is expected to review the court’s order of appointment and ask for clarification or modification of the order when necessary. The CFI must then provide the parties with written information about his or her policies and procedures. The information must include the nature of the services provided, the CFI’s qualifications, where complaints should be directed, fees and billing procedures, how communication will be handled, how sensitive information will be handled, and the CFI’s reporting obligations.

The CFI is required to provide written information about how communications and sensitive information from counsel or parties acting as their own counsel will be handled. The CFI may not have any private or ex parte communications with the court.³¹

Fees

The Colorado Judiciary has established a presumptive fee for conducting an investigation and for filing a report at \$2,000, absent a finding of extraordinary circumstances. If called upon to testify, the presumptive fee for the total testimony and preparation time is \$500 unless absent a judicial finding of “extraordinary circumstances” that justifies the excess fees. Every order appointing a privately paid CFI must state the CFI’s hourly rate. If either of the parties is indigent, the Colorado Judicial Branch may pay that party’s fees at the state rate, as established by the Office of the Child’s Representative.³²

Complaint Process

³⁰ Chief Justice Directive 04-08, amended 12/12;
http://www.courts.state.co.us/Courts/Supreme_Court/Directives/Index.cfm, Page 22.

³¹ Chief Justice Directive 04-08, amended 12/12;
http://www.courts.state.co.us/Courts/Supreme_Court/Directives/Index.cfm, Section VIII.D.

³² See Section III of Chief Justice Directive 04-08, amended 12/12;
http://www.courts.state.co.us/Courts/Supreme_Court/Directives/Index.cfm

The presiding judicial officer oversees CFI performance on a case-by-case basis, noting compliance with timelines and conformity of the CFI reports with the requirements of the appointment order and the Chief Justice Directive.

For complaints filed against privately paid CFIs and state paid non-attorney CFIs:

- Complaints are submitted electronically to the judicial district and to the SCAO via a form on the SCAO website, in person, or by mail.
- Within 10 days of receiving the complaint, the District Administrator forwards the complaint to the judge presiding over the matter in which the CFI was appointed to determine whether any immediate preventative or corrective action needs to be taken in the matter.
- The judicial district then begins an investigation to determine whether the complaint is founded or unfounded, and to determine whether to take any action necessary to resolve the concerns or issues raised by a founded complaint. A judicial district's decisions as to whether a complaint is founded or unfounded and as to what, if any, action is necessary are final decisions and are not appealable.
- If the complaint involves a privately paid attorney CFI and if it is determined after investigation that the complaint concerning the attorney CFI was founded, the District Administrator informs the Colorado Supreme Court Office of Attorney Regulation Counsel and so notifies the complainant. The District Administrator requests that the Attorney Regulation Counsel inform the judicial district and the SCAO of the final outcome of any professional conduct investigation.
- No later than 60 days after receiving a "Child and Family Investigator Complaint Procedures and Form," the judicial district's District Administrator sends a written response of some kind to the complainant.
- No later than 10 days after a final decision is reached by a judicial district regarding a complaint, the judicial district's District Administrator forwards to the SCAO a copy of the complaint file and the results of the investigation.

Complaints against state paid attorney CFIs are to be filed and processed according to the complaint procedures of the Office of the Child's Representative (OCR).³³

All information about fees and complaints is available on the Colorado courts website along with additional information to parties about how to resolve concerns with one's CFI.³⁴

Sanctions

Failure of a CFI to comply with the Chief Justice Directive may result in removal of the CFI from

³³ http://coloradochildrep.org/images/uploads/complaintform_2012.11.28.pdf

³⁴ <http://www.courts.state.co.us/Administration/Section.cfm?Section=jp3domprog>

the Statewide Eligibility Roster, from one or more of the judicial district eligibility rosters, or from the OCR District List. The OCR maintains sole discretion to determine sanctions as they apply to state paid attorney CFIs. Neither the SCAO nor a judicial district may sanction a state paid attorney CFI.

MASSACHUSETTS

In Massachusetts, the Chief Justice of the Probate and Family Court Department oversees the GAL program and has established standards for GAL investigators, including mandatory training and continuing education requirements. GAL investigators must be attorneys. The Chief Justice of the Probate and Family Court Department oversees the complaint process.

Program Oversight

The Chief Justice of the Probate and Family Court Department has authority over the GAL program. The Chief Justice of the Department has promulgated standards for GAL investigators. In its 23 pages, the standards establish the role of the GAL investigator, compensation, GAL expectations, communications with the parents and the child, and the scope and content of the investigation and report.³⁵

Role/Responsibilities/Duties of the GAL

The role of the “Category F GAL investigator” is to gather and report factual information that will assist the court in making custody, visitation, or other decisions related to the welfare of a child. Unless the appointing judge specifies otherwise, the GAL investigator’s role is limited to gathering and reporting information to the court. The GAL may include recommendations in the report if the order of the court authorizes inclusion of such recommendations.³⁶

Massachusetts also has “Category E GAL evaluators” whom the judge can appoint to offer clinical opinions in custody cases.

Roster/Certification/Appointment to the Roster

Persons wishing to serve as a GAL submit an application to the Administrative Office of the Probate and Family Court Department. Upon approval of the application and upon completion of the mandatory training, a person’s name may be added to the roster. Every individual court department maintains a list of persons eligible to be appointed by the court as a GAL. The Chief Justice of each trial court department submits the list of categories and qualifications to the Chief

³⁵ <http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/galstandards012405.pdf>

³⁶ Standards for Category F GAL Investigators, 1.1;

<http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/galstandards012405.pdf>

Justice for Administration and Management (CJAM) for approval. The CJAM compiles the listings into an annually published report. The appointment lists are public.

Qualifications

To be eligible to serve as a GAL investigator, a person must be an attorney with at least three years of experience in the domestic relations field, or a clinician with at least three years experience conducting evaluations or therapy with family members.³⁷

Education and Training

Initial Training: GALs must attend a two-day mandatory training established by the Probate and Family Court Department prior to submitting an application. Topics for the mandatory training are attachment and parenting plans, interviewing, abuse, preference and alienation in custody disputes, and report writing.

Continuing Education: Once approved for the list, GALs must attend an annual 3-hour continuing education program established by the Probate and Family Court Department.³⁸

Appointment

Generally, courts make appointments from the roster in rotation or sequential order.

Communication

The GAL must explain the GAL's role and the purpose of the investigation to the parties. The GAL must inform the parties how the information gathered by the GAL will be used. The GAL must provide a "Lamb warning" that explains there are no "off the record" discussions and that any information collected by the GAL may appear in the GAL report and be disclosed in court or to the other party. As appropriate based on the child's level of maturity, the GAL should provide a similar explanation of the investigative process and a Lamb warning to a child, but modified to reflect the child's age and level of understanding. If the GAL interviews other witnesses, they also must receive a Lamb warning.³⁹

Fees

The judicial branch has a limited amount of money in its budget to pay for GAL fees. Fees paid by the Commonwealth are set by the Administrative Office of the Trial Court. If the order specifies that compensation will be paid by the Commonwealth, the GAL is prohibited from

³⁷ <http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/fee-categories-qualifications-methods-application.pdf>

³⁸ <http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/documents/lettertoalrecontinuingrequirements.pdf>

³⁹ Standards for Category F GAL Investigators, 5.1;

<http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/galstandards012405.pdf>

charging additional fees to the parties. Because the Judiciary's funding is limited, in practice, judges on occasion ask the parties to pay some or all the GAL's fees. If so, the judge, in the appointment order, may cap the number of compensable hours. The GAL determines the hourly rate.

Complaint Process

All requests for the involuntary removal of an individual from the roster must be in writing, must specify the grounds upon which the request for removal is based, and must be addressed to the Chief Justice of the Trial Court Department. If the request raises serious concerns as to the individual's qualifications or suitability, the Chief Justice may temporarily suspend the individual from the roster.

Investigation Process: The Chief Justice of the Trial Court Department sends a copy of the complaint to the individual, along with a notice that the individual may file a written response. After receiving a response, or after 30 days, the Chief Justice determines if an investigation should be conducted. If further investigation is ordered, the Chief Justice, upon receiving the investigative report, may meet with the individual or may conduct a hearing. If the Chief Justice determines that the individual should be removed from the roster, the Chief Justice so recommends to the Chief Justice of Administration and Management (CJAM), and sends the investigative report to the CJAM. The CJAM makes a decision within 60 days. The CJAM's decision is final. The request, the investigative report, and any hearing are confidential and not open to the public.

Sanctions

If the Chief Justice of the Trial Court Department determines that the individual should be removed from the roster or that a lesser sanction should be imposed, the Chief Justice so recommends to the CJAM. Lesser sanctions could include limited time suspension from the roster, assignment of a mentor, a directive to obtain additional training, or further investigation.

MINNESOTA

In 2010, Minnesota moved the administration of its GAL Program from the state court system to an independent board, which is part of the Minnesota Judicial Branch, but not subject to the administrative control of the Judiciary. The board receives a state appropriation to fund board and Program activities. The board establishes the qualifications, duties, and training requirement of GALs. The board's program manager is the final arbiter of complaints filed against GALs. All current divorce and custody GALs are state employees who receive annual performance evaluations.

Oversight of the GAL Program - The State Guardian Ad Litem Board

In 2007, the Minnesota Judicial Council convened a Guardian ad Litem Advisory Committee to examine the long-term and systemic challenges facing the GAL Program and to develop and make recommendations to the State Court Administrator regarding possible solutions and the benefits and trade-offs inherent in each option. The Committee made a number of recommendations related to professionalism, diversity and cultural competency, administrative structure, and the GAL's role in Family Court.⁴⁰

Based on the Committee's study and recommendations, in 2010, the Minnesota Legislature created the State Guardian ad Litem Board moving the administration of the GAL Program from the state court system to the Board.⁴¹ The Board is responsible for GALs who serve both the Juvenile and Family Courts. Prior to 2010, the Office of the State Court Administrator established the GAL Program Standards, approved by the Judicial Council. The State Guardian ad Litem Board revised the standards and renamed them "Requirements and Guidelines"⁴² in 2011.

The Board is established and funded in the Minnesota Judicial Branch, but it is not subject to the administrative control of the Judiciary. It receives a state appropriation to fund Board and Program activities. Membership on the Board includes four members appointed by the Governor and three members appointed by the Supreme Court, including two attorneys admitted to practice law in the state and one public member. At least one of the members must have former GAL experience.

Initial Supreme Court appointees to the Board were a retired district court judge, a practicing lawyer, and a former State Guardian ad Litem Program Manager for State Court Administration. Initial gubernatorial appointees were a retired judge, a private attorney, a retired county social services director, and a Native American woman who had run early childhood programs on a reservation. The Supreme Court named the retired judge appointed by the Governor as the Board Chair. Duties of the Board include the establishment of program standards, administrative policies, procedures, and rules. The Board appoints the program administrator.

The Board's yearly budget is \$12,067,000. The Board annually takes in approximately \$500,000 in fees in family law cases. In 2012, GALs were appointed in a total of 6,575 cases; 1,500 of those cases involved determinations of custody and visitation in family law matters.

The Board does not keep a count of the number of complaints in family law matters nor does it

⁴⁰ Guardian ad Litem Advisory Committee Report to the Judicial Council, March 2008.

⁴¹ See Minnesota statute <https://www.revisor.mn.gov/statutes/?id=480.35>;
<http://www.beta.mmb.state.mn.us/doc/budget/narratives/initial11/guardian-ad-litem.pdf>

⁴²[http://www.mncourts.gov/Documents/0/Public/Guardian_Ad_Litem/Program_Requirements_and_Guidelines_\(Non-statutory\).pdf](http://www.mncourts.gov/Documents/0/Public/Guardian_Ad_Litem/Program_Requirements_and_Guidelines_(Non-statutory).pdf)

have a separate budget for processing complaints.

Role/Responsibilities/Duties of the GAL

Minnesota judges may appoint GALs in divorce and custody cases to represent the best interests of the child. The statute provides for both mandatory and permissive family court appointments. GALs are prohibited from providing legal advice or attorney representation of the child. Their responsibilities include:

- Conducting an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case.
- Advocating for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary.
- Maintaining the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child.
- Monitoring the child's best interests throughout the judicial proceeding.
- Presenting written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.⁴³

Roster

Prior to July 2010, GALs were a combination of employees of the program, volunteers, and independent contractors. While at this time, GALs serving other case types are still a combination of employees, volunteers, and contractors, all GALs who serve in divorce and custody cases are employees.

Qualifications

The person must have:

- (a) A bachelor of arts or a bachelor of science degree in psychology, social work, education, nursing, law, or child-related discipline OR have an equivalent combination of training, education or experience.
- (b) Access to reliable transportation.
- (c) Sufficient listening, speaking, and writing skills to successfully conduct interviews, prepare written reports, and make oral presentations.
- (d) The ability to become proficient using relevant computer software programs and

⁴³ Minnesota Statutes 518.165. <https://www.revisor.mn.gov/statutes/?id=518.165>;
[http://www.mncourts.gov/Documents/0/Public/Guardian_Ad_Litem/Program_Requirements_and_Guidelines_\(Non-statutory\).pdf](http://www.mncourts.gov/Documents/0/Public/Guardian_Ad_Litem/Program_Requirements_and_Guidelines_(Non-statutory).pdf), Section III.

databases.

- (e) Knowledge and an appreciation of the ethnic, cultural, and socio-economic backgrounds of the population to be served.
- (f) The ability to (1) relate to a child, family members, and professionals in a careful and confidential manner; (2) exercise sound judgment and good common sense; and (3) successfully discharge the duties assigned by the court.
- (g) The ability to complete training and orientation requirements set forth in the Requirements and Guidelines.
- (h) The ability to pass a Bureau of Criminal Apprehension and federal background check.⁴⁴

Education and Training

Persons intending to serve in family court for the first time must complete a 40 hour juvenile protection training as well as a 6 hour family violence training. They must attend an additional 16 hour training course regarding family court matters approved by the Board within their first 12 months of work. Prior to 2010, the State Court Administrator had established specific training requirements. The Board has followed the State Court Administrator's training requirements, but is now in the process of updating them. Employee GALs are required to complete 15 hours of continuing education each year; volunteer GALs are required to complete 12 hours of continuing education each year.⁴⁵ The continuing education requirement is often met by attending an annual training institute or conference put on by the GAL Program. The Program sometimes offers additional trainings during the year at the state or district level that could also satisfy continuing education credits. Either the GAL state office or the program manager decides what qualifies as continuing education.

Appointment

Before an applicant is offered an employee position by the GAL program manager, the application must be reviewed, the applicant must be interviewed, and the applicant's references must be contacted. A potential employee must pass a background check.

Form Order

Court orders must include specific clear duties of the GAL and must specify the length of the GAL appointment with scheduled end dates.⁴⁶

Fees

The fee for GAL services in family cases is \$1,500. The parties pay the fee to the GAL Program,

⁴⁴[http://www.mncourts.gov/Documents/0/Public/Guardian_Ad_Litem/Program_Requirements_and_Guidelines_\(Non-statutory\).pdf](http://www.mncourts.gov/Documents/0/Public/Guardian_Ad_Litem/Program_Requirements_and_Guidelines_(Non-statutory).pdf). Section I.

⁴⁵[http://www.mncourts.gov/Documents/0/Public/Guardian_Ad_Litem/Program_Requirements_and_Guidelines_\(Non-statutory\).pdf](http://www.mncourts.gov/Documents/0/Public/Guardian_Ad_Litem/Program_Requirements_and_Guidelines_(Non-statutory).pdf). Section VI.

⁴⁶ State Guardian Ad Litem Board Policy Number 2, Family Court Appointment Order, 2011.

not to the GAL. Judicial officers have the discretion to adjust the fee upward or downward in the interest of justice and based on the ability of parties to pay. If the parties are ordered to pay and do not, the program will send the balance to “state revenue recapture” for collection.

Performance Evaluation

The district GAL program manager, in conjunction with the program coordinator(s), provides for the annual evaluation of all GALs. The evaluation is conducted pursuant to Minnesota Judicial Branch policies for performance evaluation and may consider inquiries to judges presiding over cases in which the GAL was appointed, a review of complaints filed against a GAL, and follow-up background checks.

One judicial district is conducting collaborative reviews, requesting the parties to submit an evaluation of the GAL at the conclusion of each case.⁴⁷

Complaint Process

A party who wishes to report concerns about the performance of a GAL on his/her case must contact, in writing, the program manager of the district within 30 calendar days from the filing of the order discharging the GAL. The formal written complaint must specify the alleged malfeasance or nonfeasance of duty committed by the GAL. Malfeasance of duty is defined as improper performance and nonfeasance of duty is defined as a failure to carry out one or more of the statutory responsibilities of a GAL as detailed in Minnesota Statutes 518.165. The state program administrator is the final arbiter.⁴⁸

NEW HAMPSHIRE

The New Hampshire GAL program includes a Guardian Ad Litem Board located in the Executive Branch that oversees the credentialing, activities and discipline of GALs, and investigates and resolves complaints against GALs. Complaints are investigated and resolved by the Board. The Supreme Court and Administrative Judge exercise authority over the duties of GALs in court cases. Fee arrangements must be in writing and any changes must be approved in advance by the court. Sixty-one allegations of misconduct received since January 2007 were resolved by June 2011. The Board expended \$27,475 in FY11, with revenues of \$7,531.

Program Oversight

The Supreme Court and the Administrative Judge for the Circuit Court have authority over GAL

⁴⁷[http://www.mncourts.gov/Documents/0/Public/Guardian_Ad_Litem/Program_Requirements_and_Guidelines_\(Non-statutory\).pdf](http://www.mncourts.gov/Documents/0/Public/Guardian_Ad_Litem/Program_Requirements_and_Guidelines_(Non-statutory).pdf). Section VIII.B.

⁴⁸[http://www.mncourts.gov/Documents/0/Public/Guardian_Ad_Litem/Program_Requirements_and_Guidelines_\(Non-statutory\).pdf](http://www.mncourts.gov/Documents/0/Public/Guardian_Ad_Litem/Program_Requirements_and_Guidelines_(Non-statutory).pdf). Section VIII.C.

duties in court cases. Judges and marital masters appoint the GALs to cases, determine the scope of the GALs' work, set deadlines, and approve GAL fees. A judge or marital master can remove a GAL from a case, hold them in contempt of court, or impose a fine against a GAL.

A Guardian Ad Litem Board is responsible for overseeing the credentialing activities, and discipline of GALs who are or have been certified by the Board.⁴⁹ The Board is located in the Executive Branch, administratively attached to the Department of Administrative Services, and has nine members:

- One member representing the New Hampshire Supreme Court, appointed by the Chief Justice of the New Hampshire Supreme Court.
- One member of the New Hampshire State Senate, appointed by the president of the Senate.
- One member of the New Hampshire House of Representatives, appointed by the Speaker of the House.
- The Executive Director of the New Hampshire Judicial Council.
- One member of Court Appointed Special Advocates (CASA), nominated by the director of CASA and appointed by the Governor.
- One member representing the Division of Children, Youth, and Families, or Casey Family Services, or another child protection agency in New Hampshire, appointed by the Governor.
- One member representing the interests of GALs, appointed by the Governor.
- Two members of the general public representing the interests of those individuals receiving the services of GALs, appointed by the Governor.⁵⁰

The New Hampshire Office of Legislative Budget Assistant conducted an audit of the GAL Board in January 2012. The Office identified weaknesses in the Board's structure, administration, and operations, which resulted in its inability to operate efficiently and effectively.

“There are no national models for the qualification, training, and oversight of GALs. However, the Board consisted of nine unpaid members with a part-time secretary for support and was uniquely structured and insufficiently supported when compared to most similar State entities regulating professions, occupations, and trades. The statutory makeup of the Board and how members were appointed was also atypical.”

“There is considerable diversity of guardian ad litem (GAL) programs and

⁴⁹ See GAL Board website: <http://www.nh.gov/gal/>

⁵⁰ New Hampshire Statutes, Chapter 490-C:2.

services throughout the country. As a result of this diversity, there is no single best practice or standard service model. GAL services may be centralized or decentralized; overseen by the state, county, or district; or provided through non-profits, volunteer programs, independent contractors, or state employees. Depending on the state, a GAL may be certified, require licensure in another profession, or have limited to no required qualifications.”

In cases closed during fiscal years 2010 and 2011, there were 1,900 marital/parental rights cases in which a GAL had been appointed. The Board expended \$20,548 in SFY 2010 and \$27,475 in SFY 2011 with revenues of \$5,152 and \$7,531, respectively.

The Board received 129 initial and renewal applications in SFYs 2010 and 2011; 95 % of the GALs held a bachelor’s degree or higher, with 60 % having a juris doctorate.

The Office reviewed the Board’s handling of 61 allegations of misconduct it received since January 2007 that it considered closed by June 2011. The Board combined three allegations into one complaint. The Board did not accept 22 of the allegations (37 %) because the complainant did not use the required form (12), the GAL was not certified by the Board (7), the allegations were non-jurisdictional (2), or the allegation was unsupported (1). Of the 37 complaints accepted by the Board, 26 were dismissed (70 %), 6 resulted in discipline (16 %), 2 were withdrawn (5 %), and there were 3 with no evidence of official closure (8 %).

The Office made 18 observations related to the administration, structure and operations of the GAL Board. Observations included:

- Relocating the GAL Board to the state’s Joint Board of Licensure and Certification.
- Altering Board composition to include more public members.
- Ensuring that complaints are processed according to requirements and are processed timely.
- Reevaluating the \$100 complaint filing fee.
- Disciplining GALs for late court reports.⁵¹

Role/Responsibilities/Duties of the GAL

The GAL conducts an investigation which may include interviewing the parents, the children, and other persons who may have information relevant to the issues involved. In most cases, the GAL prepares a written report which includes a recommended resolution of custody and

⁵¹State of New Hampshire Guardian Ad Litem Board Performance Audit, Office of Legislative Budget Assistant, January, 2012.

http://www.gencourt.state.nh.us/LBA/AuditReports/PerformanceReports/GALB_2012_fullS.pdf

visitation issues that, in the GAL's estimation, is in the best interests of the children.⁵²

Roster

The GAL Board compiles and maintains a list of those GALs who are certified and in good standing and makes the list available to the general public. The list is available on the court website.

Qualifications

The person must:

- (a) Have a bachelor's degree plus three years of experience in activities dealing with children of incapacitated adults consisting of at least 200 hours of experience in each of the three years, or an associate's degree plus five years of experience or an advance degree plus one year of experience.
- (b) Be at least 25 years of age.
- (c) Never have been convicted of a felony or certain misdemeanors.
- (d) Be of good character.
- (e) Never have been suspended as a GAL.⁵³

Education and Training

The Board has established initial and continuing training requirements. Initial training consists of at least 16 hours of training. GALs requesting renewal of an existing certification must complete at least 30 continuing education credits.⁵⁴ Continuing education is not a set curriculum, but can be a variety of training opportunities, ranging from trainings offered by the New Hampshire Bar Association to trainings on domestic violence. GALs submit a training request form to the Board, who reviews the request, considering the topic and presenter for relevancy and quality. If approved, the Board posts the training on the website so other GALs know that the training has been approved for continuing education credits.

Appointment/Form Order

In every case in which a GAL is appointed, the parties and the guardian must file a stipulation as to the following issues:

- (a) Expenses for which the GAL will be reimbursed.
- (b) GAL hourly billing rate and maximum fee.
- (c) Frequency of billing, terms of payment, and payment of retainer.
- (d) The names of the individuals requested to be interviewed by the GAL, including names, addresses, telephone numbers, and relationship to each party or child, listed in order of

⁵² <http://www.courts.state.nh.us/fdpp/gal.htm>

⁵³ See Chapter GAL 300. http://www.gencourt.state.nh.us/rules/state_agencies/gal.html

⁵⁴ http://www.nh.gov/gal/continuing_ed.htm

- importance. The GAL has the discretion to decide which individuals to interview.
- (e) Manner in which the GAL will communicate with each party's references (e.g., office conference, telephone call, letter).
 - (f) Action(s) the GAL will take if unable to contact a reference.
 - (g) Whether the GAL will visit each party's home.
 - (h) Whether conversations between the GAL and the children will be confidential.
 - (i) Other orders necessary to protect confidentiality.
 - (j) Dates by which parties will execute authorizations for reports. Specify records to be requested.⁵⁵

Fees

The GAL is compensated at the rate of \$60 per hour. The maximum fee (including costs) is \$1,000 for any case absent prior approval from the court. When the parties are paying the cost of the GAL, the parties and counsel may file an agreement with the court, subject to court approval, for a different hourly rate and maximum fee.⁵⁶

The parties are expected to pay unless the parties are indigent, in which case the GAL is paid from the Guardian Ad Litem Court Fund. The court has established eligibility guidelines for payment from the Fund.⁵⁷ Fees for evaluations are not paid from the Fund.

However, the legislature has recently eliminated funding for GAL services in marital cases involving indigent parents. By Administrative Order, GALs are no longer appointed in any new or reopened marital matter where both parents are indigent. If one party is indigent, the party wishing to pay may petition the court for appointment of a GAL.⁵⁸

In the case of a private fee arrangement relating to the services of a GAL, the GAL must execute with the responsible parties or party and provide to them a written agreement regarding fees and expenses which specifies:

- (a) The person or persons responsible for payment.
- (b) The amount of the rate to be charged.
- (c) The method for calculating the fees and expenses billed.
- (d) Either:
 - (1) An estimate of the cost of anticipated expenses and services expected to be performed; or

⁵⁵ Judicial Branch Family Division Administrative Order 2005-01.

⁵⁶ Judicial Branch Family Division Administrative Order 2005-03; Superior Court Administrative Order Number 17.

⁵⁷ Judicial Branch Family Division Administrative Order 2005-04; Superior Court Administrative Order Number 17.

⁵⁸ Judicial Branch Family Division Administrative Order 2011-03.

- (2) A specific amount to be charged which will not be exceeded absent an order of the court.

The private fee arrangement must also specify either:

- (a) The allocation of responsibility for payment between or among the parties; or
- (b) That the designation or allocation of responsibility for payment may be made by the court and that the court's order relative to payment will be binding.

If the GAL, in order to fulfill his or her obligations, must charge fees in excess of the estimated cost of anticipated expenses and services, or in excess of the specified amount originally stated, the GAL must:

- (a) Provide, in writing, to the party or parties responsible for payment either:
 - (1) An adjusted written estimate of the cost of anticipated expenses and services expected to be performed; or
 - (2) A new specific amount to be charged which will not be exceeded absent an order of the court.
- (b) File a motion with the appointing court requesting authorization to charge a specific amount in excess of the initial fee agreement, specifying therein:
 - (1) The amount of the original estimate or specification.
 - (2) The specific amount in excess of the original estimate or specification that the GAL wishes to charge and the reason for the adjustment.
 - (3) A statement as to whether or not each of the responsible party or parties consents to the motion.
- (c) Provide a copy of the motion to the person or persons who are or may be responsible for the payment of any fee or cost, at or before the time of the filing of the motion.

The New Hampshire Judicial Branch has adopted as an official form a statement to be submitted by the GAL, itemizing fees and expenses.⁵⁹

Complaint Process

The GAL Board investigates and resolves complaints against certified GALs. The Board may refer the complaint to the appropriate court for investigation, resolution, or other action. The Board may pursue its own investigation or disciplinary procedures. The Board may resolve the complaint by agreement.

The Board has established disciplinary procedures, penalties, and sanctions for certified GALs, which may include revocation of certification, suspension, imposition of supplemental training requirements or supervised training requirements, supplemental education, fines, written

⁵⁹ <http://www.courts.state.nh.us/forms/nhjb-2340-dfs.pdf>

reprimand, and treatment and counseling. Appointment and removal of persons from actual service as a GAL are functions of the court.

Persons wishing to file a complaint against a certified or formerly certified GAL may file a complaint with the Board along with a filing fee of \$100 or a request for a waiver of the fee.

Within 120 days, the Board will either dismiss the complaint or begin an investigation. The Board will then notify the complainant of its determination and, in the case of a dismissal, will provide a brief statement of the reason(s) for dismissal. A person whose complaint has been dismissed, or whose complaint has not been accepted for filing, may request an oral argument before the Board within 10 days of the date of the dismissal or non-acceptance. Requests must be in writing.

If the Board accepts the complaint and determines that it will be further investigated, the Board will provide the GAL who is the subject of the complaint (either in hand or by first class mail):

- (a) A written and dated notification that an investigation is being conducted into the allegations.
- (b) An Answer Form to be executed by the GAL.
- (c) A copy of the complaint and a list of supporting documents.
- (d) Written notice that the supporting documents filed in connection with the complaint are available for review at the Board's office during normal business hours.

The GAL must provide an answer within 30 days. The GAL may address the specific allegations of the complaint in the answer or instead indicate that he or she elects not to submit a substantive answer to the allegations at that time. The 30-day period in which to provide an answer to the complaint may be extended.

Sanctions

Should a certified or formerly certified GAL be found by the Board to have engaged in an action that was prohibited by the Ethical Standards and Standards of Practice, the Board may impose as a sanction:

- Revocation of certification
- Suspension of certification
- Supplemental training
- Supervised training
- Supplemental education
- A fine of not more than \$1,500 per offense
- Treatment and counseling
- Written reprimand

Appointment and removal of persons from actual service as a GAL are functions of the court.

WASHINGTON

Washington has outlined training requirements for potential GALs in family law cases that include a mentoring component, a thorough content focus, and continuing education requirements. A number of counties in the state also use a formal complaint process with a committee or board to handle the complaint process.

Program Oversight

The Washington Administrative Office of the Courts does not have an overarching state level authority for GAL matters. State statute and rules define the role and function of the GAL in family law cases and broadly outline guidelines for GAL programs to follow, in addition to providing training requirements.⁶⁰ Administration of the program, from selection to appointment to grievances to removal, all happens at the county level. Each county may establish its own local rules addressing the application process for the GAL registry, requirements for being on/remaining on the registry, GAL appointment processes, GAL duties, GAL compensation, grievances against GALs, grievances by GALs, conflicts of interests, evaluation procedures, and other topics. Each superior court is the final arbiter of GAL grievances.

Role/Responsibilities/Duties of the GAL

Thurston County: A GAL is a person appointed by the court to investigate and report factual information to the court regarding parenting arrangements and what is in the best interests of children.

A GAL reviews the court file, meets with each parent, contacts others who have information related to the parents or children, and may meet with the children. In some cases, a GAL will want to make a home visit.⁶¹

The court has established a Guardian ad Litem Code of Conduct.⁶²

Roster

The superior court in each county maintains a registry of individuals who are qualified to serve as Family Law GALs. A Registry Manager is assigned to provide administrative oversight of the registry. Application must be made to each superior court in which a GAL wishes to serve.

Thurston County: Thurston County uses a Registry Committee, which consists of the GAL

⁶⁰ http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=sup&set=GALR

⁶¹ <http://www.co.thurston.wa.us/fjc/guardians-ad-litem/index.htm>

⁶² <http://www.co.thurston.wa.us/fjc/guardians-ad-litem/gal-code-of-conduct.htm>

coordinator and two others designated by the presiding family court judge. The Committee is responsible for approving requests to be put on the GAL registry, conducting interviews with applicants, and conducting annual evaluations of GALs. Appointments are made from the court's GAL registry on a rotational basis.⁶³

Qualifications

Local courts may establish requirements, such as minimum education. A GAL is required to provide information such as related training, criminal history, experience and previous appointments as a GAL, and whether he/she was removed from a registry because of a grievance.

Family Law GALs in Washington are expected to have read and understood the statutes, local rules, and order of appointment prior to any investigation. Furthermore, GALs are expected to be familiar with the basic elements the court will weigh in on in each case type and gather information accordingly.

Thurston County: Thurston County Family Law GALs must have a bachelor's degree and experience working with children and families. Additionally, the state of Washington requires that all GALs be trained on a curriculum developed by Washington's Administrative Office of the Courts (AOC).⁶⁴

Education and Training

The AOC developed a training facilitator's guide (in RCW 2.56.030(15)) upon which King County Bar Association's training is based. King County is the most regular provider of training. Other courts provide training infrequently, on an as-needed basis. The training requirements in the guide include 19.5 hours of initial training curriculum, a writing requirement on a hypothetical dissolution case, and practicum with a mentor that includes court observation. The topics of the initial training are:

- Introduction to Service as a GAL
- Ethics and Professional Conduct
- The Law and Legal Process
- Investigation
- Interviewing
- Report Writing
- Systems and Resources
- Child Development
- Chemical Dependency and Mental Illness

⁶³ <http://www.co.thurston.wa.us/fjc/guardians-ad-litem/index.htm>

⁶⁴ <http://www.co.thurston.wa.us/fjc/guardians-ad-litem/index.htm>

- Child Abuse and Neglect
- Domestic Violence
- Personal Safety
- Cultural Competency

Six hours of continuing professional education are required annually. The topics may include any of the existing AOC curricula or any other topics that relate directly to Title 26 GAL work. Updates on case law should be addressed in the continuing education programs. Additionally, program managers are directed to devise ways for delivering notification of changes to GALs in their registry. GALs must submit annually to GAL program managers, for each county in which they are registered, a statement made under penalty of perjury that they have complied with this requirement.

Fees and Fee Disputes

GALs can be paid for their services, serve as volunteer GALs, or serve as family law court appointed special advocates. Policies and regulations about pay rates and payment procedures vary widely from county to county. Paid GALs might be employed by a county (perhaps family court services), but more often are individuals who accept appointments as independent contractors. The AOC has not provided any guidance on capping fees; it is at the discretion of each court. Court practices on the cap vary to a considerable degree. The governing statute, RCW 26.12.183, states that:

"The court shall enter an order for costs, fees, and disbursements to cover the costs of the guardian ad litem. The court may order either or both parents to pay for the costs of the guardian ad litem, according to their ability to pay. If both parents are indigent, the county shall bear the cost of the guardian, subject to appropriation for guardians' ad litem services by the county legislative authority. Guardians ad litem who are not volunteers shall provide the parties with an itemized accounting of their time and billing for services each month."

Whatcom County: The court uses an order appointing the GAL that includes a section on fees and costs, including the cap, which is established at the court's discretion. Should a party disagree with an amount billed, he or she shall immediately contact the GAL to discuss the billing. If the matter is not resolved, the party shall note the matter upon the court's calendar for review and notify the GAL of the date and time of the hearing. A party shall be liable to the GAL for court costs, interest, and attorney fees if collection action is required because payment was not made on time.

Performance Evaluations

Thurston County: Thurston County uses case evaluations and annual evaluations as oversight

tools. All parties and judicial officers in a case where the GAL is discharged are encouraged to submit an evaluation of the GAL, which will be returned to the Family Court Administrator. The GAL is able to review and respond to the evaluations, which will be kept in the GAL's file, for purposes of maintaining the registry. In addition, the Registry Committee conducts yearly evaluations of the GAL files. If there are issues that need to be addressed, the Committee must write a report and have an in-person interview with the GAL. If there are no issues apparent in the file, the report and interview are not required.⁶⁵

Complaint Process

Complaint processes vary by county, but the GAL rules provide that courts must develop local court rules spelling out the grievance procedure. GALs who are attorneys or are licensed to practice in a profession such as psychology, social work, or other professions may be disciplined for work done as a GAL.

Thurston County: Thurston County has a court-convened Guardian Ad Litem Advisory Committee to handle GAL complaints. The Committee consists of the Superior Court Administrator or designee, two county citizens, a member of the county bar association, and a GAL who is active on the county registry and who has not received a sanction through the GAL complaint process in the past 3 years, selected by a judicial officer. Service on the Committee is voluntary. After a written complaint is submitted, the Superior Court Administrator convenes the Committee. If the Committee determines the complaint has merit on its face, they request a specific response from the GAL. If it lacks merit on its face, they decline to review the complaint. If the complaint pertains to an ongoing case, the Committee declines to review the case and informs the complainant that the only form of redress available at the stage in the proceedings is to seek removal of the GAL from the case or contesting the information or recommendation in court before the judge. In determining whether the complaint has merit, the Committee reviews factors including whether a code of conduct, state, or local law has been violated, or whether the GAL has “taken or failed to take any other action which would reasonably place the suitability of the person to serve as a GAL in question.” After reviewing the GAL's written response, the Committee can then “issue a written admonishment, a written reprimand, refer the Guardian ad Litem to additional training, or recommend to the Presiding Judge that the Court suspend or remove the Guardian ad Litem from the registry.” The complainant and the GAL are notified of the Committee's decision, but no appeals process is outlined.⁶⁶

⁶⁵ <http://www.co.thurston.wa.us/fjc-docs/local-court-rules/03Guardians%20Ad%20Litem/LGALR-11-Evaluation-Of-Title-26-Guardian-Ad-Litem-Work.pdf>

⁶⁶ <http://www.co.thurston.wa.us/fjc-docs/local-court-rules/03Guardians%20Ad%20Litem/LGALR-7-Guardian-Ad-Litem-Grievance-And-Complaint-Procedures.pdf>

Sanctions

If a GAL is removed pursuant to a grievance, the court is to notify the AOC, and the AOC then notifies all the other courts. The AOC also sends out a yearly reminder for courts to notify of having removed a GAL pursuant to a grievance.

V. Compilation of Practices

A. Program Oversight

Massachusetts: The Chief Justice of the Probate and Family Court Department has authority over the GAL program. The Chief Justice of the Department has promulgated standards for GAL investigators. In its 23 pages, the standards establish the role of the GAL investigator, compensation, GAL expectations, communications with the parents and the child, and the scope and content of the investigation and report.⁶⁷

Minnesota: In 2010, the Minnesota Legislature created the State Guardian ad Litem Board moving the administration of the GAL Program from the state court system to the Board.⁶⁸ The Board is responsible for GALs who serve both the Juvenile and Family Courts. Prior to 2010, the Office of the State Court Administrator established the GAL Program Standards, approved by the Judicial Council. The State Guardian Ad Litem Board revised the standards and renamed them “Requirements and Guidelines”⁶⁹ in 2011.

The Board is established and funded in the Minnesota Judicial Branch, but it is not subject to the administrative control of the Judiciary. The Board receives a state appropriation to fund Board and Program activities. Membership on the Board includes four members appointed by the Governor and three members appointed by the Supreme Court, at least one of whom must have former GAL experience, two attorneys admitted to practice law in the state and one public member.

Duties of the Board include the establishment of program standards, administrative policies, procedures, and rules. The Board appoints the program administrator.

The Board’s yearly budget is \$12,067,000. The Board annually takes in approximately \$500,000 in fees in family law cases. In 2012, GALs were appointed in a total of 6,575 cases; 1,500 of those cases involved determinations of custody and visitation in family law matters.

⁶⁷ <http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/galstandards012405.pdf>

⁶⁸ See Minnesota statute <https://www.revisor.mn.gov/statutes/?id=480.35>;
<http://www.beta.mmb.state.mn.us/doc/budget/narratives/initial11/guardian-ad-litem.pdf>

⁶⁹ [http://www.mncourts.gov/Documents/0/Public/Guardian_Ad_Litem/Program_Requirements_and_Guidelines_\(Non-statutory\).pdf](http://www.mncourts.gov/Documents/0/Public/Guardian_Ad_Litem/Program_Requirements_and_Guidelines_(Non-statutory).pdf)

New Hampshire: The Supreme Court and the Administrative Judge for the Circuit Court have authority over GAL duties in court cases. Judges and marital masters appoint the GALs to cases, determine the scope of the GALs' work, set deadlines, and approve GAL fees. A judge or marital master can remove a GAL from a case, hold them in contempt of court, or impose a fine against the GAL.

A Guardian Ad Litem Board is responsible for overseeing the credentialing activities, and discipline of GALs who are or have been certified by the Board.⁷⁰ The Board is located in the Executive Branch, administratively attached to the Department of Administrative Services.

Thurston County, Washington: Thurston County has a court-convened Guardian Ad Litem Advisory Committee to handle GAL complaints. The Committee consists of the Superior Court Administrator or designee, two county citizens, a member of the county bar association, and a GAL.

Other States: The court provides oversight.

Maine: The Supreme Judicial Court promulgates standards and qualifications. The Chief Judge provides oversight of the complaint process.

B. Role/Responsibilities/Duties

In all states, the GAL is responsible for conducting an investigation, gathering information, conducting interviews, and then making recommendations to the courts regarding the best interests of the children. In Massachusetts, the trial judge determines whether the GAL should make recommendations. In Maricopa County, Arizona, the GAL provides clinical evaluations.

Colorado: The CFI is tasked with investigating, reporting, and making recommendations in the children's best interests on issues as specifically directed by the court. The CFI is effectively the neutral investigative arm of the court, responsible to the court, and not to either parent. After issuing a report, the CFI may be called as a witness to testify. If a more extensive evaluation is needed, a Parental Responsibility Evaluation must be ordered by the court and performed by a mental health professional.

Chief Justice Directive 04-08 has established the role and duties of the CFI:

The Role:

- The CFI serves as an investigative arm of the court. He or she is to gather information, formulate recommendations, and report to the court concerning a child's

⁷⁰ See GAL Board website: <http://www.nh.gov/gal/>

best interests with regard to whatever issues were set forth in the court's order of appointment.

- The CFI shall not serve inconsistent dual roles. The CFI shall not serve as a formal mediator, provide psychotherapy, nor provide legal advice.

Duties:

- Maintain competence through training.
- Acknowledge when an issue is beyond his or her competence.
- Collect data and conduct an investigation sufficient to allow the CFI to provide competent opinions.
- Have age-appropriate communication with the child/children involved.
- Report child abuse to the proper agency and the court.
- Prepare a clear, concise, and timely report.
- Provide copies of his or her file to counsel or a party not represented.
- Shall not conduct psychological testing or drug and alcohol evaluations.
- Maintain confidentiality.

Communications:

- Develop written policies for the parties.
- Develop written policies for counsel.
- Review the court's order of appointment.
- Have no private or ex parte communications with the court.

Massachusetts: The role of the “Category F GAL investigator” is to gather and report factual information that will assist the court in making custody, visitation, or other decisions related to the welfare of a child. Unless the appointing judge specifies otherwise, the GAL investigator's role is limited to gathering and reporting information to the court. The GAL may include recommendations in the report if the order of the court authorizes inclusion of such recommendations.⁷¹

Minnesota: Minnesota judges may appoint GALs in divorce and custody cases to represent the best interests of the child. The statute provides for both mandatory and permissive family court appointments. GALs are prohibited from providing legal advice or attorney representation of the child. Their responsibilities include:

- Conducting an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case.

⁷¹ Standards for Category F Guardian Ad Litem Investigators, 1.1.

- Advocating for the child’s best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary.
- Maintaining the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child.
- Monitoring the child’s best interests throughout the judicial proceeding.
- Presenting written reports on the child’s best interests that include conclusions and recommendations and the facts upon which they are based.

New Hampshire: The GAL conducts an investigation which may include interviewing the parents, the children, and other persons who may have information relevant to the issues involved. In most cases, the GAL prepares a written report which includes a recommended resolution of custody and visitation issues that, in the GAL’s estimation, is in the best interest of the children. Reports are confidential and are available only to the parties and their attorneys.

Maine: GALs conduct investigations, gather information, conduct interviews, and make recommendations to the court in accordance with statute and judge’s order of appointment. In addition, they are required to adhere to the Standards of Practice for Guardians ad Litem.⁷²

C. Roster

Colorado, Massachusetts, and New Hampshire maintain state rosters of persons eligible to be appointed. Some counties in Arizona and Washington maintain rosters. In Minnesota, all GALs who serve in family court custody and visitation cases are state employees.

Maine: The Chief Judge adds qualified individuals to the roster.⁷³

D. Qualifications

Colorado, Minnesota, and New Hampshire have established minimum qualifications. See Section IV.

Massachusetts: GALs must be attorneys. See Section IV.

Maine: To be qualified to serve as a GAL, the applicant must possess a valid license to practice law; or to practice as an LSW, an LCSW, LPC LCPC, LMSW, LMFT, LPC, psychologist, or psychiatrist in the state of Maine; or be certified as a Maine Court Appointed Special Advocate

⁷² http://www.courts.state.me.us/rules_adminorders/rules/MGalRules%208-04.pdf

⁷³ http://www.courts.state.me.us/rules_adminorders/rules/MGalRules%208-04.pdf

(CASA).⁷⁴

E. Education and Training

Colorado: New CFIs must complete 40 hours of training in relevant areas prior to accepting appointments. Attorneys and mental health professionals and other members of the community who are working as CFIs must complete no less than 15 hours of continuing education in relevant areas every three years.

Massachusetts:

Initial Training: GALs must attend a two-day mandatory training established by the Probate and Family Court Department prior to submitting an application. Topics for the mandatory training are attachment and parenting plans, interviewing, abuse, preference and alienation in custody disputes, and report writing.

Continuing Education: Once approved for the list, GALs must attend an annual continuing education program established by the Probate and Family Court Department.

Minnesota: Persons intending to serve in family court for the first time must complete a 40 hour juvenile protection training as well as a 6 hour family violence training. They must attend an additional 16 hour training course regarding family court matters approved by the Board within their first 12 months of work.

New Hampshire: The Board has established initial and continuing training requirements. Initial training consists of at least 16 hours of training. GALs requesting renewal of an existing certification must complete at least 30 continuing education credits.⁷⁵ Continuing education is not a set curriculum, but can be a variety of training opportunities, ranging from trainings offered by the New Hampshire Bar Association to trainings on domestic violence. GALs submit a training request form to the Board, who reviews the request, considering the topic and presenter for relevancy and quality. If approved, the Board posts the training on the website so other GALs know that the training has been approved for continuing education credits.

Washington: The AOC developed a training facilitator's guide (in RCW 2.56.030(15)). Some counties use the guide to provide training. The training requirements in the guide include 19.5 hours of initial training curriculum, a writing requirement on a hypothetical dissolution case, and practicum with a mentor that includes court observation. The topics of the initial training are:

- Introduction to Service as a GAL

⁷⁴ http://www.courts.state.me.us/maine_courts/family/gal/rules.html

⁷⁵ http://www.nh.gov/gal/continuing_ed.htm

- Ethics and Professional Conduct
- The Law and Legal Process
- Investigation
- Interviewing
- Report Writing
- Systems and Resources
- Child Development
- Chemical Dependency and Mental Illness
- Child Abuse and Neglect
- Domestic Violence
- Personal Safety
- Cultural Competency

Six hours of continuing professional education are required annually. The topics may include any of the existing AOC curricula or any other topics that relate directly to Title 26 GAL work.

Maricopa County, Arizona: The court conducts training to acquaint the evaluators with the specifics of the job and to introduce new evaluators to veteran evaluators. There is no mentoring program.

Maine: GALs are required to attend a core GAL training, with a curriculum of at least 16 hours that must include specified learning outcomes and activities designed to meet these outcomes. The Chief Judge is charged with approving the curriculum and certifying completion. In addition to core training, Maine GALs are required annually to participate in a total of at least 6 hours of continuing professional education programs.⁷⁶

F. Form Orders for Appointment

Colorado and New Hampshire have developed form orders for the appointment of GALs. In Minnesota, court orders of appointment must include specific clear duties of the GAL and must specify the length of the GAL appointment with scheduled end dates.

Maine: The court has established a form order for appointment that requires the court to specify the duties of the GAL in the particular case and to specify the basis for the GAL's fees.

⁷⁶ http://www.courts.state.me.us/rules_adminorders/rules/MGalRules%208-04.pdf

G. Fees

Colorado: The Colorado Judiciary has established a presumptive fee for conducting an investigation and for filing a report at \$2,000, absent a finding of extraordinary circumstances. If called upon to testify, the presumptive fee for the total testimony and preparation time is \$500 absent a judicial finding of “extraordinary circumstances” that justifies the excess fees. Every order appointing a privately paid CFI must state the CFI’s hourly rate. If either of the parties is indigent, the Colorado Judicial Branch may pay that party’s fees at the state rate, as established by the Office of the Child’s Representative.⁷⁷

Massachusetts: The judicial branch has a limited amount of money in its budget to pay for GAL fees. Fees paid by the Commonwealth are set by the Administrative Office of the Trial Court. If the order specifies that compensation will be paid by the Commonwealth, the GAL is prohibited from charging additional fees to the parties. Because the judiciary’s funding is limited, in practice, judges on occasion ask the parties to pay some or all the GAL’s fees. If so, the judge, in the appointment order, may cap the number of hours. The GAL determines the hourly rate.

Minnesota: The fee for GAL services in family cases is \$1,500. The parties pay the fee to the GAL Program, not to the GAL. Judicial officers have the discretion to adjust fees upward or downward in the interest of justice and based on the ability of parties to pay. If the parties are ordered to pay and do not, the program will send the balance to “state revenue recapture” for collection.

New Hampshire: The GAL is compensated at the rate of \$60 per hour. The maximum fee (including costs) is \$1,000 for any case absent prior approval from the court. When the parties are paying the cost of the GAL, the parties and counsel may file an agreement with the court, subject to court approval for a different hourly rate and maximum fee.⁷⁸

The parties are expected to pay unless the parties are indigent, in which case the GAL is paid from the Guardian Ad Litem Court Fund. The court has established eligibility guidelines for payment from the Fund.⁷⁹ Fees for evaluations are not paid from the Fund. However, the legislature has recently eliminated funding for GAL services in marital cases involving indigent parents. By Administrative Order, GALs are no longer being appointed in any new or reopened marital matter where both parents are indigent. If one party is indigent, the party wishing to pay

⁷⁷ See Section III of Chief Justice Directive 04-08.

⁷⁸ Superior Court Administrative Order Number 17; Judicial Branch Family Division Administrative Order 2005-03.

⁷⁹ Superior Court Administrative Order Number 17; Judicial Branch Family Division Administrative Order 2005-04.

may petition the court for appointment of a GAL.⁸⁰

Maine: The court has established a form order for appointment that requires the court to specify the basis for the GAL's fees.

H. Complaint Processes

There are no national, uniform procedures for making complaints against GALs. Even at the state and local level, there is often no clear complaint process. Yet custody and family law cases, particularly hotly contested cases, often result in complaints to professional licensing entities against GALs.⁸¹ Many parties use professional complaints as a way to express “perceived GAL bias, unexplained fees, and no clear way to report GAL grievances to the GAL system itself.”⁸² Establishing well-known, publicly-posted policies and procedures for the GAL complaint process “allows dissatisfied litigants to take advantage of a procedure specifically suited to GAL disputes rather than having to rely upon a professional licensing board which may find that the GAL complaint, however, compelling, is unrelated to violation of any professional rule, ethical duty, or law.”⁸³

A key tenet of the adversarial system is that parties direct challenges about factual inaccuracies or faulty investigatory methods to the judge presiding over the case. Accordingly, Maine and most other jurisdictions often require that parties raise any challenges to the methods used in the investigation within the context of the current proceeding.

However, there can be detrimental effects when there is no established complaint process in place. Parties can leave court feeling that the process was unfair and that justice was not served. Also, “without a well-known system to address complaints about the conduct of GALs, allegations of bias, negligence, and incompetence may go unaddressed. Without a centralized complaint process and adequate record keeping, it is difficult for the court to identify specific areas where a GAL might require discipline or further training.”⁸⁴

There are essentially five predominant venues for addressing complaints related to the ethical behavior or bedside manner of GALs and concerns about their continued appointment:

- (a) By the judge overseeing the case, a chief judge, or a committee of judges.
- (b) By a professional licensing body.

⁸⁰ Judicial Branch Family Division Administrative Order 2011-03.

⁸¹ Bonmil, Marcia, Debbie Freitas, and Cristina Freitas. “The Toll of High Conflict on Guardian Ad Litem Practice.” *25 American Journal of Family Law* 87 (Fall 2011).

⁸² Ducote, 2002 in Bonmil et al., p.94.

⁸³ Bonmil, et al., p.96.

⁸⁴ Commonwealth of Massachusetts Senate, 2010 in Bonmil et al., p.96.

- (c) By a bar association.
- (d) By an independent GAL board or quasi-judicial agency.
- (e) By a volunteer or CASA organization.

The venues and processes for addressing complaints in the states chosen for closer examination in this report are described below.

Colorado: The presiding judicial officer oversees CFI performance on a case-by-case basis, noting compliance with timelines and conformity of the CFI reports with the requirements of the appointment order and the Chief Justice Directive.

For complaints filed against privately paid CFIs and state paid non-attorney CFIs:

- Complaints are submitted electronically to the judicial district and to the SCAO via a form on the SCAO website, in person, or by mail.
- Within 10 days of receiving the complaint, the District Administrator forwards the complaint to the judge presiding over the matter in which the CFI was appointed to determine whether any immediate preventative or corrective action needs to be taken in the matter.
- The judicial district then begins an investigation to determine whether the complaint is founded or unfounded, and to determine whether to take any action necessary to resolve the concerns or issues raised by a founded complaint. A judicial district's decisions as to whether a complaint is founded or unfounded and as to what, if any, action is necessary are final decisions and are not appealable.
- If the complaint involves a privately paid attorney CFI and if it is determined after investigation that the complaint concerning the attorney CFI was founded, the District Administrator informs the Colorado Supreme Court Office of Attorney Regulation Counsel and so notifies the complainant. The District Administrator requests that the Attorney Regulation Counsel inform the judicial district and the SCAO of the final outcome of any professional conduct investigation.
- No later than 60 days after receiving a "Child and Family Investigator Complaint Procedures and Form," the judicial district's District Administrator sends a written response of some kind to the complainant.
- No later than 10 days after a final decision is reached by a judicial district regarding a complaint, the judicial district's District Administrator forwards to the SCAO a copy of the complaint file and the results of the investigation.

Complaints against state paid attorney CFIs are to be filed and processed according to the complaint procedures of the Office of the Child's Representative (OCR).

All information about fees and complaints is available on the Colorado courts website along with

additional information to parties about how to resolve concerns with one's CFI.⁸⁵

Massachusetts: All requests for the involuntary removal of an individual from the roster must be in writing, must specify the grounds upon which the request for removal is based, and must be addressed to the Chief Justice of the Trial Court Department. If the request raises serious concerns as to the individual's qualifications or suitability, the Chief Justice may temporarily suspend the individual from the roster.

Investigation Process: The Chief Justice of the Trial Court Department sends a copy of the complaint to the individual, along with a notice that the individual may file a written response. After receiving a response, or after 30 days, the Chief Justice determines if an investigation should be conducted. If further investigation is ordered, the Chief Justice, upon receiving the investigative report, may meet with the individual or may conduct a hearing. If the Chief Justice determines that the individual should be removed from the roster, the Chief Justice so recommends to the CJAM, and sends the investigative report to the CJAM. The CJAM makes a decision within 60 days. The CJAM's decision is final. The request, the investigative report, and any hearing are confidential and not open to the public.

Minnesota: A party who wishes to report concerns about the performance of a GAL on his/her case must contact, in writing, the program manager of the district within 30 calendar days from the filing of the order discharging the GAL. The formal written complaint must specify the alleged malfeasance or nonfeasance of duty committed by the GAL. Malfeasance of duty is defined as improper performance and nonfeasance of duty is defined as a failure to carry out one or more of the statutory responsibilities of a GAL as detailed in Minnesota Statutes 518.165. The state program administrator is the final arbiter.⁸⁶

New Hampshire: The Board investigates and resolves complaints against certified GALs. The Board may refer the complaint to the appropriate court for investigation, resolution, or other action. The Board may pursue its own investigation or disciplinary procedures. The Board may resolve the complaint by agreement.

The Board has established disciplinary procedures, penalties, and sanctions for certified GALs, which may include revocation of certification, suspension, imposition of supplemental training requirements or supervised training requirements, supplemental education, fines, written reprimand, and treatment and counseling. Appointment and removal of persons from actual service as a GAL are functions of the court.

⁸⁵ <http://www.courts.state.co.us/Administration/Section.cfm?Section=jp3domprog>

⁸⁶ [http://www.mncourts.gov/Documents/0/Public/Guardian_Ad_Litem/Program_Requirements_and_Guidelines_\(Non-statutory\).pdf](http://www.mncourts.gov/Documents/0/Public/Guardian_Ad_Litem/Program_Requirements_and_Guidelines_(Non-statutory).pdf). Section VIII.C.

Persons wishing to file a complaint against a certified or formerly certified GAL may file a complaint with the Board along with a filing fee of \$100 or a request for a waiver of the fee.

Within 120 days, the Board will either dismiss the complaint or begin an investigation. The Board will then notify the complainant of its determination and, in the case of a dismissal, will provide a brief statement of the reason(s) for dismissal. A person whose complaint has been dismissed, or whose complaint has not been accepted for filing, may request an oral argument before the Board within 10 days of the date of the dismissal or non-acceptance. Requests must be in writing.

If the Board accepts the complaint and determines that it will be further investigated, the Board will provide the GAL who is the subject of the complaint (either in hand or by first class mail):

- (a) A written and dated notification that an investigation is being conducted into the allegations.
- (b) An Answer Form to be executed by the GAL.
- (c) A copy of the complaint and a list of supporting documents.
- (d) Written notice that the supporting documents filed in connection with the complaint are available for review at the Board's office during normal business hours.

The GAL must provide an answer within 30 days. The GAL may address the specific allegations of the complaint in the answer or instead indicate that he or she elects not to submit a substantive answer to the allegations at that time. The 30-day period in which to provide an answer to the complaint may be extended.

Thurston County, Washington: Thurston County has a court-convened Guardian Ad Litem Advisory Committee to handle GAL complaints. The Committee consists of the Superior Court Administrator or designee, two county citizens, a member of the county bar association, and a GAL who is active on the county registry and who has not received a sanction through the GAL complaint process in the past 3 years, selected by a judicial officer. Service on the Committee is voluntary. After a written complaint is submitted, the Superior Court Administrator convenes the Committee. If the Committee determines the complaint has merit on its face, they request a specific response from the GAL. If it lacks merit on its face, they decline to review the complaint. If the complaint pertains to an ongoing case, the Committee declines to review the case and informs the complainant that the only form of redress available at the stage in the proceedings is to seek removal of the GAL from the case or contesting the information or recommendation in court before the judge. In determining whether the complaint has merit, the Committee reviews factors including whether a code of conduct, state, or local law has been violated, or whether the GAL has “taken or failed to take any other action which would reasonable place the suitability of the person to serve as a GAL in question.” After reviewing the GAL's written response, the Committee can then “issue a written admonishment, a written

reprimand, refer the Guardian ad Litem to additional training, or recommend to the Presiding Judge that the Court suspend or remove the Guardian ad Litem from the registry.” The complainant and the GAL are notified of the Committee’s decision, but no appeals process is outlined.⁸⁷

Maine: The Chief Judge may conduct a review of a GAL in response to a complaint or on his or her own motion. A review panel appointed by the Chief Judge then reviews all pertinent information, including interviews with or written statements from the GAL, the complainant, parties, counsel, and court personnel. The panel is comprised of one GAL who is listed on the roster, one attorney, and one member of the public.

The GAL may review the complaint and other information developed by the review panel, may provide the panel with a written response, and may request a hearing. The review panel’s decision must be in writing.

Proceedings of the review panel are normally confidential. Only the Chief Judge, the panel, the complainant, the GAL, and in the case of an appeal, the Supreme Judicial Court, shall have access to the proceedings or decision.

The Chief Judge, or the Single Justice of the Supreme Judicial Court, upon a finding that the complaint gives rise to a probable fundamental violation of the licensing standards of the GAL’s underlying profession, may make a referral for further action to the appropriate Board or Commission.⁸⁸

VI. Conclusion

This preliminary report provides information on a subset of six state and local court systems that have taken steps to provide oversight of their GAL programs. In most jurisdictions, judges exercise authority over the programs. One of the states has established an independent board within the judicial branch to administer and oversee the GAL program. One of the states and one of the counties have established independent boards to review and resolve complaints against GALs. One of the states and one of the counties have established procedures to evaluate the performance of GALs on a regular basis to ensure quality services are being provided.

Jurisdictions have also taken steps to ensure that GALs who serve in the courts have the qualifications and training needed to provide information to judges regarding the best interests of

⁸⁷ <http://www.co.thurston.wa.us/fjc-docs/local-court-rules/03Guardians%20Ad%20Litem/LGALR-7-Guardian-Ad-Litem-Grievance-And-Complaint-Procedures.pdf>

⁸⁸ http://www.courts.state.me.us/rules_adminorders/rules/MGalRules%208-04.pdf

children in custody and divorce cases and to provide information to parents undergoing a difficult transition. They have established minimum levels of education, experience, background, knowledge, and skills needed in order to be eligible for appointment, and they have established initial training programs and continuing education requirements.

To enhance understanding and expectations of the process and to minimize complaints, states and counties have taken steps to ensure that GALs and parents know the GAL's role and what the court expects the GAL to do while safeguarding the child's best interest. When appointing a GAL, judges issue orders that specify dates that the investigation will start and will be finished, factors to be addressed in the investigation, and the GAL's fee or the process for establishing the fee.

Courts with effective GAL practices:

- Provide clarity regarding the role of the GAL.
- Promulgate professional standards and training requirements for GALs.
- Draft clear court orders concerning expectations of the GAL and fees to be charged.
- Establish a fair and deliberate complaint process.
- Communicate clearly with parents on the role of the GAL.

Having standards that establish the judge's expectations for investigation can contain costs and unnecessary intrusion into parties' lives. Effective court orders establish parameters regarding the scope of the investigation, time to complete the investigation, and estimated fees. A clearly articulated process for resolving concerns or complaints regarding investigations will reduce inquiries of court staff and promote parties' understanding. Custody determinations engender tremendous personal and financial stress for parties. Communication to parties on expectations, the process, and their rights can only help them make or accept custody and parenting decisions that serve the best interest of their children.

The Maine courts, to their credit, have established an effective GAL program in domestic relations cases. Maine's current GAL process is more comprehensive than those found in many jurisdictions. The MJB has established standards and a form appointment order that establishes the GAL's role in a particular case and the method for establishing fees. The MJB has established minimum qualifications and mandatory training and continuing education. While no major overhaul of Maine's GAL program is required, the MJB could examine the practices of other jurisdictions as outlined in this report as it engages in its continuing efforts to ensure that its processes enhance the well-being and outcomes for the children of parents seeking custody and parenting orders in Maine's courts.

Appendix A - Practice Standards Promulgated by National Associations

Courts address a broad range of issues, including custody, maintenance, support, valuation, visitation, relocation, and termination of parental rights. A number of different sets of guidelines address what are commonly termed child custody evaluations, involving disputes over decision-making, caretaking, and access in the dissolution of the parental relationship.

The Association of Family and Conciliation Courts (AFCC)

The AFCC Model Standards of Practice for Child Custody Evaluation (2006)⁸⁹ is widely referenced by state courts, social workers, matrimonial attorneys, psychologists, and others. A number of states or programs have in fact modeled their own jurisdiction-specific standards after the Model Standards.

As an organization, AFCC is decidedly multidisciplinary, and the best practices that AFCC recommends apply equally to mental health and legal professionals. However, the Model Standards explicitly lean towards mental health evaluators. “Knowledge and skills of the mental health professions to the resolution of legal matters is, by definition, a forensic endeavor and these Model Standards have been written from that perspective.”⁹⁰ Even though most of Maine’s GALs are attorneys, the Model Standards provide a helpful consideration of all of the issues that a state must consider in ordering custody evaluations.

The Model Standards address professional competence, record-keeping, roles, and responsibilities. The Model Standards contemplate rigorous professional training and experience, requiring a minimum of a master’s degree (or its regionally-recognized equivalent) in a mental health field that includes formal education and training in child development, child and adult psychopathology, interviewing techniques, and family systems. Further, evaluators are expected to “possess advanced knowledge of the complexities of the divorce or separation process, a working knowledge of the legal issues in divorce or separation in their jurisdictions of practice, knowledge of the sources of evaluator bias and methods for maintaining neutrality, and an understanding of the many issues—legal, social, familial, and cultural—involved in custody and access.” As a final matter, the Model Standards suggest detailed fee disclosures, a strict bar on ex parte communications, and significant detail in the presentation of the recommendations and report.

With regard to the resolution of complaints, the Model Standards explicitly deny enforcement authority. However, the Model Standards stress that any work performed should be performed

⁸⁹ See Appendix A; <http://www.afccnet.org/Portals/0/ModelStdsChildCustodyEvalSept2006.pdf>

⁹⁰ *Model Standards*, Introduction.

pursuant to court order. Under Evaluator responsibilities, the Model Standards provide that “prior to commencing evaluations, evaluators shall take reasonable steps to secure court orders or consent agreements in which they are specifically named and in which their roles, the purposes of their evaluations, and the focus of their evaluations are clearly defined.” The Model Standards also state that “evaluators shall avoid offering opinions to the court on issues that do not directly follow from the court order of appointment or signed stipulation or are not otherwise relevant to the purpose of the evaluation.”⁹¹ This is important because it contemplates close oversight by the court, and that any work completed is done through a limited judicial appointment of investigative authority. In modeling these Model Standards to establish state-specific guidance for custody evaluations, Colorado established guidelines both for Evaluators as well as for the court or judge presiding over the custody case. In keeping with the model language, the Colorado standards also stress the importance of specificity in the court order.

The American Psychological Association (APA)

The APA established guidelines informed by the “Ethical Principles of Psychologists and Code of Conduct” for psychologists in 2002.⁹² They are intended to facilitate a high level of practice by psychologists in performing custody evaluations. Even though they were designed to address practicing psychologists, the guidelines provide useful illumination as to the type of knowledge, skill, and experience needed for any professional to complete a child custody evaluation.⁹³ Most helpfully, these guidelines emphasize ethics and professional practices that lend confidence to the process, such as fee agreements and client communications.

Uniform State Laws

The Uniform Laws Commission, through the National Conference of Commissioners on Uniform State Laws (NCCUSL), provides a model statute for custody proceedings.⁹⁴ The preamble provides guidance for professional skills needed to perform an evaluation. The prefatory language acknowledges that “the decision to appoint a child’s attorney, best interests attorney, or best interests advocate will depend in large part on the child’s developmental level and the court’s sense of how the child’s interests can best be protected. In a case involving an emotionally disturbed child, for example, the appointment of a mental health professional as best interests advocate may be particularly helpful, while in a proceeding involving an older child with defined views, a child’s attorney may be appropriate. In contrast, a preverbal child in the middle of a bitter and protracted custody dispute may need representation through a best interests attorney. At the same time, courts must recognize that the appointment of a lawyer or best

⁹¹ *Model Standard*, Recognition of the Court Order.

⁹² See Appendix B; <http://www.apa.org/ethics/code/index.aspx>

⁹³ <http://www.apa.org/practice/guidelines/child-custody.pdf>

⁹⁴ See Appendix C; http://apps.americanbar.org/legalservices/probono/nccusl_act_rep_children.pdf.

interests advocate for the child in a custody case may be unnecessary and might introduce a potentially intrusive, polarizing, and expensive voice in the proceeding.”

Regarding fees, the NCCUSL recognizes that most states do not have funds to pay best interest representatives in custody disputes and therefore states that the “ordinary” approach is for parties to pay. They do, however, also recognize judicial discretion to allocate fees.

The American Bar Association (ABA) Divorce and Custody Standards

The ABA Divorce and Custody Standards (2003)⁹⁵ are general standards for all lawyers for children. The standards differentiate between the “child’s attorney,” the attorney who represents the child in a traditional attorney-child relationship, and a “best interests” advocate “who independently investigates, assesses, and advocates the child’s best interests as a lawyer.” Realizing that 20-21% of Maine’s GALs are not attorneys, these standards are useful primarily for the preamble language encouraging jurisdictions to adopt standards. As stated in the introduction, few jurisdictions have clear standards to detail professional responsibilities for GALs (or evaluators). Because of this, GALs have to navigate “the very real contradictions between their perceived roles as lawyer, protector, investigator, and surrogate decision-maker. This confusion breeds dissatisfaction and undermines public confidence in the legal system.” Establishing clear standards for the GAL role will assist Maine in delivering services to families.

The National Court Appointed Special Advocates Association (NCASA)

While the mission and funding of NCASA is intended first and foremost to support the CASAs that give voice to the child’s best interest in child abuse and neglect proceedings, CASAs are often appointed as GALs in divorce and custody cases. They are volunteers who are part of a local chapter that falls under the regulation of the State and NCASA. The role played by the CASA in a jurisdiction depends on the emphasis established by that local chapter. Sometimes CASAs serve in a quasi-representative role, representing the child’s best interest and even speaking to the child’s best interest in court, whether or not the CASA is an attorney. Sometimes, however, the CASA will serve as an evaluator, as that term is being used within this report. As stated by the 1999 Resolution Regarding Use of CASA Volunteers in Domestic Relations Custody Cases,⁹⁶ “once a National CASA member program has evaluated its ability to fulfill the primary CASA mission, that program is not prohibited from choosing to provide child advocacy in private child custody disputes where there are issues of abuse or neglect. As a condition of affiliation with NCASA, such programs must demonstrate that volunteers doing this

⁹⁵ See Appendix D; <http://www.msbar.org/admin/spotimages/1960.pdf>

⁹⁶ http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5473521/k.CC53/CASA_Volunteers_in_Domestic_Relations_Custody_Cases.htm

work are receiving supervision, the core CASA training, and additional training in order to handle these cases with the equivalent level of expertise expected of CASA and guardian ad litem volunteers in child protection abuse and neglect cases in juvenile court.” NCASA estimates that there is some 20% child custody crossover on child abuse and neglect cases. While NCASA had some concerns about mission creep, and wanted to support CASAs serving as experts in child protection issues, NCASA also sought to address special issues such as domestic violence and serious allegations made during divorce proceedings. Thus, NCASA supports the AFCC Model Standards for evaluators⁹⁷ and sees value in the standards as preventing CASA volunteers from being caught in the middle of a custody dispute. NCASA’s standards for program administration address program governance and volunteer management, among other topics.⁹⁸ The volunteer management section includes policies regarding recruitment; application, selection and screening; training; supervision; volunteer roles and responsibilities; and dismissal that may prove helpful in establishing similar mechanisms for Maine’s GALs.

⁹⁷ Michael Pirano, Executive Director, National CASA (in-person August 26, Reno).

⁹⁸ See Appendix E; http://nc.casaforchildren.org/files/public/community/programs/Standards-QA/Local_CASA_Program_Standards_April_2012.pdf.