

A VOICE FOR LOW-INCOME CHILDREN

**Evaluating
Guardians *ad litem*
in Divorce and
Parental Rights and
Responsibilities Cases**

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***The Edmund S. Muskie Fellowship for Legal Services
Guardian ad litem Project***



Acknowledgements

The late Senator Edmund S. Muskie championed the cause of justice for low-income Mainers in the final years of his remarkable career. Many people felt that creation of a Muskie Fellowship for Legal Services in Maine would insure that his legacy was continued into the future, but without the leadership, vision and generous financial support of the Edmund S. Muskie Foundation in Washington, DC, it never would have come into being. First announced at the annual Muskie Access to Justice Award Dinner in May of 1999, Board President the Honorable Leon G. Billings pledged support for a legal services child advocacy project that would focus on children of divorce. The Foundation's commitment to the project galvanized other community members to join forces and fully fund the first Muskie Fellowship for Legal Services. It is an honor and privilege for the project to bear the name of the late Senator, and we extend our greatest thanks to the Muskie Foundation, its Board and especially Executive Director Carole A. Parmelee for their unwavering commitment to this Fellowship.

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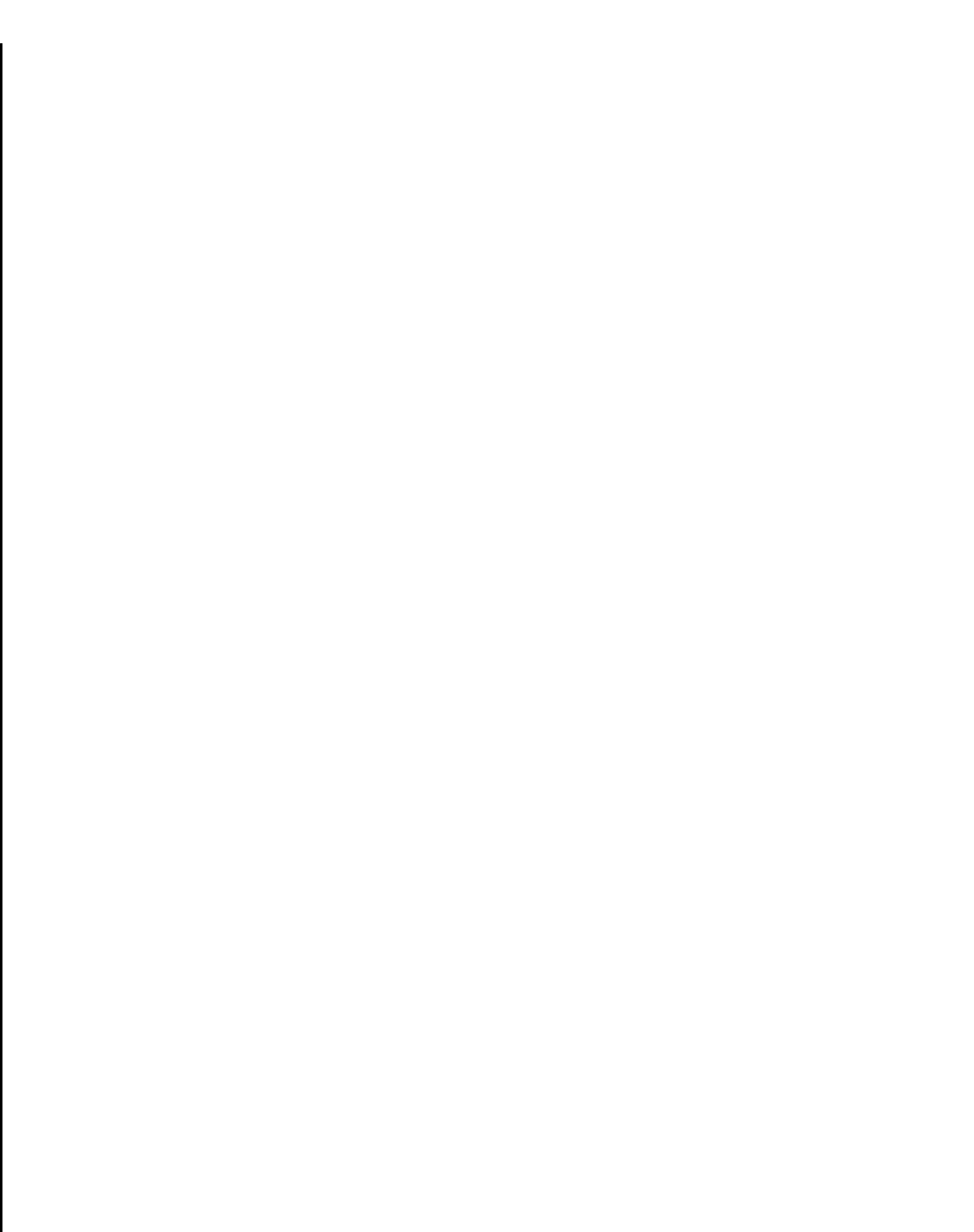
Executive Summary

The Muskie Guardian *ad Litem* Project evaluated the use of Guardians *ad Litem* (GALS) in divorce and parental rights and responsibilities cases in Maine.

The research suggests that there are significant benefits of GAL appointment for children in contested court proceedings. GALS effectively represent the best interests of children in family proceedings. They assist the Court in issuing custodial decisions, assist in settlement of highly contested cases and otherwise expedite the legal process. In addition to their investigative function, GALS report working with parents and children in an effort to reduce conflict between family members and to connect families with needed social services.

Despite these benefits, the research reveals two shortcomings of the current system. First, there are 500 to 850 low-income cases a year in which Judges and Case Management Officers cannot appoint a GAL because the family is without funds to pay the GAL, fee. This results in a two-tier system within the Family Court whereby the benefits of a GAL are denied to the overwhelming majority of low-income children. Second, the research suggests that there are a number of factors affecting the quality of GAL representation. These factors include GAL training and education, the experience of the GAL, and the availability and accessibility of social services for low-income families.

The quality of GAL representation could be enhanced by increased training opportunities for GALS, mentoring programs, efforts to compile resource databases, allocation of judicial staff, and collaboration with parent education programs and mental-health professionals. These efforts, however, will not address the basic fact that low-income children do not have access to GALS because of the lack of income in their households. Unless the Legislature, the Judicial Branch and concerned members of the Maine community decide to allocate financial resources to provide GAL representation to low-income children, these children will continue to be underserved.



Evaluating the Use of Guardians *ad Litem* in Divorce and Parental Rights and Responsibilities Cases Involving Low-income Children

Every weekend when I come home from Daddy's apartment, Mommy asks me what I did all day. She asks me about Daddy's new girlfriend and tells me that Daddy is mean for leaving us. I asked her if I could go on the class trip this week but she said there was no money because Daddy hadn't paid child support. Daddy's girlfriend said all my Mom does is buy new pairs of shoes with the money he gives her. Dad told her not to worry because he was going back to court. I just wish they would stop screaming at each other. I just wish things would go back to the way they were.

Samantha, age 9.'

When couples with children, married or unmarried, decide they can no longer maintain their relationship, they often turn to the judicial system to sort out disputes related to their children. Some of these court cases become highly contested. When parents are at war with each other, the judicial system becomes the theatre of battle and children the main casualty. In this inflammatory and potentially dangerous environment, parents ask the Court to make a multitude of decisions: where the children will live, which parent will make medical decisions, what the contact schedule will be between parent and child. The Court's best efforts to make these decisions are often hindered because the Court is without impartial, objective evidence related to the needs of the children involved in the case. Under the traditional legal model, while the parents can secure legal representation and advocacy, children have no right to retain counsel.

The statutory solution to this problem is the Guardian *ad Litem* (GAL). The Court appoints a GAL to represent the child's best interests in legal proceedings. Although the GAL is the legal representative of the child, the GAL does not serve as a lawyer for the child. Rather, the GAL advocates for what is in the child's best interests

' "Samantha's" statements are a composite of conversations the Muskie Fellow has had with children she represented as a GAL.

and provides the Court with information about the children and their families so the Court may ultimately issue a custodial decision that serves the best interests of the child.

While a GAL may be appointed, there is no legal entitlement to a Guardian ad *Litem* in family law proceedings. If a family is unable to pay for the services of a GAL, or to secure the pro bono efforts of a GAL, a child's interests will remain unrepresented. Representatives of the judicial system, the Legislature, the legal community and child advocates have long argued that GAL services are crucial to the positive welfare of children in contested family law matters, and the unavailability of GALs in these cases leaves an enormous gap in needed services for poor children of Maine. In response to this identified need, a coalition of combined interests came together in 1998 and created the Muskie GAL Project.

The project, named in recognition of Senator Muskie's long-standing commitment to low-income children, has two goals. First, the GAL project provides actual representation to some of the children in need by funding a fellowship staff attorney position. Based at Pine Tree Legal Assistance, the staff attorney represents low-income children in York County. To date, the Muskie Fellow has represented over 70 low-income children and will continue GAL representation until fall 2002. The second goal of the GAL project is to evaluate the use of GALs in contested custody cases involving low-income children. In addition to the Muskie Fellow's evaluation of the current system, surveys were conducted of many stakeholders in the process so that the system could be evaluated from a number of perspectives. This Muskie GAL Report is the product of those evaluations.

The Muskie GAL Project's research demonstrates that there are measurable benefits to children from the appointment of a GAL in contested family law cases. The results of the surveys show that GALs are viewed to effectively represent the best interests of a child in family law proceedings. They connect families with needed social services, assist the Court in making difficult custodial decisions, reduce conflict between family members, assist in settlement and expedite the legal process.

But the picture is not perfect. The research also reveals two important concerns. First, the previously recognized gap in services to low-income children is significant. There are 500-850 cases a year involving children who fit the criteria for GAL

representation but who cannot access the service because there are no state or private funds to pay for GALs. Second, the quality and effectiveness of GAL representation could be enhanced significantly through increased training and a wider availability of social service resources.

The contents of the report are as follows: Part I describes the existing system of child representation in Maine. Part II evaluates the system and set forth the findings generated by the research. Based upon this research, Parts III and IV set forth recommendations and conclusions.



I. Current Child Representation in Maine in Divorce and Parental Rights and Responsibilities Cases

Custody disputes arising in divorce and parental rights and responsibilities cases are governed by Title 19-A of the Maine Revised Statutes Annotated.² Jurisdiction in these cases lies with the District Court. As in any civil matter, each parent may retain an attorney to represent them in the proceeding. By contrast, children may not hire an attorney to represent their interests in their parents' divorce.³ The Court, however, may appoint a *Guardian ad Litem* to represent the child's best interest in a contested family law proceeding.⁴

A *Guardian ad Litem* "in a custody dispute is an adjunct of the Court." The Guardian's "central responsibility is to assist the Court in its role *as parents patriae* to determine the best interest of the children." In the investigation, the GAL, is directed to apply the 'best interest of the child standard.' The statute explains that in considering an award of parental rights and responsibilities with respect to a child, the GAL shall

² The other major categories of cases in which courts determine custody are Title 22 child protective proceedings and 18-A guardianship proceedings. Title 22 cases are heard in the District Court and primarily involve actions brought by the Department of Human Services (DHS) against parents accused of abuse and neglect of their children. The focus of these cases is whether the children are in jeopardy and should be placed in DHS custody. The parents are entitled to court appointed counsel and the Court funds the appointment of a GAL in every case. Title 18-A guardianship proceedings are heard in the Probate Court. Third parties seeking custody against the parents usually bring these cases. Court appointed counsel and government funded GALs are available in these cases as well.

³ See *Miller v. Miller*, 677 A.2d 64,66 (1996)("[t]here is no basis in the common law for the intervention of minor children as parties in the divorce action of their parents with an attorney of their choice.") The Court also rejected the claim that the United States Constitution requires children have the right to intervene as parties in their parents' divorce with an attorney of their choice. Specifically, the Court held that "the use of *Guardians ad Litem* to protect the best interest of children in divorce proceedings My satisfies any federal constitutional requirements." J& at 19.

⁴ See 19-A M.R.S.A. Q 1507(1). The statute makes clear that the Court may appoint a *Guardian ad Litem* "in contested proceedings.. in which a minor child is involved." && The statute encourages the early appointment of a GAL, stating that "the appointment may be made at any time, but the Court shall make every effort to make the appointment as soon as possible after the commencement of the proceeding." The circumstances under which a Court may appoint a guardian are broad: "The Court may appoint a *Guardian ad Litem* when the Court has special reason for concern as to the welfare of a minor child." &&

⁵ *Kennedy v. State of Maine*, 1999 ME 85, n. 10.

⁶ *Miller*, 677 A.2d at 69, n. 8.

⁷ & 19-A M.R.S.A. §1653 (2000).

consider “as primary the safety and well-being of the child.” The statute further directs the GAL to consider factors such as the age of the child, the child’s relationship with the parents or other significant adults, the motivation of the parties involved, and the parents’ capacity to cooperate with each other in regards to child care.’

In addition to the best interest standard, GALs must abide by statutory requirements set forth in 19-A M.R.S.A. § 1507. The GAL must conduct a face-to-face interview with the child and submit a written report of investigations, findings and recommendations to the Court and each party.” The statute further describes optional duties, making it clear that the Court may set forth more specific duties for the GAL as the demands of a particular case requires.’ *

In 2000, the Supreme Judicial Court issued Rules and Standards of Practice that elaborated on the statutory provisions and set forth in greater detail the role and responsibility of a *Guardian ad Litem*. At the direction of the Legislature, the Court also imposed new eligibility requirements for GALs in Maine. Most significantly, state law now requires GALs to attend a 16-hour training and submit an application to the Chief Judge of the District Court. The Court then evaluates the application and determines whether the applicant has the necessary qualifications to serve as a GAL.¹³ If accepted, the GAL is placed on a list of rostered GALs and may be appointed to represent children’s interests.

In contrast to child protective proceedings, there is no legal entitlement to a GAL in divorce and parental rights and responsibilities cases. Nor are there state funds to pay for GALs as in child protective and guardianship cases. As a result, the availability of GALs is currently limited to those families who can afford the GAL fee or are able to

^a 19-A M.R.S.A. § 1653 (3).

¹⁰ 19-A M.R.S.A. § 1507(2)(A).

¹¹ Prior to 1994, the *Guardian ad Litem*’s responsibilities were set forth in judicial opinions. In 1994, the Legislature enacted An Act to Amend the Law Pertaining to the Appointment of a *Guardian ad Litem in Contested Proceedings*. The act, codified at 19 M.R.S.A. § 752-A, elaborated upon the common law responsibilities set forth in judicial opinions and clarified the manner of appointment and scope of a GAL’s duties. See also Kennedy, 1999 MJ3 85, 10, n. 10.

¹² The Court also imposed a continuing education component to the GAL process. Since 2000, in each 12-month period, a GAL must participate in a total of six hours of continuing professional education.

¹³ There are only four categories of professionals who can serve as a GAL: an attorney with a current valid license to practice law in Maine; a mental-health professional with a license to practice as a LSW, LCSW,

access the free services of Pine Tree Legal Assistance, the Volunteer Lawyers Project, the Muskie Fellow, or the *pro bono* (uncompensated) services of a private Guardian *ad Litem*.⁴

LCPC, LMSW, LPC, psychologist or psychiatrist; a CASA volunteer (only for Title 22 Child Protective proceedings); and a person for whom the Chief Judge has waived the licensure requirements.

⁴ Beginning in 2001, Pine Tree Legal Assistance agreed to provide GAL representation to low-income children in up to 20 cases a year. This project will be in place for two years and then it will be re-evaluated.



II. Evaluation of Current GAL Representation

A central goal of the Muskie GAL Project is to test the assumption that GALs provide a beneficial service to children. To do this, the project surveyed the three groups of professionals who work most closely with children in contested family law proceedings: members of the judiciary, attorneys and GALs. In addition, the project conducted internal case reviews of the Muskie Fellow's GAL representation of low-income children, and in-depth, in-person interviews of judicial, attorney and GAL representatives. The results of this research suggest that GALs play an important and effective role in contested family law proceedings and that the benefits of GAL appointment accrue to children, their families and the court system.

A. Benefits of GAL representation

1. GALs Are Critical in High-conflict Custody Disputes

Although the potential universe of GAL appointment is broad (any case involving a child), there is consensus in the data that GAL representation is critical in high-conflict custody disputes.

In high-conflict cases, the parents verbally abuse, threaten and denigrate each other. Other characteristics of high-conflict cases are, in increasing order of severity, threats to limit the other parent's access to the child, threats of litigation, ongoing attempts to form a coalition with child against other parent over isolated issues, endangering each other, threatening violence against each other, verbally threatening harm or kidnapping, continual litigation, parental alienation syndrome, and physical or sexual abuse.¹⁶ They often use the court system as a means to harass, intimidate and abuse the other parent. Although these children may not experience the level of abuse and neglect necessary to trigger investigation by the police or the Department of Human

¹⁵ Due to the limitations of the project and the difficulties in surveying children, children and parents were not surveyed. However, any future projects that work on issues related to GALs should consider ways to access the voices of the children and their parents.

¹⁶ Carla B. Ganity and Mitchell A. Baris, *Caught in the Middle: Protecting the Children of High Conflict Divorce* 43 (1994).

Services, the consequences of being caught in a high-conflict parental separation are severe and pervasive. “Over time, parental wars take a greater toll on a child’s development than any other single factor in divorce.”⁷

All surveyed constituencies seem to understand the risk to children in high-conflict cases and identified them as the most critical for GAL representation. The Muskie Fellow’s experiences yielded the same conclusions.

When the Muskie Project was initiated, the creators assumed the greatest need for GALs for low-income children was in cases where neither parent was represented by legal counsel. In practice, the legal status of the parents did not turn out to be the determining factor in the Court seeking the involvement of the Fellow. Over half of the Muskie cases involved at least one attorney. Instead, the unifying thread in the Fellow’s cases was the high level of conflict between the parents. This is reflected in more than anecdotal observations. Over 50% of the reviewed cases were post-judgment motions to modify existing custody arrangements. These parents had already been to Court on at least one occasion and as conflict resurfaced, they returned to the legal arena to continue the fight.

2. GALs Increase Settlement and Reduce Contested Court Proceedings in Divorce and Parental Rights & Responsibilities (PR&R) Cases

The data compiled from the surveys strongly suggests that GAL appointment increases settlement between parties, reduces contested court hearings and reduces the number of times parties return to Court once the divorce or PR&R case is complete (referred to as post-judgment motions).

Attorneys who represent parents in divorce and parental rights and responsibilities cases report that GAL involvement increases settlement and reduces contested hearings above and beyond the normal settlement process in civil legal proceedings. The surveyed family law attorneys reported that GALs help settle cases in 63% of their cases, and that 78% of those cases would not have been resolved without the GAL.

The judicial and GAL surveys support this finding and strengthen the proposition that GALs expedite the court process by assisting in settlement, reducing contested court hearings and post-judgment motions. For example, 80% of the District Court Judges/Case

⁷ Id&35.

Management Officers (DCJsKMOs) believe that contested family law proceedings are resolved more quickly when GALs are involved. Seventy percent of the DCJKMOs reported that GALs help parties settle their dispute without a contested final hearing. And, 90% of the DCJsKMOs believe that contested family law cases come back to Court less often when a GAL is involved.

Although the data from the GAL survey is self-reported, the responses indicate that GALs believe they are effective in keeping the parties from contested hearings and facilitating settlement. Only 6% of GALs report that their cases regularly go to a contested final hearing, and only 14% of GALs report that their cases regularly have contested interim hearings. Twenty-seven percent of GALs stated that they “always” help settle a case. Another 60% indicated that they “often” help settle a case. Fifty percent of GALs reported that the parties accepted their recommendations at settlement.

Without additional data, it is not possible to directly compare this high rate of success with what would have happened had a GAL not been appointed. The Muskie Fellow’s settlement rate, particularly in the *pro se* cases, suggests however that GAL involvement does increase the likelihood of settlement. For example, in the Muskie cases, 82% of the *pro se* cases settled without a contested hearing. These cases tend to be difficult to resolve and absorb judicial time because there tie no professionals to assist with settlement. These findings are encouraging and certainly suggest that GAL involvement increases settlement and reduces the number of contested hearings. This provides cost savings to the court system by reducing the need for judicial time devoted to contested hearings and post-judgment motions.

The benefits are more than financial, however. Acceptance of GAL recommendations at settlement by the parties, or by the Court, means that a neutral articulation of the child’s best interests is influencing the parents and the Court.

Most importantly, however, is that a reduction in contested hearings and post-judgment motions and an increase in settlement suggests a reduction in conflict between the parties. In most cases, if parents are able to reach a settlement on interim or final issues, they are less likely to be in heated conflict with each other. The benefit of conflict reduction flows directly to children who are usually placed in the middle of parental conflict.

The importance of conflict reduction should not be minimized. Although these children may not experience physical abuse, the consequences of being caught in a high-conflict parental separation can be severe and pervasive. Social science research has demonstrated that children caught in the middle of contested family law cases can suffer long-term emotional harm. These children are “two to four times more likely to have the kinds of adjustment problems typically seen in children being treated for emotional and behavioral disturbance as compared with national norms.”¹⁸ They face “perpetual emotional turmoil” and “may be at a greater risk for substance abuse and educational failure.”¹⁹ Reduction of parental conflict through GAL involvement therefore suggests that there are enormous long-term mental health benefits to the children.

3. GALs Assist the Court in Issuing Custodial Decisions

In those cases that do not settle and go to a contested hearing, 100% of the DCJKMOs report that the involvement of a GAL improves their ability to evaluate the best interests of the child. Given the importance of a custodial decision and its long-lasting impact on a child, this finding is striking. If the Court is required to issue a decision based on the best interest statute, and every DCJKMO response indicates that decision is better informed with the GAL presence, GAL involvement is a significant benefit to the system and the child.

4. GALs Connect Families With Needed Social Services

Another set of findings from the surveys demonstrates the social service component of the GAL role. The surveys reflect that GALs often recommend counseling, mental-health evaluations, parent education programs, substance abuse programs, anger management courses, and domestic violence support programs for children and their family members. The GALs regularly seek counseling for the children or families.

For low-income families, these connections to services while critical can be difficult to obtain. In addition to lacking the money to purchase services, the Muskie Fellow’s experience with low-income families has shown that the GAL may be the only source of information about these resources. Many parents are *pro se* litigants and lack

¹⁸ Janet R. Johnston, *High Conflict Divorce*, Children And Divorce, The Future of Children, Vol. 4, No. 1, spring 1994.

¹⁹ *High Conflict Cases: Reforming the System for Children*, 34 Fam. L. Q. 589-606 (2001).

the knowledge to research and access available resources. The Muskie Fellow was able to provide information about available resources and advocate with providers so that families could receive services.

5. The GAL's Role is Multi-faceted and Adaptable

The surveys asked a number of questions related to the proper "role" of a GAL in a contested 19-A case. As expected, most respondents referred to their role as an "investigator" for the Court. By conducting interviews with parties, investigating parental allegations, and bringing that information before the Court, the GALS feel that they can advocate for the child's best interests. What was striking was the overwhelming focus on the importance of facilitating and increasing communication between parents. Many GALS described themselves as "mediators," "facilitators," or "conflict-resolution people." Descriptions from judges/CMOs were similar: responses focused on both the investigative and facilitation role.

GAL and judicial responses to a related set of questions were in keeping with their descriptions of their role in the case: GALS overwhelmingly indicated they think it is appropriate that they work with families to improve family dynamics, communication and parenting skills. Similarly, nine out of 10 judges/CMOs think it is appropriate for GALS to work with families to improve family dynamics and communication, and eight out of 10 judges/CMOs think it is appropriate for GALS to work with families to improve parenting skills.

The responses to these questions reveal that GALS do more than represent children—they work directly with parents on issues relating to parenting. Although the surveys do not delve into justifications for this expansive view of the GAL role, expert interviews and the Muskie staff attorney offer some insight into the justification for working directly with parents.

In contested divorce and parental rights cases, children are involved with the court system because their parents are in conflict. Usually the dispute is not related to the child's behavior but instead is based on parental inability to effectively parent and care for their children. A breakdown in parental capacity may be related to the pressure of the divorce or it may be related to fundamental limitations in parenting. Interviewees report that GALS play a critical role in connecting parents with mental-health and other

professionals who can address parenting limitations. The GAL often works directly with the parents to encourage them to put their children's needs first by improving communication and working on parenting skills.

As one interviewed GAL explained,

The kids I work with are holding their breath waiting for their parents to stop fighting. The parents are so focused on their own anger that they forget to focus on the children. I spend a lot of my time working directly with the parents, trying to refocus and redirect their anger. As I see it, these cases come to me because the parents aren't parenting, and what these kids need more than anything are parents who care. If I can help these parents, I help the child.

Another possible explanation for the expansive view of the GAL role is that the role changes depending on the nature of the case. As one GAL survey respondent explained, "In cases with *pro se* parents, the GAL functions as a case manager/mediator/magistrate. In a case with paying clients, the GAL functions as an arbitrator. In a case with adolescent clients, the GAL may need to function as an attorney."

The Muskie Fellow's experience supports the idea that the role of the GAL changes with the case. In the Muskie cases, there is a lack of legal and social services resources. Out of necessity, the Fellow serves many functions. The Fellow may be the only person who can compile and present information to the Court about the safety and well being of the child. In addition to the role of investigator/Court advocate, the Fellow may be the only person involved with the family who can work to improve the family situation and decrease the stress on the children. Thus, the Fellow reports spending time working to increase communication, focusing the parents' attention on the children's needs, and teaching the parents how to negotiate their own solutions to conflict.

B. Identified Problems in the Current System

1. Low-income Children Have Limited Access to GAL Representation

Unlike families with financial resources, poor children caught in the middle of high-conflict cases are not provided with a GAL because there is no money to pay the GAL fee. *Pro bono* efforts of the private bar and the work of Pine Tree Legal Assistance,

the Volunteer Lawyers Project and the Muskie Fellow fall dramatically short of meeting the need for GAL representation of these children.

This gap in GAL services to low-income families has been long recognized. In the sole testimony supporting the original act to codify the appointment of GALs in Title 19-A cases, a representative of the Department of Human Services noted,

[T]he only provision in this L.D. for payment for these services is by parents who are able to afford them. Since there is a substantial shortfall in the Courts' accounts, the decision of whether to appoint and pay for a *Guardian ad Litem* for indigent parents will pose a dilemma for the judge. However, having this statute on the books could provide the impetus to rally community agencies to look for creative ways to fund the services of the *Guardian ad Litem* when parents are indigent.²⁰

When the Legislature directed the Supreme Judicial Court to develop a program to train and supervise GALs, it also directed the Court to address the appointment of, and funding for, *Guardians ad Litem* when one or more of the parties are indigent. In 1997, the committee formed by the Court to study the issue recommended that the Court request a legislative appropriation of \$80,000 to address the need for a GAL in indigent cases. The Court was unable to address this section of the committee's recommendations due to budgetary and time constraints. In 1998, Case Management Officer John David Kennedy called the lack of GALs in low-income cases "the single largest remaining problem in our system of justice for family matters."

In 2001, at the request of the Muskie GAL project, the Family Division tracked the need for GALs in low-income cases for a two-month period. CMOs kept weekly tallies of the number of cases in which CMOs were unable to appoint a GAL due to lack of funds. The data compiled by the CMOs, when applied to a 12-month model, generated a total need of 863 rounded down to 850.²¹

Specifically, the CMOs were asked to

indicate for each day of the week the number of cases you handled in which you believe a GAL was needed but the family did not have

²⁰ Testimony of Carolyn Welch, Department of Human Services, Supporting L.D. 1860 An Act to Amend the Law Pertaining to the Appointment of a *Guardian ad Litem* in Contested Proceedings, February 24, 1994.

²¹ Two of the eight CMOs did not complete the tallies. On the basis of the six participants, the estimated need amounted to 665. In order to generate a total annual need estimate, we generated an average weekly need (1.9) using the six participants. We then multiplied 1.9 x 52 weeks for a total of 98.8. Given that two CMOs did not complete the tally, we multiplied 98.8 x 2 = 197.6. We then added 197.6 to 665 to generate the final number of 863, which we round down to 850.

available resources to pay for the GAL's services. Typically such cases will involve unrepresented litigants, although you may occasionally have a case in which the parents spent all available resources hiring counsel. Other appropriate indicators include situations in which a parent's income falls below the federal poverty line and cases involving the 'working poor' (i.e. parents who earn just enough to be ineligible for public benefits).²²

Other than this direction, the CMOS/Judges were not asked to use any specific income guidelines in deciding who could not afford a GAL. Likewise, the CMOS/Judges did not use specific guidelines in deciding which cases to refer to the Muskie Fellow for GAL representation. However, despite the lack of rigid income guidelines, in the overwhelming majority of the Muskie Fellow's cases at least one parent was eligible for some type of public assistance. Even where a parent was not eligible for public assistance, their income was insufficient to afford the average cost of a private GAL. As is so often the case, these low-income, "working poor" find themselves both ineligible for public assistance yet unable to afford needed services.

In an effort to further isolate the unmet need for GALs, the judicial survey included questions related to the need for GALs in low-income cases. The DCJs/CMOs indicated they would like to appoint a GAL in 50% of the cases in which the parties are *pro se* and unable to afford a GAL. In 25% of those cases, the judicial respondents indicated that they can find a GAL to serve *pro bono*. On the basis of these judicial responses, there is a statewide annual need of GAL representation in 500 cases involving low-income children. 23

According to the Muskie research, it is estimated that there are 500 to 850 contested domestic relations cases annually, in which CMOS and District Court Judges would like to appoint a GAL, but are unable to do so due to a lack of financial resources.

22 Memorandum, Wendy Rau, Family Division Director, Administrative Office of the Courts, May 2001.

^u In fiscal year 2001, there were 9,000 initial family law cases filed in Maine District Court. Although not specifically tracked in '01, the Court estimates that there are an additional 3,000 post judgment filings each year. Thus, the total estimated filings equals 12,000. The Court does not currently track how many cases involve children. For example, many couples filing a complaint for divorce do not have children but the case is still filed as an initial family matter. Current Court estimates are that 70-75% of total filings involve children. Therefore, 9,000 of the total 12,000 family law matters filed annually are estimated to involve children. Interview with Wendy Rau, Family Division Director, Administrative Office of the Courts, December 12, 2001. Assuming that the number of low-income cases involving children in proportionate to the percentage of children in poverty in Maine (15%), and assuming 9,000 family cases with children filed annually, it follows that there are 675 cases a year in which GALs are needed. That number decreases to 504 (rounded to 500) when *the pro bono* services are taken into account.

2. GAL Effectiveness Is Limited by Experience, Training and the Ability to Access Social Services.

a. Training

The data suggests that GALs benefit the system, but also indicates that GALs need additional training. Almost all judges and CMOs, and more than half the GALs surveyed, did not believe GALs had sufficient training to perform their duties. Almost the entire sample of GALs, even those who thought their training was sufficient, were willing to take additional training. The overwhelming request for training was for interview techniques of children, child development and issues relating to conflict management in divorce and parental rights cases.

Although not formerly surveyed, domestic violence Court advocates provided written comments for this report that suggest the need for significant training related to domestic violence and its impact on the health and safety of children. According to the Court advocates, direct contact between victims and abusers during drop-off and pick-up of children is emotionally and physically dangerous for victims and their children. Yet the advocates report that GALs rarely structure these exchanges to minimize direct contact. The advocates' comments reflect a strong concern that GALs do not sufficiently consider the safety of the victim or the children when issuing recommendations about parent/child contact. These representations suggest the need for further training of GALs in issues specific to domestic violence cases.

b. Experience

The best predictor of effective GAL representation is experience.²⁴ GALs who had completed at least 10 to 30 cases reported higher rates of settlement and a higher rate of acceptance of their recommendations by the parties at a final hearing. They also reported they were less likely to have contested interim hearings in their cases. Also, if the case went to contested interim hearing, the Court was more likely to accept their recommendations.

²⁴ In this report, effective representation is defined as reducing conflict, increasing settlement, reducing contested hearings, and accepting recommendations. Further study of the outcomes in cases involving GALs would be useful to best appreciate the value GALs bring to the system.

In addition, the GALs with more experience reported spending more time with the children they represented as a proportion of the case and were more likely to believe it appropriate for a GAL to work with a family to improve family dynamics and communication skills.

c. Access to Social Services

The GAL survey asked GALs to indicate the obstacles they faced in their work. GALA cited as the greatest obstacle the difficulty of trying to work with angry, uncommunicative parents who resisted working with the GAL, or parents who did not understand the role of the GAL. The two other significant obstacles noted by the respondents related to 1) a lack of financial resources to pursue the case or for the family to obtain needed services, and 2) an inability to work with the parents' attorneys. Other issues that were raised by a number of respondents related to the obstacles faced by a lack of mental-health services, long travel distances, and a lack of good communication with mental-health providers.

In other survey questions, GALs were asked to rate how often they recommended different social services. The answers indicated that GALA are more likely to recommend mental-health counseling (most answers ranged from "sometimes" to "often"), but rarely recommend a substance abuse evaluation. The respondents sometimes recommend psychological evaluations. Despite the respondents' recommendations for services, more than a third indicated they were "often" not able to obtain psychological evaluations, or counseling, due to lack of insurance. There was a high rate of correlation between the answers for these questions. When a respondent encountered difficulties in obtaining some services for the parties, she was likely to encounter the same degree of difficulty in obtaining other services. GALs who reported difficulties finding services for families were likely to spend twice as long on a case than those who found it relatively easy to get services.

III. Recommendations

A. Provision of GAL Services to Low-income Children Must Be a Public Priority

The judiciary has identified 500-850 critical cases per year in which children involved in high-conflict family law cases are in need of GAL representation. Children caught in the middle of these cases are at risk of short and long-term mental and physical health problems. GAL representation reduces conflict in families and contested proceedings in the court system. The benefits of GAL representation extend beyond legal representation, however. The families of the children identified for GAL representation lack necessary resources to support their needs in a time of crisis. The GAL can make critical connections between at-risk youth and families and social services. The GAL can work to ensure that the child's needs are met by assisting the entire family in meeting its needs and helping navigate the legal and social services systems. The findings of this project demonstrate that GAL representation of children in these cases could be an effective intervention that benefits children, their families and the court system.

B. Low-income Children Need Experienced GALS

In the past, the Court has relied heavily on *the pro bono* efforts of the Maine Bar to provide GALS for low-income children. Many of these attorneys do a spectacular job representing children and some of these *pro bono* attorneys have significant experience serving as a GAL. More often, however, a *pro bono* GAL has done few, if any, GAL cases. Given that the data suggests generally that the quality of the GAL's representation improves over time, relying on *pro bono* efforts to serve these low-income children is problematic. Moreover, it suggests that the current practice of occasionally waiving training requirements when attorneys agree to *serve as a pro bono GAL* for poor children may pose significant dangers for the children.

These problems are compounded by the fact that the GAL may be the only professional in a case involving low-income families-both parents are often *pro se*. Thus, other than the Judge or CMO, there is no oversight of the GAL's work. There is no attorney to serve as a "check" on the GAL's authority. Insufficient training or inexperience may cause harm to these children in need. Experienced, competent GAL

representation is therefore crucial, and any practice of relying on inexperienced GALs is a disservice to children.

C. Cost Estimates

The cost of providing GAL services to these low-income cases would be significant.²⁵ If the demand were estimated at 500 cases annually (the number derived from the judicial survey), the cost would range from \$710,000 (staff-attorney model) to \$751,000 (mixed staff and court appointed model) to \$875,000 (court appointed, independent contractor model).²⁶ If the need jumped to 850 cases annually (the number derived from internal court tracking), the range would increase to \$1.2 million (staff-attorney model) to \$1.3 million (mixed staff and court appointed model) to \$ 1.5 millions court appointed, independent contractor model).

Given that many of these cases involve parents with some limited means, it is possible that some program costs could be offset by parental contribution in line with family income. There are a number of additional findings from the research that suggest other ways to reduce costs, increase efficiency and increase quality.

D. Methods for Reducing Costs and Increasing Efficiencies of GAL Representation

1. Limited Appointment of GAL

An option for reducing time spent on a GAL, case, and thereby reducing costs, involves the Court itself. In cases in which the presiding judge or case management officer was only concerned about a particular issue, she could limit the area of investigation for the GAL, i.e., the GAL shall investigate issues related to Mom's prior drug use and the current home environment. This could reduce the time needed to investigate, keep the case from ballooning out of control and would provide the Court with critical information upon which to base its decision. The GAL could always petition to expand the investigation if the GAL felt that it was in the best interest of the child.

²⁵See Appendix E for a breakdown of estimated costs of GAL program. These figures are estimates only but are useful to understand the possible range of costs associated with a GAL program-

²⁶The GAL surveys reveal an average 30 hours per case. The Muskie Fellow's case reviews showed a 30 to 40 hour range depending on the involvement of attorneys: 30 hour average with two attorneys, 35 average with one attorney and 40 average if both parents are *pro se*. Given that many of the cases identified by the judicial branch are *pro se* cases, cost estimates are done on a 3 5 hour average.

This approach requires the active participation and monitoring of the Court to guarantee that the needs of the child are not being compromised. It also requires the Court to be familiar enough with the case to identify the critical issues for investigation. Although appointing a GAL for a limited purpose, or limited time, raises some concerns, it could be an effective tool for reducing time spent on a case.

2. Resource Guidebook for GALs

The GAL survey demonstrates that the average GAL case takes 30 hours. The average GAL spends seven hours with the child and other adults, and six hours writing reports, when one is written. The survey does not illustrate a microanalysis of time expenditure for the remaining 17 hours. It is assumed that a portion of the remaining time is spent on the investigation-interviews of collateral contacts, record review, etc. In addition, summaries of the Muskie staff attorney's cases and GAL survey responses suggest that a significant portion of case time is spent 1) pursuing needed resources for the child and family and 2) dealing with child/parent or parent/parent interactions, either routine or crisis.

The finding that the time spent on a case doubles when there is no access to social services supports the proposition that GALs spend significant time working to pursue resources. Many respondents indicated that a lack of insurance was a reason why they could not access services for their clients. However, the survey questions were not sufficiently tailored to isolate the true cause of lack of access to services. It seems likely that, in addition to problems related to health insurance, GALs are having difficulty assessing what services are available and how to access those services.

The creation and maintenance of regional lists of social services would provide access points to schools, mental-health clinics, domestic abuse shelters, local charities, etc. A one-time effort to compile contact names and numbers, which could be updated annually, could ultimately recoup the costs of production by limiting the number of hours a GAL needed to spend on a case. A resource guide, specifically tailored to the needs of GALs working with low-income families, would be an invaluable training tool and could enhance the credibility and effectiveness of a GAL in serving children.

3. Client Education Material

GALS reported that the greatest obstacle to performing their job is working with angry, uncommunicative parents who did not understand or appreciate the GAL role in the legal process. A relatively low-cost “public information kit,” prepared for each adult client would be useful in explaining the role of the GAL and encouraging parents to cooperate with the GAL. The documents could include a letter from the Chief Judge of the Maine District Court outlining the role of the GAL; a testimonial letter from clients who have worked with a GAL; a brochure listing the services provided by the GAL, etc. The public information kit would give greater credibility to the GAL and greater understanding of the GAL’s purpose. This would therefore reduce the time the GAL needed to spend explaining his or her role and working with the parents to get them to “buy into” the system.

4. Parent Education Programs

The difficulties in working with angry, hostile parents also suggest the need for further support of parent education programs geared toward this high-conflict community. Currently, the parent education community in Southern Maine is expanding and tailoring programs to meet the needs of these families. If GALS were able to refer clients to parent education programs specifically tailored to the needs of high-conflict families, it would lead to a reduction of time spent by the GAL working to reduce conflict between parents. Additional resources related to conflict resolution and parenting skills would reduce the level of conflict, or at least provide the tools to do so, for parents and children.

E. Methods to Increase Quality of GAL Representation.

The findings of the research suggest ways to maximize the quality of GAL representation and further reflect concerns that there is a need for increased oversight of GALS, particularly when working with low-income families. These findings lead to a number of recommendations.

1. A GAL Mentoring Program

The data indicates that experienced GALS are more efficient and more successful in their representation of children. If experience increases efficiency, the creation of a mentoring program would assist less experienced GALS and speed up the process of high-quality representation. A mentoring program could also provide a new GAL with

contacts for social services and other related services that are frequently used in GAL cases.

2. Increased and Specialized Training for GALs Working with Low-income Children

The development of mandatory 16-hour GAL training sessions, sponsored by the GAL Committee of the District Court, has dramatically improved the quality of GAL representation. The data suggests, however, that more work is necessary.

Although the survey results make clear that the greatest need for additional training relates to interviewing children and understanding child development, there is a consensus that additional GAL training is needed in relation to total job performance.

The overwhelming willingness of GALs to engage in further training is positive demonstration that GALs are committed to increasing the quality of their work. It also suggests that the existing mandatory training is insufficient, and the District Court should consider expanding the current training. Currently, the GAL Committee of the District Court sponsors the GAL training. The committee, comprised of court officials and private members of the community involved in GAL work, is a volunteer committee without staff support. Ultimately, professional staff may be necessary to increase the scope and quality of the trainings.

In addition to further efforts of the court system, other interested professional organizations should be encouraged to consider sponsorship of future trainings. Given the wide range of responsibilities of the GAL, a multi-disciplinary approach should be considered to develop training opportunities.

GALs should have specialized training related to the particular needs of low-income children. In the Muskie cases, 25% of school-age children were receiving special education services; only 16.7% of the general school age population in Maine is in special education.²⁷ In addition to learning disabilities, many of these children present with untreated physical and mental difficulties. GALs serving this population should be trained to address these children's needs.

²⁷ State of Maine, Department of Education, Special Education Data, www.state.me.us/educationkpeceddata/14yeardatahtm.

The universal identification of high-conflict cases as those most in need of GAL involvement helps to isolate the need. It also raises questions about necessary training for GALs in high-conflict cases: Are there characteristics of high-conflict cases that require specialized training or interventions? Is the role of the GAL in a high-conflict case different than in other cases? These issues must be considered so that GALs are properly trained to effectively protect and represent children's best interests in these cases.

There are similar concerns related to the identification of conflict resolution as a component of the GAL role. GALs and judicial respondents overwhelmingly described GALs as "facilitators," and "conflict-resolution people." This function may serve the laudable goal of reducing conflict for children. However, until the 2001 training, there was no presentation related to "conflict resolution." If GALs are in fact working to reduce conflict between the parties, GALs must be adequately trained in this area.

3. Creation of Judicial Position to Coordinate, Monitor and Guarantee High-quality GAL Representation for Low-income Children.

Many of the findings in this report, and the recommendations suggested in this section, could be addressed through the creation of a central management office with one staff position. The staff person could expand and improve the current GAL training, work toward the development of a "best practices" model for GAL representation, provide and disseminate information to GALs statewide about best practices and current literature regarding the representation of children, explore the particular needs of low-income children, and develop specialized training for GALs working with low-income families, as well as resources for those children. The staff person could compile and maintain the regional resource books for GALs statewide. The staff person would become the institutional memory and could assist a GAL program to function on a small budget with great effectiveness.

F. Need for Agreement on Scope of GAL Responsibilities

Although there seems to be agreement among the GALs and the Court that GALs should be taking an interactive approach with families, this function is not set forth in the statute, or in the new GAL standards. While the standards of practice for GALs suggest that GALs' responsibilities cast a wide net, involving them in many areas that are more

akin to social services rather than legal representation, the standards do not suggest that GALs should be actively engaging with the family to improve the internal family system, i.e., improving family dynamics, parenting skills, communication. These concerns are reflected in the attorney survey in which only half of the attorneys thought it was appropriate for GALs to engage in this type of interactive, social service role. One respondent indicated, “a GAL should observe and report to the Court, not get personally invested in fixing broken families.”

These findings suggest that there is a not a uniform understanding between GALs, parents’ attorneys, DCJsKMOs, the Legislature, parents, children and the public about the scope of the GAL’s duties. It may be that the role of the GAL is too broad or too expansive to be addressed by one professional. Coordination and collaboration between the legal and mental health professions may be the answer. Given the importance of the GAL as an advocate for children, there needs to be further discussion and consideration of the appropriate role of the GAL in family law cases.

IV. Conclusion

The research has identified that GALS provide a valuable service for children in family law cases but low-income children have very limited access to GAL representation. The unavailability of GALS in divorce and parental rights cases involving low-income families has a serious and negative impact on the Court's ability to address the needs of what is one of the state's most vulnerable populations: poor children caught in the middle of high-conflict custody disputes. Unfortunately, under the current system, a child's economic status determines the availability of a resource that can reduce the level of conflict in the course of a parental rights case and can connect the child with critical social services.

This report has identified potential cost savings and ideas for increasing efficiency and quality of GAL representation. The creation of an easy-to-use resource guide for GALS would ease the burden GALS face in connecting low-income families with needed resources. Increased training for GALS, especially in regard to issues raised in cases where neither parent is represented by counsel, would be another relatively low-cost but important step in improving quality.

There appears to be momentum to confront the lack of GAL representation for low-income children. One promising development is the District Court's redirecting the duties of an existing judicial position to include a focus on GAL representation throughout the state.

However, given the depth of identified need, there is no way to protect these low-income children with the current financial allocations to the court system. The *pro bono* efforts of the private bar, while significant, cannot be expected to fill the void. Ultimately the Legislature, the Judiciary and the Maine community as a whole must address this unmet need for low-income children. Options can include the expansion of the court-appointed system available in Title 22 child protective cases, the establishment of a project specifically designed to provide GALS to low-income families, or some combination of approaches could be considered. In the end, however, the continued failure to address this problem means that poor children, simply because of the family's income, will not be afforded the benefits of GAL representation. As a state and a community we cannot afford to let this need go unmet.

Muskie Fellow: Case Findings And Recommendations

I. Overview

Since 1999, the Muskie Fellowship for Legal Services has funded a fellowship staff position based at Pine Tree Legal Assistance, to represent low-income children in York County. To date, the “Muskie Fellow” has represented over 70 low-income children and will continue GAL representation until fall 2002.

Case Management Officers and District Court Judges in York County (CMOsAXJs) refer GAL cases directly to the Fellow. The CMOsEXJs are given discretion to appoint the Fellow to children in low-income or working poor families where there are no available resources to pay for a GAL. In discussions leading to the creation of the Fellowship, *pro se* families were identified as having the greatest need for GAL services. Consistent with the fellowship’s philosophy, CMOs/DCJs are thus encouraged, but not required, to appoint the Fellow in *pro se* cases.

As part of the compilation of this report, the Fellow conducted an internal case review of 30 GAL cases completed by September 2001. These cases offer a snapshot into the world of child representation in low-income families.

II. Discussion

The actual breakdown of the 30 cases reviewed internally supports the basic finding I take from my GAL representation of low-income children: In my experience, the level of conflict between parents most often determines the need for a GAL rather than the lack of legal representation of parents or allegations of specific illegal conduct. For example, almost half of these cases were post judgment motions to modify an existing court order. These parents had already been to court on at least one occasion. Conflicts continued to resurface in these cases and the parents were unable to reconcile or work together. Instead they turned to the court system. Similarly, the high referral rate to parent education and parent/child counseling compared to the low rate for actual evaluations (e.g. substance abuse, mental health) supports the proposition that the cases more regularly present behavioral family issues rather than isolated illegal or improper conduct.

The high rate of conflict in families is further represented in the total breakdown of communication in every one of my cases. In many cases the families never communicated

effectively when they were a unit. In others, there was so much hostility resulting from the family break-up, one or both parents were unable to communicate at all. At a minimum, this precluded the parents from communicating about their children's needs.

Children's needs at a time of divorce or separation are high—they are stressed and worried about their future. If the parents cannot communicate about their children's experiences, the children's needs are more likely to be unmet. More common, and more detrimental, are the parents who cannot communicate effectively and are so angry that they are actively hostile and emotionally abusive toward one another. Although the conflict is between the parents, the children are witnesses and suffer the consequences.

III. Observations and Recommendations

A. The Role of the GAL in a Low-income, High-conflict Case Is Expansive

Representing the child's best interests before the Court involves getting to know the child, evaluating his or her needs within the context of the family and advocating for the child before the Court. In cases with low-income families, there is often a lack of resources. In many cases neither parent is represented by legal counsel. Many of the families are "working poor." They earn too much money to be eligible for public benefits, including medical coverage, and they are struggling to provide for their families. Even when families qualify for free medical coverage there is usually a long waiting list for needed services. As a result of the lack of legal and social services resources, I am often the only professional involved in the case.

In these cases, out of necessity, I serve many functions. First and foremost I investigate the circumstances of the child. Specifically, I look into parental allegations of misconduct or simply evaluate the current home situation with each parent. Given the lack of resources in these cases, I may be the only person involved in the case who can compile and present this information to the Court. This service provides the Court with a deeper understanding of the child's situation and assists the Court in rendering its decision.

Because these are divorce and parental rights cases rather than child protective matters, it is often assumed there are no issues of safety for these children. In fact, issues of physical safety and mental health surface regularly, and some of my cases by necessity turn into child protective cases. In the cases in which I am the only professional involved

with the family, discovery of safety issues is particularly important as the likelihood of detection from other sources is limited.

More regularly, however, my investigations reveal situations in which the children are experiencing mental anguish that may not rise to the level of abuse and neglect, but is nonetheless intolerable. In these cases, the trauma to the child is often a result of the intense conflict and hatred between the parents. In these cases, I find that my role as GAL becomes more expansive.

Ideally in cases with intense conflict I refer children and their parents to professionals who are best suited to work on the specific issues facing the family. These referrals can be most critical for the parents. By referring the parents to needed services, the parents obtain their own support system while simultaneously being instructed on how to protect their children from the trauma of the parental separation. When these services are available, and I am able to collaborate and coordinate with social service providers, the outcomes improve for the children.

The unfortunate reality in many of my cases is that these services are not available. Long wait lists for providers or a complete lack of services mean that children and families go without. Consequently, I often perform many roles. As the “provider” in the case, I may be the only person who can facilitate meetings between parents, spend time on the telephone working through crisis with parents or attend a school-based meeting to advocate for a child’s educational or emotional needs. Thus, in these cases, I often take on an interactive role with the parents as well as the children.

The GAL standards do not specifically address this role. Nonetheless, I would argue that in low-income cases without resources, working with the parents can be as important as working with the child. If I am able to increase communication between the family members, explain the impact of parental behavior on children, encourage the parents to place their children’s needs ahead of their own and try to teach the parents to negotiate their own solutions to family problems, my work with the parents benefits the child. Indeed, the cases in which I have had the greatest success are those in which I was able to bring the family together to work toward the common goal of helping the children adjust to the changes following a divorce or separation. The expansion of the GAL, role

to include an interactive relationship with the family can be of great benefit to **low**-income children given the lack of other available resources.

B. GALs Must Be Adequately Trained and Supervised

This expansive role comes with dangers as well as benefits because the GAL is given almost unlimited access to, and influence over, parents and children. As a result, it is imperative for GALs to be properly trained to work interactively with the parents and children.

Similarly, there must be sufficient oversight of the GAL. The GAL may be the only professional in a low-income case. Parents without legal counsel will likely provide little oversight of the GAL. Even the institutional oversight of the DCJ/CMO may be limited since the vast majority of cases are settled out of court. In light of the potential for such broad involvement with low-income families, and the lack of potential checks and balances on that involvement, training and supervision for GALs is critical.

Due to the lack of resources available for GALs in low-income cases, GALs are most likely to be appointed in only the most contentious cases. If GALs working with this population are most regularly confronted with high-conflict cases, it follows that GALs should specifically be trained to represent children in these types of cases.

In addition, many of the children in these cases present with special needs related to educational or mental-health issues. GALs must be trained in how to identify these needs and advocate for the necessary services.

Given the vulnerability of the population it is critical that GALs receive excellent, continuous training on best practices in the field of child representation. Only through these investments will we guarantee the most effective GAL representation of low-income children.

C. Critical Resources

As noted in the case statistics, there was a high referral rate to parent education and counseling services. These are critical services and must be a priority for these children.

Parent education programs are a necessary and integral part of the family law case. Many parents need to be taught to view their divorce or separation from the perspective of the child. Without this perspective, parents often continue to place their children in the middle of their disputes, slowly tearing their children apart. The parent education

community in Southern Maine is working aggressively to expand its reach and its programs. Unfortunately, there still remains a desperate need for programs specifically related to high-conflict cases.

In addition to the need for parent education, there is a great need for monitored exchange locations. In many cases, the level of conflict between the parents is so high that drop-off and pick-up for visitation is a traumatic event for the child. The parents are unable to control their emotions and the children are forced to witness their parents' extreme anger on a regular basis.

Although these types of programs focus on the parents, the direct beneficiaries of their success are the children. When parents learn to effectively communicate, or children are exchanged in a safe, non-stressful environment, the children are given a chance to establish relationships with their parents.

Access to mental-health services is likewise critical in many of these cases. The presence of mental-health services in my cases has been extremely beneficial. When a child is working with a therapist, I maintain a close relationship with the therapist and work cooperatively to guarantee the safety and well-being of the child. As an attorney-GAL, the skills of a mental-health worker can be invaluable to representing a child.

With the expansion of the CubCare program in Maine, more children are receiving medical coverage, and thus mental-health services. There still remains, however, a population of children unable to access mental health services. An increasing problem is that, even when a child is eligible for mental health services, there are long waiting lists due to the lack of providers who accept Medicaid. Guaranteeing access to this resource in a timely manner is crucial for these children.

Most parent education and mental-health services are centered in cities, leaving the rural children without access. For many of the low-income families, transportation is an obstacle to securing services. Any efforts to increase the availability of services must consider the rural nature of most of the state and work creatively to provide access to rural children.

IV. Conclusion

The GAL's role in family law cases involving low-income families can be critical, not only in assisting the Court in making a decision concerning an award of parental rights

and responsibilities, but also in connecting family members with much needed social services and actually reducing the level of conflict experienced by children. This is especially true in low-income cases in which parents are often not represented.

While the GAL can serve a defining role in family law cases, there exists the potential for harm arising from the GAL's access and influence over parents and children. Low-income children are particularly vulnerable because their families tend to lack support systems (financial and emotional) in times of crisis. The children must be ensured GAL representation that is sensitive, effective and accountable. Proper training and oversight is essential to provide these children with the high quality representation and protection that they deserve.

V. Case Statistics

Table D. Breakdown of 30 Muskie GAL cases	
Procedural Status of Case	
Parental Rights & Responsibilities	43%
Divorce	13%
Post Judgment Motion to Modify	43%
Issue	
Parental rights and contact	70%
Contact (Visitation) Only	30%
Outcome	
Cases to final contested hearing	17%
Settle	73%
Other (Dismissed)	10%
Settlement Rate with 22~0 se Parents	82%
Settlement Rate with Two Attorneys	100%
Settlement Rate with One attomev	42%
I Renrepresentation	
<i>Pro se</i>	37%
One Attorney	30%
Two Attorneys	23%
<i>OthfP</i>	10%
Reports	
Interim	17%
Final	50%
None	33%
Number of	
Protection from Abuse Orders	37%
Criminal Charges	13%
Illiteracy in Parents	7%
Children in Special Education (of cases with school age children)	25%
Allegations of	

28 In these cases, the parents were represented at some point in the process but did not retain counsel for the life of the case.

Breakdown in Communication	100%
Domestic Violence	30%
Substance Abuse	37%
Child Abuse (physical or sexual)	20%
Referrals made to	
Parent Education	83%
Batterers Programs	7%
DV Education	7%
Parent Counseling	57%
Child Counseling	60%
Evaluations requested	
Psychological of parents	3%
Psychological of children	3%
Substance abuse of parents	10%
Substance abuse of children	0 %

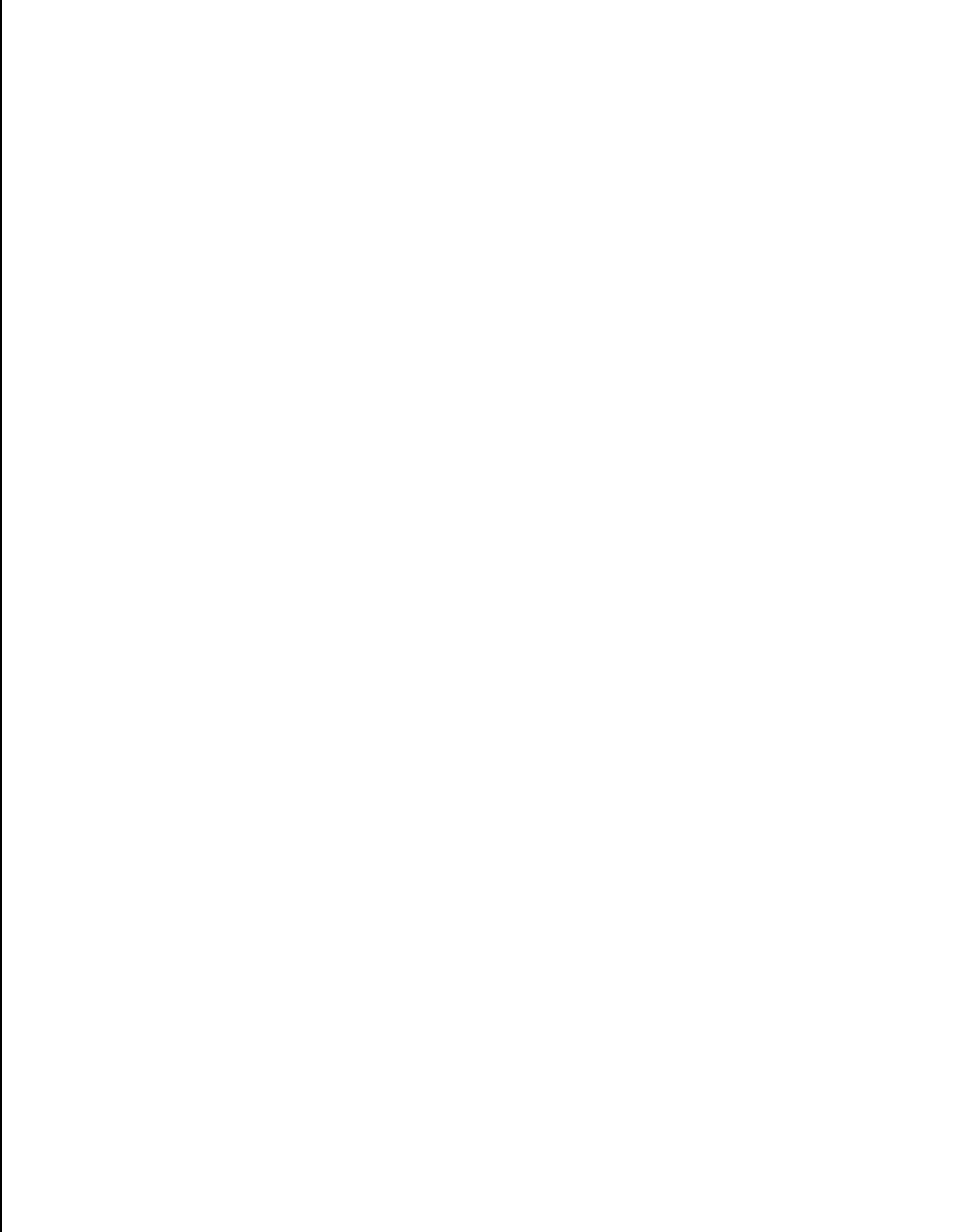
Overview of Survey Methodology

In an effort to capture the views on GAL representation of the three professional groups most integrally involved with children in divorce and parental rights and responsibilities cases, this study surveyed Guardians ad litem [GALs], District Court Judges [DCJs] and Case Management Officers [CMOs], and family law attorneys. The surveys were drafted by the Muskie staff attorney and were based upon her field experience as a GAL. The surveys, although tailored to specific audiences, posed questions relating to the effectiveness of GALs, obstacles faced by GALs, availability of GALs, and finally, methods for providing GALs to low-income children. The initial drafts of the surveys were circulated for comments to members of the Maine District Court GAL Committee, judicial employees, legal services and private attorneys. The comments were incorporated into the surveys that were then distributed to each group.

The response rate to the District Court Judge/Case Management Officer Survey was over 80% and can be taken to be highly representative of the views of the judicial participants.

The response rate for the GAL and attorney surveys did not exceed 50%, typical for mail surveys, so the results of these two surveys could be subject to significant selection bias. For example, it is possible that only attorneys who felt strongly about the value of GALs bothered to reply to the survey. This would explain the existence of two distinct clusters in the data showing markedly different attitudes toward the effectiveness of GALs. Those attorneys who did not respond, under this theory, would have given responses somewhere between those of the two clusters if they had participated in the survey. Similarly, the GALs who chose to respond may have different characteristics than those who chose not to respond. Also, the survey was only mailed to those on the roster and not all GALs are rostered under the new system.

Nevertheless, the respondent questionnaires provide a wealth of information about GAL work in Maine. What follows is a descriptive summary of the findings of the GAL, judicial and attorney surveys.



Guardians *ad Litem* (GAL) Survey Summary

As with all of the surveys in the GAL study, this survey was drafted by the Muskie staff attorney and received comment from other legal services attorneys, members of the GAL Committee of the District Court, and other judicial personnel. The survey sought to compile both general information relating to GALs, and specific information regarding the use of GALs in cases in which the parties were low-income, one of the parties was *pro se*, or one of the parties was represented by a *pro bono* attorney, Pine Tree Legal Assistance, or the Volunteer Lawyers Project.

Data Sample

A total of 188 surveys², were mailed to the list of rostered GALs³. The GAL roster is maintained by the office of the Chief Judge of the Maine District Court and represents persons in Maine who qualify to serve as a GAL in Title 19-A cases.

The survey was anonymous. Sixty people responded to the initial mailing. Reminder phone calls were made to the entire list, which elicited another 16 responses, for a total of 76 surveys. Of the 76, four indicated they had not done any GAL work, so did not complete the questionnaire. Thus, the total number of completed surveys is 72.

GAL Experience

The number of GAL cases handled by respondents varied widely, from one to several hundred cases. The average number of GAL cases handled by a respondent was 65.³¹ The median was considerably smaller-25 cases. Twenty-five percent of the sample had handled less than 10 cases; twenty-five percent had handled more than 60 cases. Responses came from across the state with 52% working only in southern Maine and 32% working only in northern Maine.

There was a statistically significant correlation between the number of cases handled³² and the answers to 13 other questions in the survey.³³ These correlations will

2g See page 57 for a list of the survey questions, as well as a detailed percentage breakdown of the responses.

3o The list of rostered GALs is the most comprehensive list of GALs and accounts for almost all professionals qualified to serve as a GAL in the state.

31 The distribution has a log-normal distribution, with a mean of the logarithms equal to 3.25 and a standard deviation of 1.43.

32 Note that correlations were actually run with the logarithm of the number of cases handled.

be discussed below, but note at the outset this finding indicates that experience is an important variable affecting the opinions of GALs.

GAL Role

One of the initial questions in the survey was an open-ended request to define the role of a GAL,. There was a consensus among the respondents that a GAL's role was an amalgam: the GAL is an agent of the Court advocating for the child, a mediator/facilitator of family communication, an investigator, and a social worker.

Respondents described GALs and their role in the following manner:

"The eyes and ears of the Court to insure that the child's best interests are represented. "

"An advocate for children, advocate for alternative dispute resolution in families, negotiation, mediation, Agent of Peace!"

"1. Advocate for the interest of the child(ren). 2. Independent investigation and report to the Court. 3 Mediator/facilitator to serve the best interest of the child(ren). "

"A tiger for what is in the children 's best interest. "

"Investigator, mediator, magician and facilitator. "

Most of the respondents felt it was the GAL's job to take an interactive approach with the families. These respondents indicated their role was to work with the parents, not solely to advocate for the child.

"A GAL should focus on the best interests of the children. This often means trying to get the parents to better communicate and co-parent, which allows the children to benefit. Recommend to both parents that it is important that the child have a parent-child relationship with each parent. "

"The role of the GAL is to serve as an extension of the Court to thoroughly investigate the circumstances of children in families of divorce, and render recommendations to the Court regarding the best interests of the children. The GAL also serves as the children's advocate. The GAL may also serve as a facilitator in helping parents make parenting agreements and decisions regarding parental rights and responsibilities. "

33 At the 95% level of significance.

“To suggest services to the parents that will help them be better parents; to suggest ways of communicating to help parents resolve conflicts; help parents identify, common parenting goals and suggest ways of achieving them. ”

“I see my role as one that protects the child S (children ‘s) best interests. Also provide as much info regarding parenting and effects of divorce on children to both parents and grandparents involved. To gain the trust of each child, hopefully to hear what they are thinking and feeling and to try and help them understand this is not their fault. ”

“Advocating the best interests of the child objectively; gathering information and presenting it to the parties and Court; helping parents relate to each other in the child’s best interests; helping parents relate to the child about the changing dynamics; helping the child deal with the parents and the changes. ”

“A catalyst for change in the family dynamics. ”

Some respondents made it clear that a GAL’s role often changes, depending on the type of case.

“In a case with pro se parents, the GAL functions as a case manager/mediator/magistrate. ”

“In a case with DHS involvement, the GAL may function as a social worker, or, if there is a large treatment team, the GAL may need to function as an administrator/supervisor. ”

“In a case with paying clients, the GAL functions as an arbitrator. ”

“In a case with adolescent clients, the GAL may need to function as an attorney. ”

One respondent noted that the sophistication level of the family influences the role of the GAL,:

‘First, I find my role as GAL defined by the level of understanding the parents possess of the legal system. At times, I spend a great deal of time explaining legal process and procedure and what the consequences of actions are. Second (and I feel very important) I am a mediator, investigator and therapist. ’

The next question on the survey asked, “Do you think it is appropriate that a GAL work with a family to improve family dynamics, improve parenting skills, and improve communication between family members?” Not surprisingly, with the

previous descriptions of a GAL's role, a high percentage (83%) of the respondents indicated that such work is appropriate. A small sub-group of the respondents (nine of 65), particularly those with limited case experience (average of eight cases), did not think it was appropriate to undertake such activities.

The high number of positive responses related to working with the parents is interesting, given that this role is only hinted at in the Standards of Practice for GALs. Similarly, the respondents' focus on "mediation, facilitation and settlement" is not a central tenet of the standards. If GALs are so fully involved with the family, the standards, and subsequent trainings, should reflect that. If this is not an appropriate role for the GAL, the standards should be clarified.

Serving as a GAL

Responses to the survey revealed that the average time spent on a case is approximately 30 hours. The data indicates that GALs spend a 30-hour average whether the case was handled on a fee or *pro bono* basis. One might assume a *pro bono* case for a low-income family would take longer, due to the difficulty of finding resources and the frequent lack of health insurance (cited later in the report), but the Muskie staff attorney's average for a low-income case also ranged from 30 to 40 hours per case. This suggests that the 30-hour average is a true number independent of the financial status of the parties.³⁴

Of those 30 hours, an average of seven hours are spent with the child—three hours alone with the child and about four hours in the presence of another adult (parent, teacher, etc.).

Asked if they always write a report and how long they spend writing reports, GALs split into two groups. Two thirds indicated they always write a report. The remaining third, with two exceptions, indicated they "often" write a report. When a report is written, the survey indicated that it takes an average of six hours.

It must be emphasized that 30 hours per case is only an average. Even though this number, along with estimates for hourly rates, can be used to estimate the average cost of a GAL's participation in a case, in fact, hours per case vary depending on the

³⁴ The Muskie staff attorney's findings, discussed at page 26, actually suggest that time spent on low-income cases is most affected by the presence or lack of attorneys for parents. That is, GAL time spent increases when the parents do not have lawyers.

complexity of the case and between GALs. For instance, the 95%-confidence range for average time spent on a case by an individual was 24 to 35 hours. In other words, 19 out of 20 GALs reported they spent between 24 and 35 hours on average, per case. That suggests that while the average is 30 hours per case, many cases could take more time than that.

Effectiveness and Impact of GALs

Only 17% of GALs report that their cases go to contested interim hearings on a regular basis (“often” or “always”), and only 4% report that their cases go to contested final hearings on a regular basis. Overall, 27% of GALs stated that they “always” help settle a case—presumably when a settlement is reached. Another 60% indicated that they “often” help settle a case. And 50% reported that the families accept their recommendations in entirety at settlement. When a case does get to a contested hearing, 60% of the GALs report that the Court “always” or “often” accepts their recommendations in entirety.

Without additional data, it is not possible to directly compare this high rate of success with what would have happened had a GAL not been appointed. Nevertheless, the results are very encouraging. Given the impact on children from high-conflict parental separation, settlement of a contested proceeding suggests a reduction of conflict and the avoidance of contested judicial hearings. The benefits flow to the children and the court system. Also, acceptance of GAL recommendations at settlement by the parties or by the Court means that a neutral articulation of the child’s best interests is a prevailing influence.

A GAL’s effectiveness seems to improve with experience. GALs who had completed between 10 and 30 cases, reported higher rates of settlement and a higher rate of acceptance of their recommendations by the parties at a final hearing. They also reported they were less likely to have contested interim hearings in their cases and, if they went to contested interim hearing, the Court was more likely to accept their recommendations.

In addition, the GALs with more experience reported spending more time with the children they represented and were more likely to believe it appropriate for a GAL to work with a family to improve family dynamics and communication skills.

The relationship between experience and effectiveness suggests that early training or possibly a mentoring program would be useful to increase the impact of GAL representation. On the other hand, it is possible this finding reflects a self-selection process-GALS who find themselves relatively ineffective might move on to other types of cases, leaving those who are competent to build up a large, historical GAL case load. If such an explanation is the dominant cause of the statistical finding, it would suggest that an evaluation procedure should be implemented to determine whether a person is suited for GAL work or not.

In an open-ended question, the survey asked, “What is the most important type of case in which to appoint a GAL.?” The respondents (38 out of a total 68) indicated that high-conflict cases were most critical. Next were cases involving domestic violence (18 out of 68), followed by cases involving substance abuse (12 out of 68).

Although the respondents identified high-conflict cases as particularly critical for GAL involvement, GALS indicated a strong belief that GAL. presence is a significant, and positive, addition to the family law arena *in any case*. They overwhelmingly answered that the appointment of a GAL is the single most important factor in improving the outcomes for children in Title 19-A cases. When asked where they would add or reallocate resources for families in these cases, respondents indicated a preference for funding GALS and mental-health counseling for families. There was also strong support for providing attorneys for parents. Some respondents chose increased court time and parental education.

Need for Training

The desire for training was clearly expressed in the survey results. Pursuant to Maine law, GALS must complete 16 hours of basic training. Approximately half the respondents stated that they had insufficient training to fulfill the multi-faceted role of a GAL. Almost the entire sample, even those who felt they were adequately trained, indicated they were willing to take additional training. This finding is not surprising since the findings in the “Role of the GAL,” section enumerated the wide range of expectations the GALS had for themselves, as well as the wide scope of responsibility assigned to the GAL in the standards. Such diversity of responsibility necessitates broad training.

The most common suggestion for additional training involved interviewing children, a subject given limited coverage under the current 16-hour training session. Forty-seven percent of the of the 53 respondents offering suggestions made such a request, suggesting a level of discomfort in dealing with the actual client-the child(ren) at issue. Some of the other requests for training from respondents were for “understanding child development” (37%), “understanding conflict and mental-health in divorce” (21%), “more legal training” (15%), and community resources (11%). Note that some respondents (22 of them) made more than one suggestion.

Relationship with the Child

When asked about their relationship with the children they represent, a large portion of the GAL sample indicated they often made a connection with the child. The respondents also noted, however, they were unsure that the child understands the role of the GAL. This survey finding is reinforced by the numerous requests for more training in interviewing children. These responses certainly suggest that more training in interviewing children and in child development would make the GALs more comfortable in spending time with the child. Indeed, that finding is supported by the evidence that the more experienced GALs spend more time alone with the child(ren).

Obstacles

The GAL survey posed an open-ended question asking GALs to indicate the greatest obstacles GALs face in advocating for a child’s interests. The highest number of responses cited the difficulty of working with angry, uncommunicative parents who resisted working with the GAL, or working with parents who did not understand the GAL’s role. Two other significant obstacles noted by the respondents related to a lack of financial resources to obtain needed services for the family, and an inability to work with the parents’ attorneys.

The GALs were asked follow-up questions related to the availability of social services. Despite the recommendations for services,³⁵ more than a thud of

35 The answers indicated that GALs are most likely to recommend mental-health counseling (most answers ranging from “sometimes” to “often”), but rarely recommend a substance abuse evaluation. The respondents sometimes recommend psychological evaluations.

respondents indicated they were “often” not able to obtain psychological evaluations, or counseling, due to lack of health insurance.

GAL Cluster Analysis

Statistical clustering analysis was utilized to identify distinct groupings of GAL respondents. Two distinct clusters were found relating to finding services for families. The 22-person cluster found it difficult to find services, and was likely to spend more than twice as long on a case, than the 37-person cluster that found it relatively easy to find services. This is a significant difference that raises several questions: was the experience of the GAL the determining factor? Was health insurance, or lack thereof, the turning point? Did GALs put in more hours because they couldn’t find other professionals to relieve some of the burdens? One interpretation of this finding is that the availability of services for families would dramatically reduce the time a GAL needs to spend on a case. On the other hand, the first cluster may have simply had more difficult cases. Further research in this area would be very helpful because of the potential economic implications.

Structural Placement of GALs

The final set of questions in the survey addressed how money should be allocated to manage GAL representation of low-income children. Respondents overwhelmingly favored GALs who were court-appointed on an individual contract basis, as indicated in Table A.

Table A. Respondents’ Support for Various GAL Management Options

	Support for Option	First-choice Option
Court-appointed on an individual contract basis	91%	68%
Employee of the judicial branch	51%	15%
Employee of statewide children’s law Provider	25%	10%
Employee of statewide legal-services Provider	33%	0%
Employee of statewide mental-health Provider	38%	7%

Judicial Survey Summary

As with all of the surveys in the GAL study, this survey was drafted by the Muskie staff attorney and received comment from legal services attorneys, members of the GAL Committee of the District Court and other judicial personnel. The survey sought to compile both general information relating to GALs, and specific information regarding the use of GALs in cases in which the parties are low-income, one of the parties is *pro se*, or one of the parties is represented by *apro bono* attorney, Pine Tree Legal Assistance, or the Volunteer Lawyers Project.

The judicial branch was an active participant in compiling this information. Under the direction of the Honorable Jon Levy, Chief Judge, Maine District Court, members of the judiciary and their staff cooperated extensively with this project. Chief Judge Levy's willingness to assist in this research provided a valuable and unique view related to the need for, and effectiveness of, Maine's GAL program.

Data Sample

All numerical responses discussed in this section are averages, unless otherwise noted.

The sample size of 35 consisted of 29 District Court Judges [DCJs] and six case Management Officers [CMOs]. The judicial survey⁶ was distributed in person to the participants during a judicial business meeting of the District Court and responses were gathered on site. The sample size represents 83% of all DCJs/CMOs in the state. The DCJs were on the bench for an average of eight years. The six CMOs had been on the bench for an average of three years.

GAL Role

The survey asked the judicial respondents to explain their interpretation of the GAL's role in Title 19-A cases. As in the GAL survey responses, DCJs/CMOs consider the GAL an advocate for the child's best interests. The DCJs/CMOs also share the GALs' view that the role of the GAL often goes beyond the scope of duties set forth by statute and in the Rules and Standards of Conduct for GALs.

A sampling of judicial descriptions of the GAL's role follow:

“To investigate the circumstances of the children and the parties, try to bring the parties together toward an ultimate resolution and to make recommendations to the Court based on the best interests of the children. ”

“1. To look out for the child’s needs/interests and advise the Court of them, 2. Facilitate communication/settlement with kids, 3. Court time-saver. ”

“A person who investigates the situations and identifies the problems, formulates the solution, mediates with parties to effect the solution, and failing that, advocates before the Court for it. ”

“To determine the best interests of the child and to help educate the parents as to your results and to give voice to the children. ”

“1. The eyes and ears of the Court within the family, 2. Education about the Court process. ”

“Best interest of the child and give the Court another objective view of parties/mediator. ”

‘Represent the best interest of the child, spare the child the ordeal of testifying in Court. ’

Given these statements, responses to questions related to the appropriateness of specific GAL duties are not surprising: nine out of 10 DCJs/CMOs think it is appropriate for a GAL to work with a family “to improve the family dynamics,” and “improve communication between family members.” Eight out of 10 judges think it is appropriate for a GAL to try to improve parenting skills.

Effectiveness and Impact of GALS

All DCJs/CMOs responding to the survey felt that the involvement of a GAL improves their ability to evaluate the best interest of the child. Eight out of 10 stated that GALS adequately represent a child’s best interest.

All but one of the 35 respondents thought that the number of years a GAL had practiced makes some difference in the quality of representation. Two to three out of 10 judges stated that it made a lot of difference. This is consistent with the results from the GAL survey in which GAL experience was related to self-reported success rates.

36 See page 67 for a statistical summary of the judicial survey data.

Six out of 10 of the judicial respondents thought that GALs needed additional training. This finding is also consistent with the GAL survey, in which about half the GALs responding stated they needed more training, and almost all were willing to take further training.

A high percentage of the judiciary—eight out of 10—thought that cases are resolved more quickly when GALs are involved. The respondents indicated that, in their view, GALs help the parties settle without a contested final hearing in seven out of 10 domestic relations cases. Furthermore, a full nine out of 10 DCJs/KMOs thought that domestic relations cases come back to Court less often when a GAL is involved.

Given the choice in a low-income domestic relations case, nine out of 10 DCJs/CMOs would assign a GAL for a child in preference to an attorney for one party, or a social worker/case worker for the family.

DCJs/KMOs believe that GALs are useful beyond low-income cases.³⁷ For example, four out of 10 of the respondents would like to appoint a GAL in any case in which minor children are involved. Seven out of 10 would like to appoint a GAL in contested family cases that involve children. DCJs/KMOs who thought it was useful to have a GAL were more likely to report that parties requested a GAL. It is possible these DCJs/KMOs tell the parties of the GAL option and/or encourage parties to request a GAL.

The overwhelming majority of DCJs/KMOs (nine out of 10) selected high-conflict cases as the most important case in which to appoint a GAL for the child. Three out of ten felt that a GAL is important in all cases.

Based on the significant positive responses noted above, it is not surprising that DCJs/KMOs affirm that the participation of a GAL in a case improves their ability to evaluate the best interests of the child. Their comments illustrate the benefits they derive from a GAL appointment:

“A more objective view from the perspective of the child’s best interests.”

³⁷ The DCJs/CMOs were almost evenly split on the question, ‘Are GALs more or less useful in cases in which one or both parties are *pro se* or in which one or both parties are represented by counsel?’

‘Providing an intimate, and confidential, report of the children’s wishes and best interests. ’

“More impartial information. ”

“A more balanced presentation of the facts, and more importantly, a good GAL has focused on the right issues and asked the important questions as compared to the advocates ’ stance of putting a spin on the facts. ”

“1. Always have more and better information when a GAL is involved; 2. Not always, but often, recommendations are either adapted or strongly influence the ultimate decision. ”

“GAL evaluates situation over time as opposed to 1-2 days I may see the parties. ”

“We get information about family dynamics, parents ’ personalities and parenting styles that we otherwise would not receive. ”

It is important to note, however, that DCJsKMOs do not always decide that GALS are appropriate. For instance, although represented parties request a GAL in three out of 10 cases, the Court sometimes turns *them* down. Two out of every 10 DCJsKMOs responding have refused at times to appoint a GAL when requested by both parties. Five out of 10 DCJs/CMOs stated they have refused at times to appoint a GAL when requested by one party who is willing to pay.

Need and Availability of GALS

The respondents indicated that low-income, *pro se* parties request a GAL in one out of 10 cases. Even if these parties do not request a GAL, the DCJs/CMOs stated they would like to appoint a GAL in five of every 10 cases in which the parties are *pro se*, low-income and unable to afford a GAL. The DCJs/CMOs reported that they only secure *pro bono* GAL in an average of 28% of those cases. 38

Getting those GALS in 28% of those cases is not easy, as indicated by the personal reactions of the DCJsKMOs in answering the question, “What do you do now to secure GALS when a family cannot afford one?”

“Call on volunteers, including the VLP. ”

38 There did exist a group of seven DCJs/CMOs (20% of respondents) who reported an extremely high rate of *finding pro bono* GAL (70% of cases), whereas the average of the other DCJs/CMOs was approximately 10%. It is possible that geography influences the ability to secure a *pro bono* GAL. *The*

“ ‘Arm twisting’ of attorneys ”

“Call my ever-shrinking circle offends. ”

“Call around and twist arms. ”

“Wail”

“Lean on attorneys who appear frequently. ”

These findings related to need and availability of GALs for low-income children can be used to provide one estimate of the need for GALs. Assuming that the number of low-income cases involving children is proportionate to the percentage of children in poverty in Maine (15%)³⁹, and assuming that 8,500 family cases with children are filed each year⁴⁰, it then follows that there are 640 cases per year in which GALs are needed for low-income family disputes.⁴¹

In the 640 low-income cases presenting a need for GALs, the DCJs/CMOs were able to find a GAL to take the case *pro bono* an average of 28% of the time. Thus, the unmet need for GALs, following the same logic used above, is 75% of 675 cases, or 506 cases, which we round to 500 cases per year.⁴² Because this estimate is based on low-income families in Maine, it may not include working poor families who, although they live above the federal poverty line, cannot afford this service.

Financial Allocations for GALs

DCJs/CMOs were asked what type of program they would support if funds were allocated to provide GALs to low-income families. The options and results follow.

surveys did not ask the respondents where they worked, however. Further study to understand this difference could be useful to isolating the availability and actual need for GALs throughout the state.

³⁹ *Maine Kids Count*, 2001 Data Book, p. 10

⁴⁰ In fiscal year 2001, there were 9,000 initial family law cases filed in Maine District Court. Although not specifically tracked in '01, the court estimates that there are an additional 3,000 post judgment filings each year. Thus, the total estimated filings equals 12,000. The court does not currently track how many cases involve children, and many couples filing a complaint for divorce do not have children but the case is still filed as an initial family matter. Current court estimates are that 70-75% of total filings involve children. Therefore, 9,000 of the total 12,000 family law matters filed annually are estimated to involve children. Interview with Wendy Rau, Director, Family Division, Maine District Court, 2001.

⁴¹ $67\text{HI.5} \times 0.15 \times 9000$. (Need) = (Fraction of cases needing a GAL according to DCJs/CMOs) x (fraction of cases assumed to be low-income) x (estimated number of divorce and parental rights and responsibilities cases filed annually).

⁴² Note that the median response to this question about unmet needs significantly differed from the average: the median response was 10%, indicating a skewed distribution, i.e., half of the judges *can only* find a *pro bono* GAL 0% or 10% of the time, while the other half is able to do much better on average. This difference does not affect the estimate of unmet needs, however, which requires the use of the average response. Nevertheless, understanding the reasons for the skewed distribution through future research might be helpful to the court system.

1. Three to four of 10 DCJsKMOs support GALs as employees of the judicial branch.

2. Three out of 10 DCJsKMOs support GALs as employees of a statewide mental-health provider.

3. Five out of 10 DCJs/CMOs support GALs as employees of a statewide legal services provider.

4. Seven out of 10 DCJsKMOs support GALs being court-appointed on an individual contract basis.

5. Five out of 10 DCJsKMOs supported GALs as employees of a statewide children's law provider.

The DCJsKMOs were asked which of the options listed above was best. Four respondents were not able to narrow their view to one option, Five out of 10 named court-appointment as the best option. Three out of 10 listed a statewide legal provider as the best option, and two of 10 listed the judicial branch as the best option.

Judicial Cluster Analysis

A “cluster analysis” was performed on the responses of the DCJs/CMOs. The analysis revealed the existence of two equal clusters of 15 DCJsKMOs each, whose members differed over four related questions, illustrated by Table B, below. The biggest difference in response is in the percentage of cases in which the DCJs/CMOs would like to appoint a GAL. Yet the respondents do not differ that dramatically in the answers to the fourth question, would they like to appoint a GAL in contested cases involving children. The difference in need for GAL, appointment suggests the need for further study. For example, do some DCJs/CMOs see fewer contested cases or does the definition of “need” for a GAL vary greatly from judge to judge? Are there geographical differences? Investigation into these questions could help isolate and identify actual needs throughout the state.

Table B. Results of cluster analysis of responses given by DCJs/CMOs

Questions in which responses differed noticeably	Cluster 1 ^a	Cluster 2 ^b
In what percentage of cases in which the parties are <i>pro se</i> , low-income and unable to afford a GAL, would you like to appoint a GAL?	82% of cases	26% of cases
How often do represented parties request a GAL?	43% of	23% of

	cases	cases
If available, would you like to appoint a GAL in almost all cases that involve minor children?	53% said yes	33% said yes
If available, would you like to appoint a GAL in almost all contested family cases that involve children?	80% said yes	66% said yes
^a Average response of 15 judges in each cluster		

Attorney Survey Summary

As with all the surveys in the GAL study, this survey was drafted by the Muskie staff attorney and received comment from legal services attorneys, members of the GAL Committee of the District Court and other judicial personnel. The survey sought to compile both general information relating to GALs, and specific information regarding the use of GALs in cases in which the parties are low-income, one of the parties is *pro se*, or one of the parties is represented by a *pro bono* attorney, Pine Tree Legal Assistance, or the Volunteer Lawyers Project. The following section summarizes the findings based on the attorneys' responses.

Data Sample

A total of 270 surveys were mailed to all members of the Family Law Section of the Maine State Bar Association.⁴³ As with all three surveys conducted for the project, the responses were anonymous. Of the 270 surveys mailed, 78 attorneys responded for a response rate of 29%.

For the purpose of the following discussion, average responses to the numerical questions are presented, unless otherwise indicated.

GAL Role

As with the other two surveys, the attorneys were asked to briefly describe the role of a GAL in a Title 19-A family law case. Descriptions were similar to answers in the other two surveys:

“Consultant to the judge who provides guidance in the best interests of the children.”

“Attorney for the children and zealous advocate for their best interests.”

“independent, objective eyes and ears of the Court to get true picture of the facts o/b/o the children.”

Some respondents included responsibilities as well:

“Fact-finder, negotiator, advocate for the child.”

“Advocate for the child and mediator for parental concerns ”

⁴³ See page 71 for a statistical breakdown of survey responses.

“Investigator, mediator.. . and, zsuccessful, facilitator ”

What was strikingly different, however, was that a number of respondents argued, unlike DCJsKMOs and GALS, that GALS should limit their role to investigation and legal advocacy in court proceedings:

“GALS who attempt to mediate between the parties don ‘t do so well. It’s a conflict with their role as a judgment maker. ”

“Be an advocate-not always a mediator. Fighter for the best interests of the child. ”

“Observe and report to the Court, not to get personally invested in fucing broken families. ”

Given these statements, it is not surprising that fewer attorney respondents, compared to GAL and judicial respondents, thought it appropriate for GALS to work closely with families on issues related to communication and parenting. Fifty-six percent of attorneys thought it was appropriate for GALS to work with families to improve family dynamics; 52% thought is was appropriate for GALS to work with families on parenting skills; and 66% of attorneys thought it was appropriate to work to improve communication between family members. Although these numbers are lower than the GAL and judicial numbers, it still remains that over half of the attorneys who responded to the survey thought it appropriate for the GAL to take an interactive approach with families.

Effectiveness and Impact of GALS

Asked whether GALS adequately represent a child’s best interest, 76% attorneys answered in the affirmative and 63% thought that cases are resolved more quickly when a GAL, is involved. On average, in 66% of the cases, attorneys thought GALS help settle cases before a contested final hearing. And, most importantly, attorneys thought that 78% of these cases would not have settled without the presence of a GAL. These positive opinions are consistent with the survey results from both GALS and DCJs/CMOs.

In contested family cases involving children, 60% of the attorneys would like a GAL in almost all of them. They find a GAL most useful in “all” or “high-conflict” cases. Only 30% of the attorneys felt that courts give too much deference to the

recommendations of GALs, and of those attorneys it was felt that this happened in 46% of the cases.

Attorneys at times object to the appointment of a GAL. In fact, 55% have so objected and do so in 16% of their cases. A variety of reasons were given for objecting: too expensive, 50%; delay, 20%; too simple a case, 16%; quality of GAL, 9%; don't want client investigated, 5%.⁴⁴

More than half of the responding attorneys (58%) felt that GALs were adequately trained. When asked about ideas for additional training, many of the responses mirrored the GAL answers:

“How to investigate thoroughly both parents, speak with children alone (when age appropriate), observe children. ”

‘Mental-health issues, family systems and abuse dynamics. ’

“Child interviews; medical/mental-health issues. ”

However, many answers regarding suggestions for additional training were more pointed and often critical of the GALs themselves. For example:

“I would virtually demand that GALs be parents. I really do not believe GALs who do not have kids can understand them. ”

[GALs need training in] *“L&5. ”*

“who came up with the idea that graduation from law school gives anyone insight on the parenting process???”

“Sometimes I think GALs spend more time working as a mediator, trying to force the parents to agree, instead of investigating the concerns that each parent has about the other. ”

All three surveys asked about resource allocation. “If you had the power to allocate resources to low-income families involved in title 19-A cases, what resources would you provide (e.g., monies for mental-health services, GALs, attorneys for parents, court time and personnel)?” only 34% of the attorneys responded to the question. There was a considerable spread in the answers among those who did respond. The highest response was for GALs, but the difference was not statistically significant. Thus, although there was support for GALs as an important resource, the

44 Some attorneys gave more than one reason.

numbers are nowhere near as strong as the judicial and GAL numbers in which the overwhelming response was for increased GAL services.

Structural Placement of GALs

Attorneys were asked about the types of programs they would support for providing GALs to low-income families. They responded as follows:

1. 32% supported GALs as employees of the judicial branch.
2. 7% supported GALs as employees of a statewide mental-health provider.
3. 29% supported GALs as employees of a statewide legal-services provider.
4. 63% supported GALs being court-appointed on a contract basis.
5. 24% supported GALs as employees of a statewide children's law provider.

When asked to express a preference for the best option of those listed above, only 60% of the attorneys responded. Of those, 63% chose "court-appointed on a contract basis," with scattered support for the remaining options.

Correlations

There were several interesting correlations found among the answers from the practicing attorneys:

1. If a respondent attorney tended to score low on the positive aspects of GALs, that attorney was likely to conclude that the Court gives too much deference to GAL recommendations.

2. If a respondent was positive about GALs, the attorney was 1) more likely to want a GAL in all contested family cases, 2) more likely to think GALs should work to improve parenting skills, and 3) more likely to think GALs are adequately trained.

3. Not surprisingly, if an attorney thought a GAL should work to improve one family feature, the attorney was more likely to think a GAL should work to improve others.

4. If an attorney would support GALs as employees of the judicial branch, the attorney was more likely to support GALs as employees of legal-services providers.

5. If an attorney wanted a GAL in all contested family cases, the same attorney was more likely to want GALs court-appointed on a contract basis.

Attorney Cluster Analysis

The responding attorneys fell into two distinct clusters, those who were very positive about the effectiveness of GALs (77%), and those who were negative (23%). The responses are illustrated in the following table. Note however that only 68 of the 78 attorneys answered all the questions. As a result, there may be some difference between the 68-sample population and the full 78-sample population.

Table C. Cluster Analysis of Attorney Responses

Question	Average response of positive cluster Cluster 1 (77%) ^a	Average response of negative cluster Cluster 2 (23%) ^a
How often do GALs adequately represent a child?	82% of the time	53% of the time
How often do GALs help your client?	74% of the time	37% of the time
How often are cases resolved more quickly with a GAL?	71% of the time	24% of the time
In what % of Title 19-A cases do GALs help settle without a contested final hearing?	74% of the cases	28% of the cases
Would these cases settle without a GAL,?	13% of the time	40% of the time
Do you ever object to a GAL?	56% say yes	55% say yes
Would you want a GAL in all contested cases?	71% say yes	25% say yes
Does Court give too much deference to GAL recommendations?	17% say yes	63% say yes
Are GALs adequately trained?	52% say yes	30% say yes
^a Note that only 68 of the 78 attorneys could be used in the cluster analysis, because only 68 answered all the questions in the cluster assignment. As a result, there may be some differences in the subpopulation used for cluster analysis.		

The responses of the negative cluster may derive from the fact that these attorneys believe GALs only help their clients in 37% of the cases, whereas the larger, positive cluster reported that GALs help their clients in 74% of the cases. Another contributor may well be attitudes toward training and effectiveness. only 30% of the negative

attorneys reported that GALs are adequately trained; 28% reported that GALs help settle Title 19-A cases without a contested final hearing.

In addition to the responses shown in Table C, the negative cluster is less likely to think GALs should work to improve family or parenting skills. However, the two clusters are identical in the percentage of respondents who believe GALs should work to improve communication skills.

The existence of a minority cluster of attorneys who have a negative reaction to GALs is a potentially important finding. If this negativity could be corrected, the effectiveness of GALs and their impact on parents could be improved. Future studies could help elucidate the reasons for the differences between the two clusters and then identify how this negative reaction could be changed to a positive one.

Appendix A: Statistical Summary of GAL Survey Results

STATISTICAL SUMMARY OF RESULTS FROM GAL SURVEY ON THE USE OF GUARDIANS AD LITEM IN TITLE 19-A CASES

This survey sought information from rostered Guardians ad litem regarding the use of a guardian ad litem in cases in which the parties are low-income, one of the parties is pro se, or one of the parties is represented by a pro bono attorney, Pine Tree Legal Assistance, or the Volunteer Lawyers Project.

The survey also asked those who had never been a Guardian ad litem on these types of cases to so indicate-19 responded.

Questions requiring an unstructured response are not reported here. Responses are averages, unless otherwise noted.

1. Are you a: Social Worker 0 Psychiatrist 0 Psychologist 0 Attorney 0 Other
81% Attorneys, 10% Other, 7% Social Workers, 3% Psychologists. Two of the 58 attorneys also listed a second category.
2. Approximately how many cases have you handled as a GAL?
Average = 65; Geometric Mean and Median = 25; Minimum = 1, Maximum = 1000. The responses displayed a log-normal distribution. Twenty-five percent of the sample had handled less than 10 cases. Twenty-five percent had handled more than 60 cases.
3. In what counties do you serve as a GAL?
Northern Maine 33%, Southern Maine 54%, Both Northern and Southern Maine 13%
4. On average, how many hours do you spend on a fee-generating GAL case?
Average = 30, Geometric Mean = 36. Missing: 12 respondents
5. If you serve as a GAL in *pro bono* or low-income cases, how many hours do you spend on average per case?
Average = 30, Geometric Mean = 22. Missing: 15 respondents
6. How would you define the role of a GAL?
 INAI
7. Specifically, do you think it is appropriate that a GAL work with a family to:
 - Improve the family dynamics **Yes 86%; No 14% Missing: 6 respondents**
 - 0 Improve parenting skills **Yes 80%; No 20% Missing: 5 respondents**
 - Improve communication between family members **Yes 91%; No 9% Missing: 5 respondents**
8. How often do you recommend **the** following evaluations and/or **services** for **the children** you represent as the GAL?
(X marks the average value. If two X's appear in a row, then the average response was in between the marked categories.)

	Never	Rarely	Sometimes	Often	Always	NA
• Psychological Evaluation	-	-	-- X	-	-	-
• Mental Health Counseling			- X	-	X	-
• Substance Abuse Evaluation	_____	- X	-	-	-	-

9. Do you ever face the following obstacles in your low-income, pro bono cases:
Note that in addition to the "X" that marks the average response value, the percentage of respondents who checked, "often," in question 9 is listed under the often heading.

You are unable to obtain

	Never	Rarely	Sometimes	Often	Always	NA
• Psychological evaluations due to lack of insurance	_____	- X -	_____	- 34 % -	_____	_____
• Psychological evaluations due to lack of evaluators	_____	_____	- X -	- 21 % -	_____	_____
• Counseling due to lack of insurance coverage	_____	_____	- X -	- 38% -	_____	_____
• Counseling due to lack of counselors	_____	- X -	- X -	- 17 % -	_____	_____
• Substance abuse evaluations b/c no insurance coverage	_____	_____	- X -	- 18 % -	_____	_____
• Substance abuse evaluations due to lack of evaluators	_____	- X -	- X -	- 11 % -	_____	_____

You are unable to recommend:

a A substance abuse program due to lack of availability	_____	- X -	_____	- 9 % -	_____	_____
• Parent education program due to lack of availability	_____	- X -	- X -	- 13 % -	_____	_____
• A domestic violence program due to lack of availability	_____	- X -	_____	- 13 % -	_____	_____
• A batterers program due to lack of availability	_____	- X -	_____	- 11 % -	_____	_____
• A substance abuse program b/c lack of financial resources	_____	_____	- X -	- 16 % -	_____	_____
• Parent education program due to lack of financial resources	_____	- X -	_____	- 10 % -	_____	_____
• A domestic violence program b/c lack of financial resources	_____	- X -	_____	- 6 % -	_____	_____
• A batterers program b/c lack of financial resources	_____	- X -	- X -	- 9 % -	_____	_____
• Other (please identify) [NA]	_____	_____	_____	_____	_____	_____

10. Generally, what do you perceive to be the obstacles GALS encounter in trying to perform their duties?
 WA1

11. Are there changes you would make in the case management system to make the job of the GAL, easier?
 W I

12. Please estimate how often:

Note that percentages are included by some categories

	Never	Rarely	Sometimes	Often	Always	NA
• Your case settles before the Court issues a decision	_____	_____	_____	- X -	6 _____ 5 _____ %	
0 Your recommendations are accepted entirely by the parties in a settlement	_____	_____	- X -	- X -	6 0 %	2 1 _____ % -
• Your recommendations are accepted partially by the parties in their settlement	_____	_____	- X -	- X -	48%	-

13. In the cases that settle, how often do you think your involvement helped settle the case?

Never	Rarely	Sometimes	Often	Always	NA
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14. Please estimate how often:

• Cases have contested interim hearings

Never	Rarely	Sometimes	Often	Always	NA
_____	_____	- X -	-	-	_____

Note that the above occurs often or always only 17% of the time

0 Your recommendations are accepted entirely by the Court in contested interim hearings

-	X	-	-	-	-
---	----------	---	---	---	---

Note that the above occurred either often or always in 60% of the response

0 Your recommendations are accepted partially by the Court in contested interim hearings

-	X	-	X	-	-
---	----------	---	----------	---	---

15. Please estimate how often:

0 Your cases go to a contested final hearing

Never	Rarely	Sometimes	Often	Always	NA
_____	- X -	X	-	-	-

Note that the above occurs often or always only 4% of the time

0 Your recommendations are adopted entirely by the Court in contested final hearings

-	X	-	-	_____	-
---	----------	---	---	-------	---

Note that the above occurred either often or always in 60% of the responses

• Your recommendations are adopted partially by the Court in contested final hearings

-	X	-	x	-	-
---	----------	---	----------	---	---

16. How often do you write a report?

Never	Rarely	Sometimes	Often	Always	NA
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17. On average, how many hours do you spend on a report?

Average = 5.6, Geometric Mean = 4.9

18. How often are you able to establish a connection with the child?

Never Rarely Sometimes **Often** Always NA

19. How often do you think the child understands your role as GAL?

Never - 1 Y **Sometimes Often** Always NA

20. Do you think you have been provided with enough training to interview children?

Yes 53%, No 47% Missing data: 4 respondents

21. In the average case, how much time do you spend alone with the child?

Lessthan1hour ml-3hours 3-5hours morethan5hours
3 hours (“less than’s” put to OS, “more than’s” put to 6)

22. In the average case, how much time do you spend with the child and other adults (e.g. parents, teachers)?

]Lessthan1hour al-3hours 3-5hours morethan5hours
4 hours (“less than’s” put to 0.5, “more than’s” put to 6)

23. Pursuant to Maine law, GALS need to complete a 16-hour training session. Do you think this is sufficient training?

Yes 55%, No 45% Missing data: 7 respondents

24. Would you be willing to complete additional training?

Yes 93%, No 7% Missing data: 4 respondents

25. In what areas do you think there should be additional training? [NA]

26. What would be the single most important change that could be made in the current GAL system to improve the outcomes for children in Title 19-A cases? [NA]

27. If you could add or reallocate resources to the families involved in Title 19-A cases, what changes would you make? (e.g. monies for mental-health services, GALS, attorneys for parents, additional court time and personnel)
W |

28. What is the most important kind of case to have GALS? (e.g. high-conflict cases, domestic violence, substance abuse)
WA1

29. Do you have any ideas on how to provide GALS in cases where families cannot afford one? [NA]

30. If money were allocated to provide GALS to low-income families, would you support a program in which:

- GALS worked as employees of the judicial branch Yes 51%
- GALS worked as employees of a statewide mental-health service provider Yes 25%
- GALS worked as employees of a statewide legal-services provider Yes 33%
- GALS were court-appointed on an individual contract basis (similar to the attorney appointment in child protective and criminal cases) Yes 91%
- GALS worked as employees of a statewide children’s law provider Yes 38%

31. Of the options above, which do you think is the best one? Why?
- GALS worked as employees of the judicial branch **First Choice, 15%**
 - GALS worked as employees of a statewide mental-health service provider **First Choice, 7%**
 - GALS worked as employees of a statewide legal-services provider **First Choice, 0%**
 - GALS were court-appointed on an individual contract basis (similar to the attorney appointment in child protective and criminal cases) **First Choice, 68%**
 - GALS worked as employees of a statewide children's law provider **First Choice, 10%**
32. If none of the above, what would you recommend?
W I
33. Do you have any other comments related to the role of the GAL in Title 19-A cases?
WA1

Correlation Analysis:

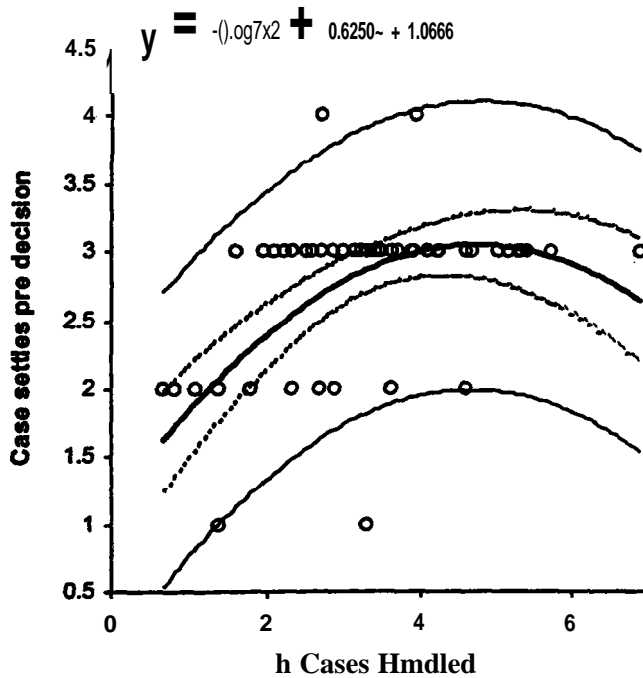
A prior hypothesis for this study was that experience mattered. For this prior hypothesis, a significance level of $p=.05$ was taken. A second “prior” hypothesis for this study was that GALs make a difference. Ten questions addressed that issue, either in terms of settlement or acceptance of recommendations by the parties or DCJs/CMOs. For these ten questions, a p-value of 0.005 was required before assigning significance to a correlation. For all the other questions, which did not have any prior hypothesis attached to them, a value of $p=.001$ was required. This low screening value was chosen to reduce the number of chance correlations that would be picked up in a matrix of 52 X 52 questions.

Table E illustrates the questions that correlated significantly with a GAL’s experience. The strongest correlation was found with the question regarding cases settling before the Court reached a decision. Note that a negative correlation coefficient indicates that experience negatively correlates with the response. Two of the 13 significant correlations are negative. They have been highlighted in bold type.

Table E Questions that correlate with GAL experience^a		
Question	pvalue	Pearson correlation coefficient
Hrs on a case <i>pro bono</i>	0.03	-0.29
Appropriate for a GAL to work to improve family dynamics	0.016	0.3
Appropriate for a GAL to work to improve communication skills	0.011	0.3
Unable to obtain psych evaluations due to lack of evaluators	0.01	0.35
Unable to obtain counseling due to lack of insurance coverage	0.011	0.34
Unable to obtain counseling due to lack of counselors	0.011	0.35
Unable to obtain substance abuse evaluations due to lack of insurance coverage	0.002	0.45
Case settles	< 0.0001	0.49
GAL recommendations are accepted entirely by the parties in a settlement	0.0044	0.35
GAL helps settle	0.022	0.28
Cases have contested interim hearings	0.042	-0.25
GAL recommendations are accepted entirely by the Court in contested interim hearings	0.015	0.31
Time spent alone with child	0.03	0.28

a) as measured by the logarithm of the number of cases handled. All respondents were included in this analysis, although the numbers do not change in any significant way if the respondents are restricted to persons who affirmatively indicated a number for average hours spent on either a *pro bono* or fee-based GAL case.

The correlation between experience and a case settling is very strong. Inclusion of a quadratic experience term improves the fit to the data further, with both the linear and quadratic terms remaining statistically significant. The figure below shows the resulting graph. Recall that the scoring for the response to the “case settles” question is 1=rarely, 2=sometimes, 3=often, and 4=always. The x-axis gives the logarithm of the number of cases handled. “2” corresponds to 7 cases, “3” corresponds to 11 cases, and “4” corresponds to 55 cases.



Another way to look at the correlation between experience and the frequency at which cases settle is to compute the average number of cases by response to the “case settles” question. Table F presents the results, indicating that it can take a fair number of cases before GALs are likely to report their cases often settle. Based on the above figure and Table F, it appears that *it takes* 10 to 30 cases before a GAL reports that the cases *often settle*. Such a finding suggests that experience matters significantly. On the other hand, it is possible that this finding reflects a self-selection process: GALs who find themselves relatively ineffective might move on to other types of cases, leaving those who are inherently good at the process to build up a large historical GAL caseload.

Table F Number of cases handled compared to frequency at which cases settle		
Frequency at which cases settle	Average number of cases handled by GAL	Median number of cases handled by GAL
Rarely	10	6
Sometimes	18	9
Often	89	45
Always ^a	33	28

g) Only two respondents checked this category for cases handled are quite uncertain

A similar effect of experience was found for questions that explored the frequency at which a GAL's recommendations were accepted entirely by the parties, as well as the frequency at which a GAL reported they had helped settle a case. A weak relationship was found between GAL experience and the frequency at which a GAL's recommendations were accepted entirely in interim hearings.

To summarize the experience correlations: the greater the experience a GAL has, the more likely a case will settle before a decision, the more likely a respondent is to conclude that they helped settle the case, the less likely a case will have a contested interim hearing, the more likely the GAL's recommendations will be accepted entirely by the parties in a settlement, and the more likely a DCJICMO will accept the recommendations entirely in a contested interim hearing. The hypothesis that experience matters is strongly confirmed by these results.

In addition, note that the greater the experience of a GAL, the more likely they are to believe it is appropriate for them to work to improve family dynamics and communication skills.

Although not anticipated as a pre-survey hypothesis, a very significant relationship was found (p -value < 0.0001) between establishing a connection with the child and believing that the 16-hour training was sufficient. Put in the reverse formulation: the less likely a GAL is to make a connection with the child, the more likely a GAL is to feel that the current training is insufficient.

Interrelated Questions:

A number of questions actually showed marked correlations, which is not surprising. For instance:

a) The more likely a GAL's cases were to settle before a decision, the less likely the cases were to go to either a contested interim hearing or a contested final hearing, and the more likely the parties were to accept the GAL's recommendations in their entirety. Similarly, the more a GAL indicated they helped settle a case, the more likely their recommendations were to be accepted by the parties, either entirely or in part.

b) GALs who were likely to think that a GAL should work toward improving either family dynamics, parenting skills, or communication skills, were also likely to support another category.

c) The more often a GAL reported recommending a psychological evaluation, the more often the GAL reported recommending mental-health counseling.

d) The more likely a GAL was to support one of the options other than court-appointed contract attorneys, the more likely they were to support other non-court-appointed options.

e) The more often a GAL reported being unable to recommend a psych evaluation because of lack of resources, the more often the GAL reported being unable to recommend domestic violence programs because of lack of resources.

f) The questions on resource unavailability also showed a great deal of correlation:

If a GAL reported a lack of insurance for one type of program, this same GAL tended to report having a lack of insurance for one or more other programs.

If a GAL reported a lack of staff for one type of program, this same GAL tended to report having a lack of staff for one or more other programs.

If a GAL reported a lack of availability for one type of program, this same GAL tended to report having a lack of availability for one or more other programs.

If a GAL reported a lack of financial resources to allow use of one type of program, this same GAL tended to report a lack of financial resources for one or more other programs.

g) The questions relating to GAL effectiveness also showed correlations, as indicated in Table G. Note that a negative correlation coefficient indicates that the two questions negatively correlate. Negative correlations are highlighted in bold.

Table G Answers related to GAL effectiveness that show strong intercorrelations			
Question	Correlated question	p-value	Pearson correlation coefficient
Case settles			
	Recommendations accepted <i>entirely</i> by the parties in a settlement	< .0001	0.55
	Cases have contested interim hearings	0.0014	-0.40
	Case goes to final contested hearing	< .0001	-0.51
Recommendations accepted <i>entirely</i> by the parties in a settlement			
	Case settles	< .0001	0.55
	GAL involvement helped settle the case	0.0022	0.37
Recommendations accepted <i>partially</i> by the parties in a settlement			
	GAL involvement helped settle the case	0.0013	0.39
	Recommendations adopted partially by the court in contested f-1 hearings	0.0033	0.40
GAL involvement helped settle the case			
	Recommendations accepted <i>entirely</i> by the parties in a settlement	0.0022	0.37
	Recommendations accepted <i>partially</i> by the parties in a settlement	0.0013	0.39
	Recommendations adopted entirely by the court in s	0.0024	0.38
Cases have contested interim hearings			
	Case settles	0.0014	-0.40
	Case goes to final contested hearing	0.0007	0.42

a) Includes data from all respondents, including those who did not indicate any hours as a GAL themselves. Only correlations are reported that had a p-value better than (below) $p = 0.005$. (A “prior” hypothesis for this study was that “GALS make a difference.” Ten questions in the GAL survey addressed that issue, either in terms of settlement or in terms of acceptance of recommendations by the parties or judges/CMOS. For these ten questions on the GAL survey, a p-value of 0.005 (= 0.05/10) was required before assigning significance to a correlation in the correlation matrix.)

Cluster Analysis

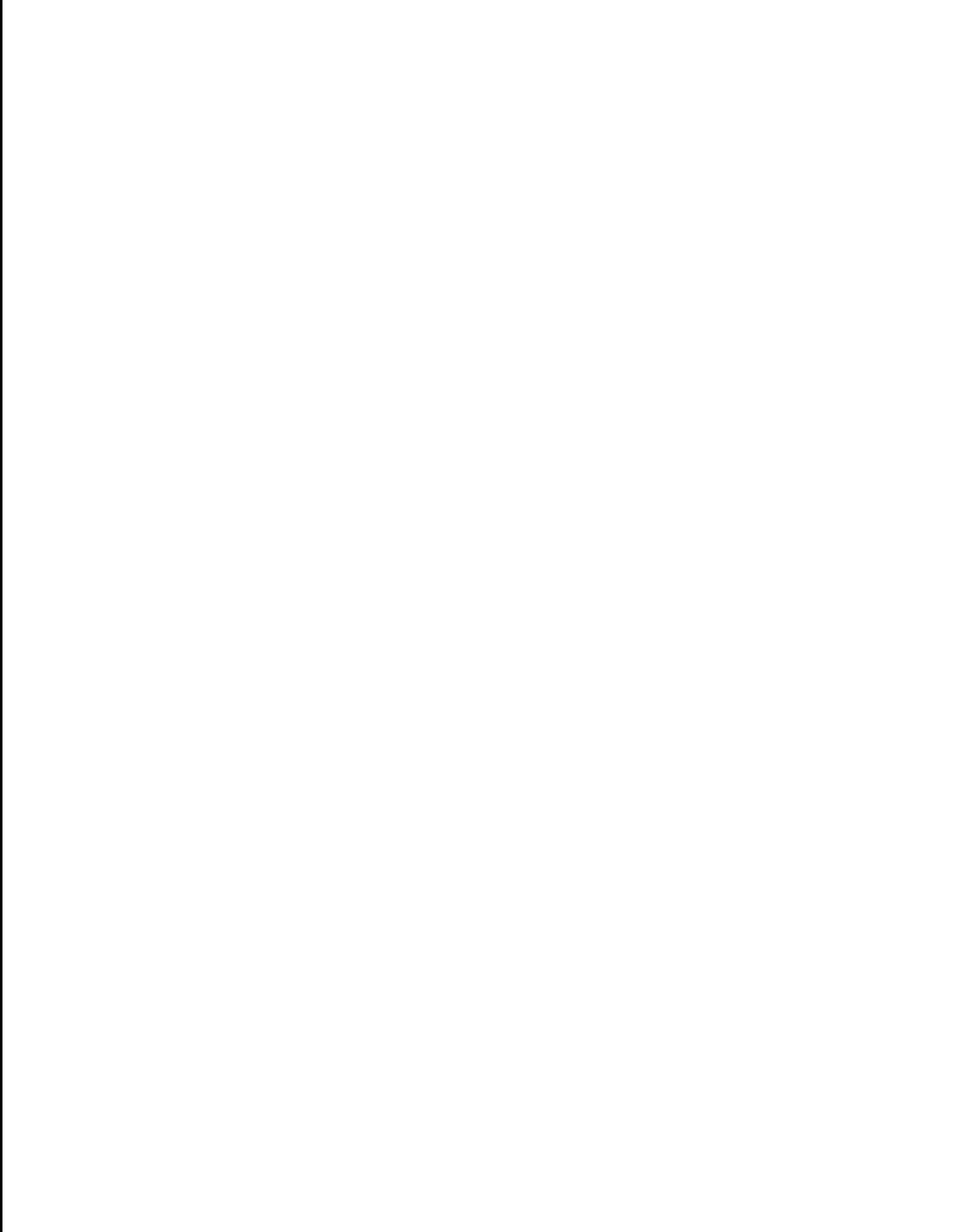
For the cluster analysis, missing **values** had to be handled carefully, because the software used did not account for them properly, treating them as zeroes. This was potentially a problem with the hours spent on a GAL case, which many persons apparently left blank by mistake or because they did not do GAL work. To avoid incorrect clustering, respondent data were excluded if the fields for both the fee-basis hours and the *pro* bono-basis hours were left blank.

Two distinct clusters were found. They did not differ in the reported frequency of settlement or their contribution to settlement. The two clusters did differ, however, in a number of other ways, particularly in their ability to find services for the families, although not in the reported frequency with which they requested services. The 22-person cluster that found it difficult to find services was likely to spend more than twice as long on a case as the 37-person cluster that found it relatively easy to get services. This is a big difference. Possibly, GALS had to do more work when they couldn't find other professionals to handle some of their burdens. One possible interpretation of this finding is that the availability of services for families will dramatically reduce the time a GAL needs to spend on a case. On the other hand, the first cluster may have simply tended to come into contact with more difficult cases. Further research in this area would be very helpful, because of the potential economic implications.

Although there was no difference between the clusters as to reported success in settlement, the cluster spending more time on the cases (the first cluster) was more likely to report greater acceptance of their recommendations by the Court.

A number of other, less-distinct differences appeared between the two clusters. For instance, the first cluster tended to spend slightly more time writing a report than their counterparts, and slightly more time with the child. In addition, the first cluster had somewhat less experience and was somewhat more likely to work in the southern part of Maine.

The first cluster was also more likely to support GALS working for non-traditional employers than the second cluster. The second cluster was much more likely to simply favor GALS being appointed by the Court.



Appendix B: Statistical Summary of Judicial Survey Results

STATISTICAL SUMMARY OF RESULTS FROM JUDICIAL SURVEY ON THE USE OF GUARDIANS *AD LITEM* IN TITLE 19-A CASES

This survey sought information from District Court Judges [DC%] and Case Management officers [CMOs] regarding the use of a Guardian ad litem in cases in which the parties are low-income, one of the parties is pro se, or one of the parties is represented by a pro bono attorney, Pine Tree Legal Assistance, or the Volunteer Lawyers Project.

Questions requiring an unstructured response are not reported here. Responses are averages, unless otherwise noted.

1. Are you a District Court Judge or a Case Management Officer?
29 were DCJs, six were CMOS
2. How long have you been *on* the bench?
The DCJs were on the bench for an average of 8 years; the CMOS an average of three years.
3. How often do low-income, *pro se* parties request a GAL?
One out of 10 cases
4. In what percentage of cases, in which the parties are *pro se*, low-income and unable to afford a GAL, would you like to appoint a GAL?
In five of every 10 cases
5. In these cases, how often can you find a GAL to take the case *pro bono*?
An average of 28 percent of the time. The median response was 10 percent, indicating a skewed distribution, i.e., half of the respondents can only find a *pro bono* GAL 0% or 10% of the time, while the other half is able to do much better on average.
6. How often do represented parties request a GAL?
Three of 10 cases
7. Do you ever refuse to appoint a GAL when requested by both parties?
Two out of 10 have so refused.
8. Do you ever refuse to appoint a GAL when requested by one party who is willing to pay?
Five out of 10 have so refused.
9. If available, would you like to appoint a GAL in almost all cases that involve minor children?
Four out of 10 would like to do so.
10. If so, why? If not, why not?
W I
11. If available, would you like to appoint a GAL in almost all contested family cases involving minor children?
Seven out of 10 would like to do so.
12. If so, why? If not, why not?
INA I
13. How would you define the role of a GAL in a Title 19-A case?
W I

14. Specifically, do you think it is appropriate that a GAL work with a family to:
- Improve the family dynamics: **Nine out of 10**
 - Improve parenting skills: **Eight out of 10**
 - Improve communication between family members: **Nine out of 10**
15. In what types of cases do you find a Guardian useful (e.g., high conflict between the parents, domestic violence, substance abuse), and why?
Nine out of 10 find a Guardian useful in cases involving high conflict between the parents; three out of 10 find a Guardian useful in all types of cases.
16. Is a GAL critical in any type of case, and why?
Three out of 10 felt that a GAL is critical in a high-conflict case.
17. Does the involvement of a GAL improve your ability to evaluate the best interest of the child?
35 of 35 felt the involvement of a GAL improves their ability to evaluate the best interest of the child.
18. How?
W I
19. How often do you think GALS adequately represent a child's best interest?
In eight out of 10 cases
20. Do you think the number of years a GAL has practiced makes a difference in the quality of representation?
All but one of the 35 thought that the number of years a GAL has practiced makes some difference in the quality of representation. Two to three out of 10 stated that it makes a lot of difference. (This is consistent with the results from the GAL survey, where a significant difference was found in the self-reported success rate as the number of relevant cases passed beyond 10-15.)
21. Do you think GALS need additional training?
Six out of 10 answered yes. (This is consistent with the GAL, survey, where about half felt they needed more training, and almost all were willing to take further training.)
22. Do you think cases are resolved more quickly when GALS are involved?
Eight out of 10 answered yes
23. In what percentage of domestic relations cases do you think GALS help settle the cases without a contested final hearing?
In seven out of 10 domestic relations cases
24. Do you think domestic relations cases come back to court more or less often when a GAL is involved?
Nine out of 10 thought that domestic relations cases came back to court less often when a GAL was involved.
25. Are GALS more or less useful in cases where one or both parties are represented, or where one or both parties are not represented by counsel?
Answers were almost evenly split between represented and not represented
26. If you had the option of assigning an attorney for one party, a GAL for the child, or a social worker/case worker for the family in a low-income domestic relations case, which would you choose, and why?
Nine out of 10 would assign a GAL for a child
27. What do you do now to secure GALS when a family cannot afford one?
W I
28. If money were allocated to provide GALS to low-income families, would you support a program in which:
- GALS worked as employees of the judicial branch. **Three to four out of 10 said yes**
 - GALS worked as employees of a statewide mental health provider. **Three out of 10 said yes**
 - GALS worked as employees of a statewide legal-services provider. **Five out of 10 said yes**

- GALs were court-appointed on an individual contract basis (similar to the child protective and criminal procedures).
 - **Seven out of 10 said yes**
 - GALs worked as employees of a statewide children's law provider. **Five out of 10 said yes**
29. Of the options above, which do you think is the best option?
Four were not able to choose one option. Five out of 10 selected court-appointment as the best option. Three out of 10 chose a statewide legal provider, and two out of 10 chose the judicial branch as the best option.
30. If none of the above, what would you recommend?
 W I
31. Do you have any other comments you would like to share?
 INAI

Correlation Analysis:

A Pearson correlation matrix was formed between the 30 variables in the survey for which numerical scoring was possible. Given the approximate 900 possible question pairs, a large number of correlations would be expected to be found by chance, if one were to use the standard p-value test of 0.05. In the absence of any a-priori hypotheses, it was not possible to narrow the focus of analysis to a set smaller than 900. Therefore, it was necessary to require a high degree of statistical significance before taking note of any individual correlation. We took $p = 0.002$ as the dividing line. With this criterion there were only a few significant relationships:

1. Those respondents who thought it appropriate for a GAL to try to improve parenting skills were also likely to think it appropriate for a GAL to work to improve family dynamics and to improve communication.
2. Respondents who thought it was useful to have a GAL were more likely to report that parties requested a GAL. Possibly, such DCJs/KMOs tend to let the parties know of the GAL option and/or tend to encourage parties to request a GAL.

Cluster Analysis:

There was little clustering of the responses of the District Court Judges and CMOs. There did exist a group of seven DCJs/CMOs (20% of respondents) who reported an extremely high rate of finding a *pro bono* GAL (70% of cases), whereas the average of the other DCJs/CMOs was approximately 10%.

Appendix C: Statistical Summary of Attorney Survey Results

STATISTICAL SUMMARY OF RESULTS FROM A-ITORNEY SURVEY ON THE USE OF GUARDIANS AD L/TBI^d IN TITLE 19-A CASES

This survey sought information from family law attorneys regarding the use of a Guardian ad litem in cases in which the parties are low-income, one of the parties is pro se, or one of the parties is represented by a pro bono attorney, Pine Tree Legal Assistance, or the Volunteer Lawyers Project.

Questions requiring an unstructured response are not reported here. Responses are averages, unless otherwise noted.

1. What percentage of your caseload is 19-A divorce and PR&R *guardian ad litem* work? 25%
2. How often do you think GALS adequately represent a child's best interests? 76%
3. How **often** do you think GALS help your clients? 68%
4. How often do you think cases are resolved more quickly because GALS are involved? 63%
5. In what percentage of 19-A cases do you think GALS help settle the cases without a contested final hearing? 66%
6. Do you think these cases would have settled without the involvement of a GAL?
Yes 22% No 78%
7. Do you ever object to the appointment of a GAL?
Yes 55% No 45%
If yes, in what circumstances?
Of the attorneys who said yes, the reasons given were: too expensive, 50%; delay, 20%; too simple a case, 16%; quality of GALS, 9%; don't want client investigated, 5%. (Some attorneys gave more than one circumstance)
8. If available, would you like a GAL in almost all contested family cases where children are involved?
Yes 60% No 40%
why?
W I
9. In what types of cases do you find a Guardian useful, if any (e.g. high conflict between the parents, domestic violence, substance abuse)?
73% of the respondents stated that GALS were useful in one or more types of cases. 27% did not answer the question. Of the 73% who answered, 53% said "all cases" and 33% said "high-conflict cases." The remaining 14% were scattered over various combinations.
10. Do you think the Court gives too much deference to GAL recommendations?
Yes 30% No 70%
11. If so, in what percentage of cases? 46%
12. In what percentage of cases do you object to the GAL report? 16%
13. Do you think GALS are adequately trained?
Yes 58% No 42%
14. If not, in what areas do you think GALS need additional training?
W I

15. How would you define the role of a GAL in a Title 19-A case?

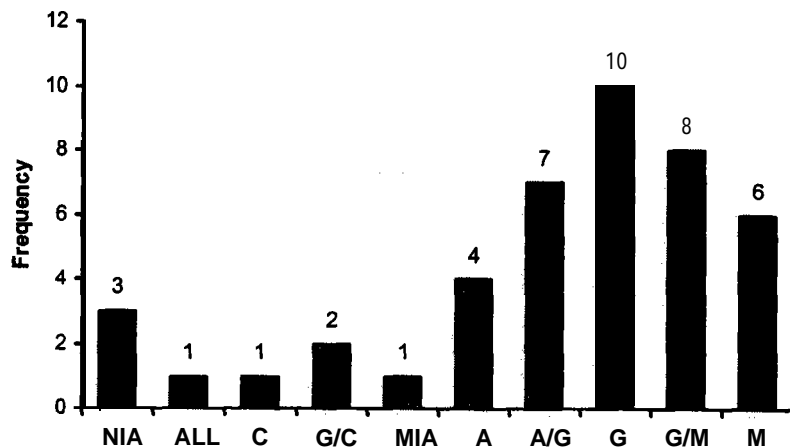
W I

16. Do you expect a GAL work with a family to:

- Improve the family dynamics Yes, 56%; No, 44%
- Improve parenting skills Yes, 52%; No, 48%
- Improve communication between family members Yes, 66%; No, 34%

17. If you had the power to allocate resources to low-income families involved in 19-A cases, what resources would you provide? (e.g. monies for mental-health services, GALs, attorneys for parents, court time and personnel)

Only 34% of the attorneys responded to this question. Among those who did respond, there was considerable spread in the responses to the question, with much splitting of Uvotes,* as shown in the figure. The highest response was for GALs, but the difference was not statistically significant.



What resources would you provide? (e.g. mental health services, GALs, attorneys, court resources) (M, 0, A, C)

18. If money were allocated to provide GALs to low-income families, would you support a program in which:

- GALs worked as employees of the judicial branch Yes 32%
- GALs worked as employees of a statewide mental-health provider Yes 7%
- GALs worked as employees of a statewide legal-services provider Yes 29%
- GALs were court appointed on an individual contract basis (similar to the child protective and criminal procedures) Yes 63%
- GALs worked as employees of a statewide children’s law provider Yes 24%

19. Of the options above, which do you think is the best option?

Only 60% of the attorneys responded to this question. Among those who responded, 69% picked “court appointed on a contract basis,” with scattered support for the remaining options. The option of legal-service provider had the least support in this question.

Correlation Analysis:

A Pearson correlation matrix was formed between the 23 variables in the attorney survey for which numerical scoring was possible. Given the approximate 500 possible question pairs that can be formed, it is expected a large number of correlations would be found by chance, if one were to use the standard p-value test of 0.05. In the absence of *any a-priori* hypotheses, it was not possible to narrow the focus of analysis to a set smaller than 500. Therefore, it was necessary to require a high degree of statistical significance before taking note of any individual correlation. We took $p = 0.004$ as the dividing line. With this criterion there were the following significant correlations.

If a respondent attorney tended to score low on the positive aspects of GALS, the attorney is likely to conclude that the courts give too much deference to GAL recommendations.

If a respondent is positive on GALS, the attorney is 1) more likely to want a GAL in all contested family cases, 2) more likely to think GALS should work to improve parenting skills, and 3) more likely to think GALS are adequately trained.

Not surprisingly, if an attorney thinks a GAL should work to improve one family feature, the attorney is more likely to think a GAL should work to improve others.

If an attorney would support GALS as employees of the judicial branch, the attorney is more likely to support GALS as employees of a legal-services provider.

If an attorney wants a GAL in all contested family cases, the same attorney is more likely to want GALS court appointed on a contract basis.

Cluster Analysis:

The attorneys fall into two distinct clusters, those who are very positive about the effectiveness of GALS (77% of respondents), and those who are negative (23% of respondents). Table H on the following page shows some of the differences in answers between the two groups. Note that only 68 of the 78 attorneys have complete responses to all the questions used in the cluster assignment. As a result there may be some differences between the 68-sample population and the full 78-sample population.

Table H. Cluster Analysis of Attorney Responses

Question	Average response of positive cluster Cluster 1 (77%)”	Average response of negative cluster Cluster 2 (23%) ^a
How often do GALs adequately represent a child?	82% of the time	53% of the time
How often do GALs help your client?	74% of the time	37% of the time
How often are cases resolved more quickly with a GAL?	71% of the time	24% of the time
In what % of Title 19-A cases do GALs help settle without a contested tinal hearing?	74% of the cases	28% of the cases
Would these cases settle without a GAL?	13% of the time	40% of the time
Do you ever object to a GAL?	56% say yes	55% say yes
Would you want a GAL in all contested cases?	71% say yes	25% say yes
Does Court give too much deference to GAL recommendations?	17% say yes	63% say yes
Are GALs adequately trained?	52% say yes	30% say yes
^{LL} Note that only 68 of the 78 attorneys could be used iu the cluster analysis, because only 68 answered all the questions in the cluster assignment. As a result, there may be some differences in the subpopulation used for cluster analysis.		



Appendix D: Consulting in the Public Interest Methodology

Consulting in the Public Interest
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**Statistical Analysis of Survey Data Collected about Guardians
ad Litem (GALs) in Title 19-A Divorce and Parental Rights &
Responsibilities Cases**

August 1&2001

Prepared for:

The Muskie Fellowship for Legal Services
The Guardian *ad litem* Project
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I. Introduction

Consulting in the Public Interest (CIPIJ) was asked by project staff of the Muskie *Guardian al Zitem* Project to assist with the analysis of survey data. All work has been done on *apro bono* basis. This report documents the methods used in the analyses.

II. Methods

A. Data collection

Upon receipt of copies of the three survey instruments, CIPI prepared forms matched to the questionnaires that could be *used for data entry* by the *Guardian al Zitem* Project. Project staff transferred data from the completed questionnaires by hand to the forms. In a second step, project staff transferred the hand-written spread sheet data into Excel, which was configured to exactly match the printed forms. Answers to open-ended questions were reviewed by GAL project staff, assigned post-survey categories, and the data given to CIPI.

CIPI staff has worked with the resulting Excel spreadsheets, transposing them, and analyzing them with two computer programs: 1) Analyze-It, an add-in for Excel (Analyze-It Limited, UK), which was used for descriptive statistics and graphics, and 2) Statmost (Dataaxiom Software, Los Angeles), which was used for preparing summary statistics and for both correlation and cluster analysis. Validation of the data entry process will be carried out by comparing printouts of the final excel spreadsheet with the raw questionnaires.

A. B. Data cleaning

Obvious typographical and other errors were checked against the spreadsheet and corrected if possible, or branded as missing data, if a reasonable explanation for the entry

could not be found. Hybrid responses, where respondents chose to give split answers, were labeled in a consistent manner and included as new categories when the numbers exceeded two. Otherwise, they were treated as missing data or added into a pre-survey category.

C. Data scoring

“Yes/No” questions were scored as 1’s or 0’s for correlation and cluster analysis. Questions with allowed answers of, “Never,” “Rarely,” “Sometimes,” “Often,” “Always,” were scored as 0,1,2,3,4’s in order to allow determination of an average response. This same scoring was used in performing correlation and cluster analysis.

Some questions allowed mixed responses, e.g.,

Less than 1 hour 1-3 hours 3-5 hours more than 5 hours

“Less than 1 -hour” was scored as 0.5 hours, whereas “More than 5-hours” was scored as 6. Sensitivity analysis showed that an alternate score of 7 made no significant difference, whereas an alternate score of 8, did reduce one correlation to below statistical significance.

D. A priori hypotheses

Before the surveys were mailed, CIPI staff asked the GAL project to state any hypotheses that had been developed as a result of the Muskie Fellow’s experience in *GAL cases*. The first *a priori* hypothesis for this study was that “experience mattered.” In analyzing questions related to this issue, a significance level of $p = .05$ was taken as a screening level for correlations between the experience question and responses to other questions. A second “prior” hypothesis for this study was that “GALS make a

difference.” Ten questions in the GAL survey addressed that issue, either in terms of settlement or in terms of acceptance of recommendations by the parties or judges/CMOS. For these ten questions on the GAL survey, a p-value of 0.005 was required before assigning significance to a correlation in the correlation matrix. A similar procedure was followed for questions on the Attorney and Judge/CMO surveys that related to GAL effectiveness.

For all other questions on the surveys--those that had no prior hypothesis attached to them-- a value of $p=.001-.004$ was required, depending on the size of the correlation matrix for the individual survey. The specific value was chosen so that one would expect only two accidental correlations within the matrix to occur by chance under the null hypothesis that no true correlations existed in the data.

B. E. Correlation and Cluster Analysis

Pearson correlation matrices were computed using the StatMost computer program. Cluster analysis was carried out using K-means, with the number of clusters restricted to three. As described in the Statmost help file:

“The idea in K-means cluster analysis is to find a clustering (or grouping) of the variables so as to minimize the total within-cluster sums of squares. In this case, the total sums of squares within each cluster is computed as the sum of centered sum of squares over values of each variable. This method sequentially processes each observation and reassigns it to another cluster, if doing so results in a decrease in the total within-cluster sums of squares.”

III. Results

The results of the various analyses are reported in the appendices to the GAL-Project report. Since the response rate for the GAL and Attorney surveys was low -- typical for mail surveys-- the results for these two surveys could be subject to significant selection bias. For example, it is possible that only attorneys who felt strongly about the value of GALS bothered to reply to the questionnaire. This would explain the existence of two distinct clusters in the data showing markedly different attitudes towards the effectiveness of GALS. Those attorneys who did not respond, under this theory, would have given responses somewhere between those of the two clusters, if they had somehow been induced to participate in the survey. Nevertheless, despite the possibility of selection bias, the survey data provides insight into the thinking of a large number of GALS and attorneys in Maine.

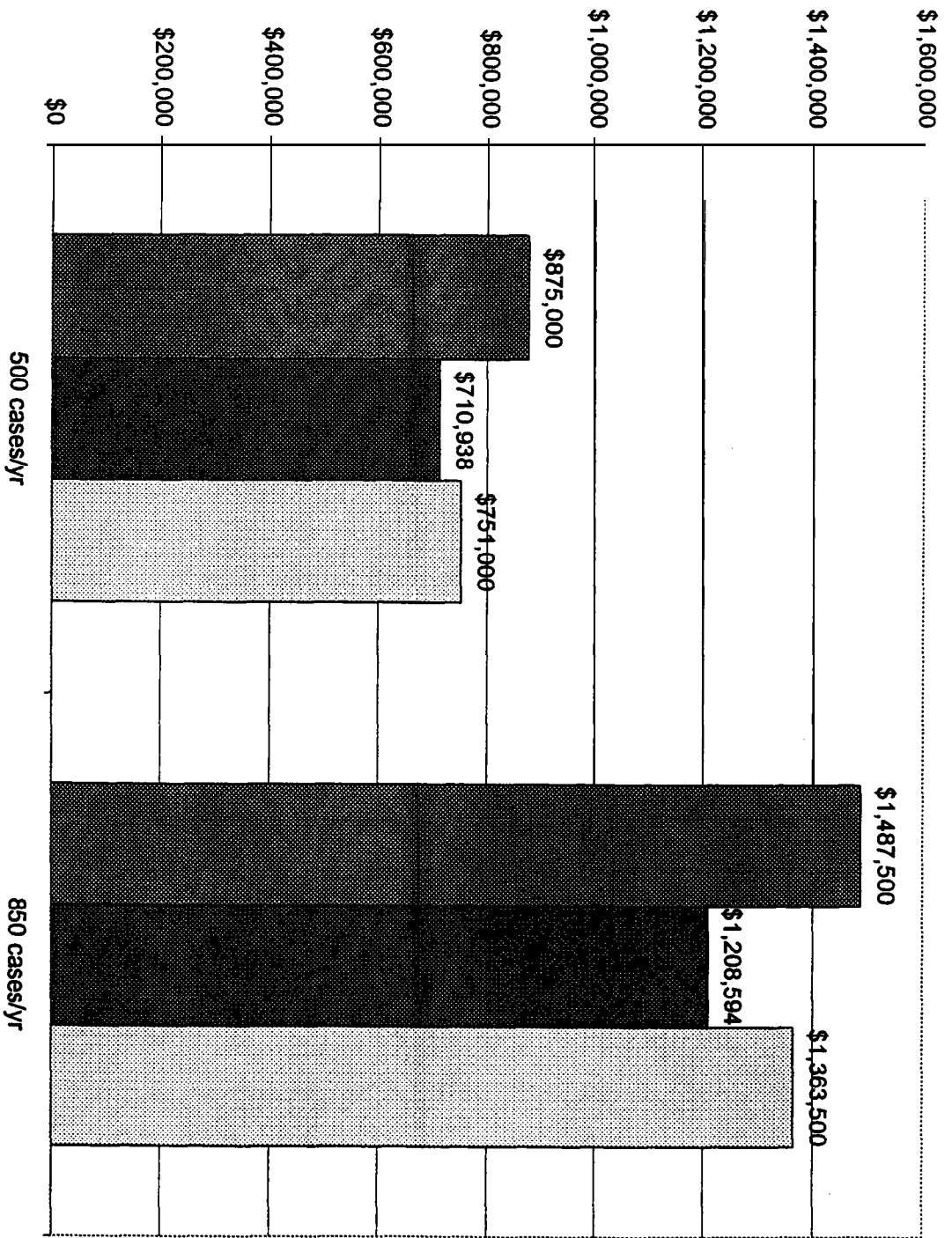
In contrast to the GAL and Attorney questionnaires, the judge/CMO survey can be taken to be highly representative of the judges/CMOs who signed up for the conference in which the survey was administered. Selection bias is unlikely to be significant.

Appendix E: Cost Estimates of Providing GAL Representation to Low Income Children

Cost Estimates for GAL Programs

Starting Assumptions	
Cost/hr, court appointed GAL	\$50.00
Annual cost, staff	\$65,000.00
Hours worked/year	1,600
Low case demand	500
High case demand	850
Hours/case	35
Derived Quantities	
Cost/hour, staff GAL	\$40.625
Cost/case, staff GAL	\$1,421.875
Cost/case, court appointed GAL	\$1,750.00
Cases/year, staff GAL	45.714286
Rounded cases/year, staff GAL	46
Case hours/year, low demand	17,500
Case hours/year, high demand	29,750
Low case, cost/year, staff GAL, by hours	\$710,938.00
High case, cost/year, staff GAL, by hours	\$1,208,594.00
Low case, cost/year, court appointed GAL, by hours	\$875,000.00
High case, cost/year, court appointed GAL, by hours	\$1,487,500.00
No. staff GALs needed to cover entire low caseload	10.869565
No. staff GALs needed to cover entire high caseload	18.478261
Round no. staff GALs needed to cover entire low caseload	11
Round no. staff GALs needed to cover entire high caseload	18
Yr to yr fluctuation in low caseload (standard deviation)	22
Yr to yr fluctuation in high caseload (standard deviation)	29
Mixed Staff & Court Appointed GAL Cases	
Assumed no. of staff GALs	8
Total staff cost, low case demand	\$520,000.00
Total staff cost, high case demand	\$520,000.00
Total cases, court appointed GALs, low case demand	132
Total cases, court appointed GALs, high case demand	482
Total cost, court appointed GAL, low case demand	\$231,000.00
Total cost, court appointed GAL, high case demand	\$843,500.00
Totals	
All court appointed, 500 cases/year	\$875,000.00
All court appointed, 850 cases/year	\$1,487,500.00
All staff GAL, 500 cases/year	\$710,938.00
All staff GAL, 850 cases/year	\$1,208,594.00
Mixed GAL, 500 cases/year	\$751,000.00
Mixed GAL, 850 cases/year	\$1,363,500.00

Annual cost of GAL program, including mixed staffing option



Assuming 35 hours per case; \$50/hr for court appointed attorneys; \$40.62/hr for staff attorneys; 8 staff attorneys in "Mixed" category.

- All Court Appointed GALS
- All Staff GALS
- Mixed GA



Appendix F: Applicable Statutes

MAINE REVISED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2000 SUPPLEMENT ***

TITLE 19-A. DOMESTIC RELATIONS
PART 3. PARENTS AND CHILDREN
CHAPTER 51. GENERAL PROVISIONS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

19-A M.R.S. 5 1507 (2000)

STATUS: CONSULT SLIP LAWS CITED BELOW FOR RECENT CHANGES TO THIS DOCUMENT

+ LEXSEE 2001 Me. ALS 253 -- See section 3.

FJ 1507. Appointment of guardian ad litem in contested proceedings

1. GUARDIAN AD UTEM; APPOINTMENT. In contested proceedings under sections 904 and 1653 in which a minor child is involved, the court may appoint a guardian ad litem for the child. The appointment may be made at any time, but the court shall make every effort to make the appointment as soon as possible after the commencement of the proceeding. The court may appoint a guardian ad litem when the court has reason for special concern as to the welfare of a minor child. In determining whether an appointment must be made, the court shall consider:

- A. The wishes of the parties;
- 8. The age of the child;
- C. The nature of the proceeding, including the contentiousness of the hearing;
- D. The financial resources of the parties;
- E. The extent to which a guardian ad litem may assist in providing information concerning the best interest of the child;
- F. Whether the family has experienced a history of domestic abuse;
- G. Abuse of the child by one of the parties; and
- H. Other factors the court determines relevant.

At the time of the appointment, the court shall specify the guardian ad litem's length of appointment, duties and fee arrangements.

2. QUALIFICATIONS. A guardian ad litem appointed on or after March 1,

2000 must meet the qualifications established by the Supreme Judicial Court.

3. **DUTIES.** The guardian ad litem has both mandatory and optional duties.

A. A guardian ad litem shall:

(1) Interview the child face-to-face with or without another person present; and

(2) Deleted. Laws 1997, c. 257, 3 3, eff. Oct. 1, 1997.

(3) Make a written report of investigations, findings and recommendations as ordered by the court, with copies of the report to each party and the court.

8. The court shall specify the optional duties of the guardian ad litem. The optional duties of the guardian ad litem may include:

(1) Interviewing the parents, teachers and other people who have knowledge of the child or family;

(2) Reviewing mental health, medical and school records of the child;

(3) Reviewing mental health and medical records of the parents;

(4) Having qualified people perform medical and mental evaluations of the child;

(5) Having qualified people perform medical and mental evaluations of the parents;

(6) Procuring counseling for the child;

(7) Retaining an attorney to represent the guardian ad litem in the pending proceeding, with approval of the court;

(8) Subpoenaing witnesses and documents and examining and cross-examining witnesses;

(9) Serving as a contact person between the parents and the child; or

(10) Other duties that the court determines necessary, including, but not limited to, filing pleadings.

If, in order to perform the duties, the guardian as litem needs information concerning the child or parents, the court may order the parents to sign an authorization form allowing the release of the necessary information. The guardian ad litem must be allowed access to the child by caretakers of the child, whether the caretakers are individuals, authorized agencies or child care providers.

4. BEST INTEREST OF THE CHILD. The guardian ad litem shall use the standard of the best interest of the child as set forth in section 1653, subsection 3. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed them, regardless of the recommendation of the guardian ad litem.

5. WRITTEN REPORT. A written report of a guardian ad litem may be admitted as evidence in the proceeding for which the guardian ad litem was appointed only if the party seeking the admission of the report has furnished a copy to all parties at least 14 days prior to the hearing. The report may not be admitted as evidence without the testimony of the guardian ad litem if a party objects to the admittance of the report at least 7 days prior to the hearing.

6. COURTS AGENT. A person serving as a guardian ad litem under this section acts as the court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem.

7. PAYMENT FOR SERVICES. Payment for the services of the guardian ad litem is the responsibility of the parties, as ordered by the court. In determining the responsibility for payment, the court shall consider:

- A. The income of the parties;
- B. The marital and nonmarital assets of the parties;
- C. The division of property made as part of the final divorce;
- D. Which party requested appointment of a guardian ad litem; and
- E. Other relevant factors.

8. NOTICE. A guardian ad litem must be given notice of all civil or criminal hearings and proceedings, including, but not limited to, grand juries, in which the child is a party or a witness. The guardian ad litem shall protect the best interests of the child in those hearings and proceedings, unless otherwise ordered by the court.

19-A M.R.S. 3 1653

MAINE REVISED STATUTES

***** THIS DOCUMENT IS CURRENT THROUGH THE 2000 SUPPLEMENT *****

**TITLE 19-A. DOMESTIC RELATIONS
PART 3. PARENTS AND CHILDREN
CHAPTER 55. RIGHTS AND RESPONSIBILITIES**

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

19-A M.R.S. 5 1653 (2000)

19-A M.R.S. 5 1653

MAINE REVISED STATUTES

***** THIS DOCUMENT IS CURRENT THROUGH THE 2000 SUPPLEMENT *****

**TITLE 19-A. DOMESTIC RELATIONS
PART 3. PARENTS AND CHILDREN
CHAPTER 55. RIGHTS AND RESPONSIBILITIES**

GOTOCODEARCHIVE DIRECTORY FOR THISJURISDICTION

19-A M.R.S. 5 1653 (2000)

STATUS: CONSULT SLIP LAWS CITED BELOW FOR RECENT CHANGES TO THIS DOCUMENT

LEXSEE 2001 Me. ALS 273 -- See section 1.

LEXSEE 2001 Me. ALS 329 -- See section 1 and 2.

5 1653. Parental rights and responsibilities

1. LEGISLATIVE FINDINGS AND PURPOSE. The Legislature makes the following findings concerning relationships among family members in determining what is in the best interest of children.

A. The Legislature finds and declares as public policy that encouraging mediated resolutions of disputes between parents is in the best interest of minor children.

B. The Legislature finds that domestic abuse is a serious crime against the individual and society, producing an unhealthy and dangerous family environment, resulting in a pattern of escalating abuse, including violence, that frequently culminates in intrafamily homicide and creating an atmosphere that is not conducive to healthy childhood development.

2. PARENTAL RIGHTS AND RESPONSIBILITIES; ORDER. This subsection governs parental rights and responsibilities and court orders for parental rights and responsibilities.

A. When the parents have agreed to an award of shared parental rights and responsibilities or so agree in open court, the court shall make that award unless there is substantial evidence that it should not be ordered. The court shall state in its decision the reasons for not ordering a shared parental rights and responsibilities award agreed to by the parents.

8. The court may award reasonable rights of contact with a minor child to a 3rd person.

C. The court may award parental rights and responsibilities with respect to the child to a 3rd person, a suitable society or institution for the care and protection of children or the department, upon a finding that awarding parental rights and responsibilities to either or both parents will place the child in jeopardy as defined in Title 22, section 4002, subsection 6.

D. The order of the court awarding parental rights and responsibilities must include the following:

(1) Allocated parental rights and responsibilities, shared parental rights and responsibilities or sole parental rights and responsibilities, according to the best interest of the child as provided in subsection 3. An award of shared parental rights and responsibilities may include either an allocation of the child's primary residential care to one parent and rights of parent-child contact to the other parent, or a sharing of the child's primary residential care by both parents;

(2) Conditions of parent-child contact in cases involving domestic abuse as provided in subsection 6;

(3) A provision for child support as provided in subsection 8 or a statement of the reasons for not ordering child support;

(4) A statement that each parent must have access to records and information pertaining to a minor child, including, but not limited to, medical, dental and school records and other information on school activities, whether or not the child resides with the parent, unless that access is found not to be in the best interest of the child or that access is found to be sought for the purpose of causing detriment to the other parent. If that access is not ordered, the court shall state in the order its reasons for denying that access;

(5) A statement that violation of the order may result in a finding of contempt and imposition of sanctions as provided in subsection 7; and

(6) A statement of the definition of shared parental rights and responsibilities contained in section 1501, subsection 5, if the order of the court awards shared parental rights and responsibilities.

An order modifying a previous order is not required to include provisions of the previous order that are not modified.

E. The order of the court may not include a requirement that the State pay for the defendant to attend a batterers' intervention program unless the program is certified under section 4014.

3. BEST INTEREST OF CHILD. The court, in making an award of parental rights and responsibilities with respect to a child, shall apply the standard of the best interest of the child. In making decisions regarding the child's residence and parent-child contact, the court shall consider as primary the safety and well-being of the child. In applying this standard, the court shall consider the following factors:

A. The age of the child;

8. The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare;

C. The preference of the child, if old enough to express a meaningful preference;

D. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity;

E. The stability of any proposed living arrangements for the child;

F. The motivation of the parties involved and their capacities to give the child love, affection and guidance;

G. The child's adjustment to the child's present home, school and community;

H. The capacity of each parent to allow and encourage frequent and continuing contact between the child and the other parent, including physical access;

I. The capacity of each parent to cooperate or to learn to cooperate in child care;

3. Methods for assisting parental cooperation and resolving disputes and each parent's willingness to use those methods;

K. The effect on the child if one parent has sole authority over the child's upbringing;

L. The existence of domestic abuse between the parents, in the past

or currently, and how that abuse affects:

(1) The child emotionally; and

(2) The safety of the child;

M. The existence of any history of child abuse by a parent;

N. All other factors having a reasonable bearing on the physical and psychological well-being of the child;

O. A parent's prior willful misuse of the protection from abuse process in chapter 101 in order to gain tactical advantage in a proceeding involving the determination of parental rights and responsibilities of a minor child. Such willful misuse may only be considered if established by clear and convincing evidence, and if it is further found by clear and convincing evidence that in the particular circumstances of the parents and child, that willful misuse tends to show that the acting parent will in the future have a lessened ability and willingness to cooperate and work with the other parent in their shared responsibilities for the child. The court shall articulate findings of fact whenever relying upon this factor as part of its determination of a child's best interest. The voluntary dismissal of a protection from abuse petition may not, taken alone, be treated as evidence of the willful misuse of the protection from abuse process; and

P. If the child is under one year of age, whether the child is being breast-fed.

4. EQUAL CONSIDERATION OF PARENTS. The court may not apply a preference for one parent over the other in determining parental rights and responsibilities because of the parent's gender or the child's age or gender.

5. DEPARTURE FROM FAMILY RESIDENCE. The court may not consider departure from the family residence as a factor in determining parental rights and responsibilities with respect to a minor child when the departing parent has been physically harmed or seriously threatened with physical harm by the other parent and that harm or threat of harm was causally related to the departure, or when one parent has left the family residence by mutual agreement or at the request or insistence of the other parent.

6. CONDITIONS OF PARENT-CHILD CONTACT IN CASES INVOLVING DOMESTIC ABUSE. The court shall establish conditions of parent-child contact in cases involving domestic abuse as follows.

A. A court may award primary residence of a minor child or parent-child contact with a minor child to a parent who has committed domestic abuse only if the court finds that contact between the parent and child is in the best interest of the child and that adequate provision for the safety of the child and the parent who is a victim of domestic abuse can be made.

8. In an order of parental rights and responsibilities, a court may:

- (1) Order an exchange of a child to occur in a protected setting;**
- (2) Order contact to be supervised by another person or agency;**
- (3) Order the parent who has committed domestic abuse to attend and complete to the satisfaction of the court a domestic abuse intervention program or other designated counseling as a condition of the contact;**
- (4) Order either parent to abstain from possession or consumption of alcohol or controlled substances, or both, during the visitation and for 24 hours preceding the contact;**
- (5) Order the parent who has committed domestic abuse to pay a fee to defray the costs of supervised contact;**
- (6) Prohibit overnight parent-child contact; and**
- (7) Impose any other condition that is determined necessary to provide for the safety of the child, the victim of domestic abuse or any other family or household member.**

C. The court may require security from the parent who has committed domestic abuse for the return and safety of the child.

D. The court may order the address of the child and the victim to be kept confidential.

E. The court may not order a victim of domestic abuse to attend counseling with the parent who has committed domestic abuse.

F. If a court allows a family or household member to supervise parent-child contact, the court shall establish conditions to be followed during that contact. Conditions include but are not limited to:

- (1) Minimizing circumstances when the family of the parent who has committed domestic abuse would be supervising visits;**
- (2) Ensuring that contact does not damage the relationship with the parent with whom the child has primary physical residence;**
- (3) Ensuring the safety and well-being of the child; and**
- (4) Requiring that supervision is provided by a person who is physically and mentally capable of supervising a visit and who does not have a criminal history or history of abuse or neglect.**

G. Fees set forth in this subsection incurred by the parent who has committed domestic abuse may not be considered as a mitigating factor reducing that parent's child support obligation.

7. VIOLATION OF ORDER CONCERNING PARENTAL RIGHTS AND RESPONSIBILITIES AND CONTACT. Either parent may petition the court for a hearing on the issue of noncompliance with the order issued under subsection 2. If the court finds that a parent has violated a part of the order, the court may find that parent in contempt and may:

A. Require additional or more specific terms and conditions consistent with the order;

B. Order that additional visitation be provided for a parent to take the place of visitation that was wrongfully denied; or

C. Order a parent found in contempt to pay a forfeiture of at least \$ 100.

8. CHILD SUPPORT ORDER. The court may order conditions of child support as follows.

A. Either parent of a minor child shall contribute reasonable and just sums as child support payable weekly, monthly or quarterly. In an action filed under section 1654, the court may require the child's nonprimary care provider to pay past support. Availability of public welfare benefits to the family may not affect the decision of the court as to the responsibility of a parent to provide child support. The court shall inquire of the parties concerning the existence of a child support order entered pursuant to chapter 65, subchapter II, article 3. If an order exists, the court shall consider its terms in establishing a child support obligation. A determination or modification of child support under this section and a determination of past support must comply with chapter 63.

B. After January 1, 1990, if the court orders either parent to provide child support, the court order must require that the child support be provided beyond the child's 18th birthday if the child is attending secondary school as defined in Title 20-A, section 1, until the child graduates, withdraws or is expelled from secondary school or attains the age of 19, whichever occurs first.

C. The court may require the payment of part or all of the medical expenses, hospital expenses and other health care expenses of the child. The court order must include a provision requiring the obligated parent to obtain and maintain health insurance coverage for medical, hospitalization and dental expenses, if reasonable cost health insurance is available to the obligated parent. The court order must also require the obligated parent to furnish proof of coverage to the obligee within 15 days of receipt of a copy of the court order. If reasonable cost health insurance is not available at the time of the hearing, the court order must establish the obligation to provide health insurance on the part of the obligated parent, effective immediately upon reasonable cost health insurance being available.

When the department provides support enforcement services, the support order must include a provision that requires the responsible parent to keep the department informed of changes in that parent's current address, the name and address of that parent's current employer and whether the responsible parent has access to reasonable cost health insurance coverage and, if so, the health insurance policy information and any subsequent changes.

9. **ENFORCEMENT OF CHILD SUPPORT ORDER.** The court may enforce a child support order as provided in chapter 65.

10. **MODIFICATION OR TERMINATION.** Upon the petition of one or both of the parents, an order for parental rights and responsibilities with respect to a minor child may be modified or terminated as circumstances require.

A. Modification and termination of child support orders are governed by section 2009.

8. Modification of and termination orders for parental rights and responsibilities other than child support are governed by section 1657.

11. **MEDIATION.** Prior to a contested hearing under this chapter relating to initial or modified orders, the court shall refer the parties to mediation as provided in chapter 3.

12. **TERMINATION OF ORDER.** A court order requiring the payment of child support remains in force as to each child until the order is altered by the court or until that child:

A. Attains 18 years of age. For orders issued after January 1, 1990, if the child attains 18 years of age while attending secondary school as defined in Title 20-A, section 1, the order remains in force until the child graduates, withdraws or is expelled from secondary school or attains 19 years of age, whichever occurs first;

B. Becomes married; or

C. Becomes a member of the armed services.

13. **AUTOMATIC ADJUSTMENTS.** The order of the court or hearing officer may include automatic adjustments to the amount of money paid for the support of a child when the child attains 12 or 18 years of age; or when the child graduates, withdraws or is expelled from secondary school, attains 19 years of age or is otherwise emancipated, whichever occurs first.

14. **NOTICE OF RELOCATION.** The order must require notice of the intended relocation of a child by a parent awarded shared parental rights and responsibilities or allocated parental rights and responsibilities. At least 30 days before the intended relocation of a child by a parent, the parent shall provide notice to the other parent of the intended relocation. If the relocation must occur in fewer than 30 days, the parent who is relocating shall provide notice as soon as possible to the other parent. If the parent who is relocating believes notifying the other parent will cause danger to the relocating parent or

the child, the relocating parent shall notify the court of the intended relocation, and the court shall provide appropriate notice to the other parent in a manner determined to provide safety to the relocating parent and child.

Appendix G: Rules Governing GALs: Maine Supreme Judicial Court Rules and Standards for GALs

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Rules for Guardians ad Litem

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STATE OF MAINE

SUPREME JUDICIAL COURT

RULES FOR GUARDIANS AD LITEM

I. ADTHORITY, SCOPE, GOALS, AND DEFINITIONS

A. Authority and Scope. The following Rules, and the appended Standards, are adopted by the Supreme Judicial Court, pursuant to 19-A MRSA § 1507 and 22 MRSA 0 4005. They set the qualifications for Guardians ad litem, standards for practice for Guardians, and govern the appointment of a Guardian and the placement of a Guardian on, and the removal of a Guardian from, the Guardian Roster.

B. Goals. These Rules and the incorporated Standards are designed to improve the services provided by Guardians ad litem to the Court and to ensure that Guardians diligently work to protect and promote the best interests of the children they are appointed to represent. Interpretation of these Rules and the accompanying Standards are to be governed and interpreted by application of the principles that a Guardian is a quasi-judicial officer of the Court, and that a Guardian does not act as a member of the Guardian's underlying profession, but rather as a judicial officer, primarily subject to and governed by the Court. Accordingly, the Guardian is afforded substantial latitude and deference in tailoring her or his role to the particular circumstances of a case and needs of a child, but, in general, a Guardian must:

- 'represent consistently the best interests of the child and advocate on behalf of the child's best interests;
- *understand and uphold the law as it pertains to the Guardian's appointment;
- *maintain the highest standards of professionalism, cultural sensitivity, and ethics;
- *within the scope of authority defined by statute or court order, plan, carry out, document, and complete thorough, appropriate, and fair investigations in a timely fashion;
- *assess any physical, sexual, developmental, and/or emotional risks to or abuse of the child by utilizing: risk assessment tools; evaluations, assessments, and reports; medical records; observation; and interviews with

appropriate persons;

·work effectively with other professionals involved in the assessment or treatment of the child and/or parties to a child's case,

*communicate in a developmentally appropriate way with the child; advocate that steps are taken to protect the child from harmful communication;

-make appropriate, well-reasoned, and defensible recommendations regarding the best interests of the child;

*inspire confidence in the Guardian process by including parties in the investigation, by utilizing effective communication techniques, and by being sensitive to the cultural and socio-economic status of the parties; and

*communicate effectively with the court in motions, reports, recommendations and testimony.

C. **Definitions.** As used in these Rules and Standards, the following terms have the following definitions:

i. **Chief Judge.** "Chief Judge" means the Chief Judge of the District Court, or the Chief Judge's designee;

ii. **Guardian.** ^vGuardian means a Guardian ad litem appointed to represent the best interests of one or more children pursuant to 19-A MRSA I 1507 or 22 MRSA § 4005;

iii. **Judge.** ^vJudge^w means a Justice of the Superior Court, a Judge of the District or Administrative Courts **or a Case Management Officer of the District Court, or a Judge of the Probate Court when exercising jurisdiction under Titles 19-A or 22.**

iv. **Roster.** ¹Roster¹ means the roster of Guardians maintained by the Chief Judge.

II. GUARDIANS AD LITEN.

1. Appointment.

A. Appointment until March 1, 2000. Until March 1, 2000, a judge may appoint any person who, after consideration of all of the circumstances of the particular case, in the opinion of the appointing judge has the necessary skills and experience to serve as a Guardian and represent the best interests of the child or children in that matter.

B. Appointment on and after March 1, 2000. On and after March 1, 2000, a judge may appoint, without any findings, any person then listed on the roster. In addition, a judge **may**, for good cause shown and recited in findings in the order of appointment, appoint any person who, after consideration of all of the circumstances of the particular case, in the opinion of the appointing judge has the necessary skills and experience to serve as a Guardian and represent the best interests of the child or children in that matter.

2. Application, Selection and Placement of Guardians on Roster.

A. Application.

1. Form. Roster applications shall be submitted on the form attached as Appendix C. The Chief Judge may accept an application filed on a substitute form if the Chief Judge determines that substantially all of the information required by Appendix C has been furnished. The Chief Judge may reject an application that is incomplete or does not meet applicable criteria, or the Chief Judge may require an applicant to provide additional information or explanation.

ii. **Application Periods.** The Chief Judge shall accept initial applications received by January 15, 2000, and will review all of the initial applications for placement on the roster. The Chief Judge will accept applications received after that date, and will review them periodically, which must occur at least semi-annually.

B. Selection, Qualifications. The Chief Judge shall screen applications utilizing the criteria set forth in this section. The Chief Judge may waive one or more of the particular criteria for a specific applicant, who is otherwise deemed qualified.

C. Criteria for Initial Listing on the Roster.

1. Credentials.

1. A current valid license to practice law in the state of Maine,

2. A current valid license to practice as an LSW, an LCSW, LPC LCPC, LMSW, LMFT, LPC, psychologist or psychiatrist or in the state of Maine,

3. A Certification of Qualification by the Director of the CASA program, or

4. Waiver of the licensure or qualification requirement by the Chief Judge pursuant to paragraph II(3).

ii. **Core Training.** Attendance at a Guardian training with a curriculum of at least 16 hours that has been approved by the Chief Judge satisfies this requirement. The curriculum 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 Guardian as an agent of the court and interviewing techniques. 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.

D. Placement on Roster. The Chief Judge shall notify applicants of the results of the application screening process. Applicants who pass application screening are conditionally accepted, and must complete a release authorizing the Administrative Office of the Courts to conduct a

background check, comprised of a criminal history information check, and screening for child abuse cases in the records of the Department of Human Services. Those applicants who have not been conditionally accepted may request a review of the Chief Judge's decision under Section 3, Paragraph C. Applicants whose background check results are satisfactory to the Chief Judge will be finally accepted and placed on the roster. Applicants whose initial checks indicate a material problem may be disqualified or asked for additional information or releases.

E. Continuing Education Requirements. Unless these requirements are waived by the Chief Judge, a Guardian shall attend and complete any continuing professional education events or seminars designated as mandatory by the Chief Judge. In addition, in each 12 month period beginning July 1, 2001, a Guardian must annually participate in a total of at least 6 hours of continuing professional education programs applicable to 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. Completion of the specified training hours shall be demonstrated by filing a statement, on a form approved by the Chief Judge, by June 30 of 2002 and each year thereafter.

F. Acceptance of Court Referrals. A Guardian should anticipate being asked to accept at least one pro bono or reduced fee referral from the judicial system per calendar year, and should do so to the extent consistent with the Guardian's other professional, personal, and other public interest service.

0. Guardian Resignation or Leave of Absence. A Guardian may resign from the Roster at any time. A Guardian may request a leave of absence from the Roster from the Chief Judge who may accept the request, reject it, or condition acceptance on such terms as the Chief Judge believes are in the best interests of the Judicial Branch.

3. Oversight.

A. Standards of Conduct. A Guardian shall comply with the requirements of 19-A MRSA § 1507 and 22 MRSA 0 4005, as applicable to a particular case, and with the terms of a judge's order appointing the Guardian.

A Guardian must also comply with, to the extent they are not inconsistent with the above governing authorities, the Standards of Practice for Guardians ad Litem in Maine Courts, appended as Exhibit A, and incorporated in these rules by reference. The Guardian must also comply with Paragraphs 1 & 2 of the Preamble, and with the sections entitled Standards of Performance, Abuse of Position, Discrimination, and Conflict of Interest of the Judicial Branch Code of Conduct, appended as Exhibit B, and incorporated by reference. A Guardian may not solicit any gift from a party to a case in which the Guardian has been appointed. A Guardian may accept a gift of both symbolic nature and no or nominal economic value if the Guardian concludes that it is appropriate to do so in the course of establishing

or maintaining a relationship with the child or the child's family. This provision shall be strictly construed. These provisions do not apply to payment of the Guardian's fees and professional expenses.

If the Guardian is an attorney, she or he acts in his or her capacity as a Guardian, rather than as an attorney, and information he or she receives is not subject to the attorney-client privilege, but is instead governed by Standard 6.2 .

B. Ongoing Evaluations, Reports and Oversight. A Guardian is subject to ongoing oversight. The Chief Judge may initiate a review of a Guardian based upon his or her own motion, a review of the Guardian's reports, complaints received pursuant to Paragraph 4, Sub-Paragraph A, an observation of performance by a judge, or any combination of these sources. Nothing in these rules limits a judge's right to regulate a Guardian or remove a Guardian from his or her role in a particular proceeding on motion of a party after notice and hearing, or on the judge's own motion; or the CASA Director's right to regulate or remove a Guardian acting under the auspices of CASA.

4. Complaints, Reviews, and Appeals.

A. Response to Complaints. The Chief Judge shall maintain a docket of all complaints filed concerning the performance of Guardians. Complaints about the performance of a Guardian in a pending case are to be directed by motion to the judge who appointed the Guardian or to the judge who is conducting hearings in the case. The Chief Judge will not take any action with respect to, or initiate a review with respect to, a complaint arising from a pending case. When a complaint, other than a complaint in a pending case, is received the Chief Judge shall screen the complaint, and may discuss the complaint with the Guardian or other participants in confidence. The Chief Judge shall then consider all information available and may dismiss the complaint without further action. If the Chief Judge decides to review the complaint further, it shall be done under the review procedures set out in Paragraph B.

B. Review Procedures. The Chief Judge may conduct a review of a Guardian in response to a complaint, or on his or her own motion. If the Chief Judge initiates a review of a Guardian for any reason(s), the Chief Judge shall notify the Guardian 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 Guardian, the complainant, parties, counsel and court personnel. The panel shall be comprised of one Guardian who is listed on the roster, one attorney and one member of the public. Upon request, the Guardian may review the complaint and other information developed by the review panel. The Guardian may provide the panel with a written response. Thereafter, the review panel may terminate the review without action or may notify the Guardian in writing of any proposed action. If the Guardian requests a hearing before the panel on the proposed action, the Guardian 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 Guardian, 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 Guardian's underlying profession, may make a referral for further action to the appropriate Board or Commission.

5. Temporary or emergency Removal.

The Chief Judge may remove or suspend a Guardian from the roster prior to initiation or completion of the review procedure set forth in Section 4, paragraph B upon the Chief Judge's determination that it is in the best interests of the Judicial Branch to do so.

III. Ix4mNITy.

Pursuant to 19-A MRSA § 1507(6), and to these Rules, a Guardian is entitled to quasi-judicial immunity from liability for actions undertaken pursuant to their appointments, these Rules or the Standards of Practice for Guardians ad Litem in Maine Courts.

IV. TRANSITION

Guardians appointed prior to March 1, 2000, shall continue to serve until their appointments are terminated or expire in accordance with the terms of their order of appointment, whether or not listed on the roster. Guardians who do not wish to continue with their appointment must move to withdraw from the case.

Dated: November 9, 1999

For the Court,

Daniel E. Wathen, Chief

Justice

Appendix A

STATE OF MAINE

SUPREME JUDICIAL COURT

STANDARDS OF PRACTICE FOR GUARDIANS AD LITEM

IN MAINE COURTS

1. CORE OBLIGATIONS OF A GUARDIAN AD LITEM

1.1 Exercise of Independent Judgment. A Guardian ad litem acts as a quasi-judicial officer of the Court. Accordingly, a Guardian ad litem shall be guided by the best interests of the child and shall exercise the Guardian's independent judgment on behalf of the child in all relevant matters. These standards represent a compilation of "best practices" for Guardians ad litem. A Guardian is not required to engage in all of the activities listed in every case, but is expected to tailor the Guardian's activities to the individual circumstances of each child and each case, being guided in all instances by the Guardian's evaluation of the best interests of the child.

1.2 Protect Child's Interests. The determination of the child's legal interests must be based on objective criteria as set forth by the provisions of the Maine Revised Statutes Annotated that **are** related to the purposes of the proceedings.

1.3 Faithfully perform duties. The Guardian ad litem must maintain independent representation of the best interests of the child and perform the Guardian ad litem's duties faithfully. Upon failure of the Guardian to do so, the appointing Court may discharge the Guardian ad litem and appoint a successor.

2. INITIAL CASE DEVELOPMENT

2.1 Develop Understanding of Litigation. Commencing upon appointment the Guardian ad litem should:

(1) Obtain copies of all relevant pleadings and notices;

(2) Participate in depositions, negotiations, and discovery that are relevant to the child's best interests, and participate in all case management, pretrial or other conferences, and hearings, unless excused by the court;

(3) Confirm with the Court Clerk that he or she has been appointed. The Clerk must send copies of all subsequent notices and orders to the Guardian. Parties and their counsel are on notice that the Guardian is entitled to copies of all pleadings and correspondence with the Court and is entitled to reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;

(4) Attempt to reduce case delays and if unnecessary delays are encountered, remind the court or its staff of the need to speedily resolve children's issues;

(5) Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and

(6) Identify appropriate family and professional resources for the child.

2.2 Meet and Interview Child. Establishing and maintaining a relationship with a child is a foundation of the Guardian's duties. Therefore, irrespective of the child's **age**, the Guardian ad litem should visit

with the child as soon as possible after appointment, consistent with statutory requirements or the order of appointment, or both. In Title 22

proceedings, unless otherwise specified by the Court, the initial meeting

must take place within 7 **days**. Meetings with the child should include interviews both in the child's home and unless impractical or inappropriate,

in a neutral setting. The Guardian should meet with the child prior to court

hearings and when apprised of emergencies or significant events impacting

on the child. In Title 22 proceedings, unless otherwise specified by the Court, the Guardian must meet with the child at least quarterly.

3. PRN-NEARING ACTIVITIES

3.1 Access to Child, Parties, Caregivers, Records. The Guardian ad litem shall be provided access to the child by any agency or person. The Guardian ad litem should meet with the child in the child's placement as often as necessary to determine that the child is safe and to ascertain and represent the child's best interests.

Unless otherwise provided by law, the Guardian ad litem shall be provided, upon request, with all reports relevant to the **case** made to or by any agency or any person and shall have access to all relevant records of such agencies or persons relating to the child or the child's family members or placements of the child.

3.2 Investigation. To support the child's best interests, the Guardian ad litem should conduct prompt thorough, continuing, and independent investigations and discovery which must, unless otherwise directed by the appointing court include,

(1) Reviewing the child's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case, including, when necessary, obtaining court orders to facilitate this review;

(2) Contacting and meeting with the parents, legal guardians, foster parents and caretakers of the child;

(3) Meeting separately with the child and each party, unless inappropriate in a particular case;

(4) Interviewing other individuals involved with the child, including school personnel, child welfare case workers, school personnel, physicians, and mental health professionals who are treating the child.

Pursuant to the statutes, rules, and Standard 1.1, a Guardian has a broad permissible scope of activity and authority. However, in most

cases completion of all activities and the exercise of all powers are not necessary. Accordingly, in addition to the above elements, the Guardian's investigation may include, but is not limited to:

(5) Reviewing the court files of siblings and other family members, and other case-related records of involved social service agencies and other service providers;

(6) Contacting lawyers for other parties and Guardians ad litem in the case and in other relevant cases for background information;

(7) Obtaining necessary authorizations for the release of information;

(8) Interviewing individuals involved with the child, including school personnel, child welfare case workers, foster parents and other caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses;

(9) Reviewing relevant photographs, video or audio tapes and other evidence; and

(10) Attending and participating in, where appropriate, treatment, placement, administrative hearings, other proceedings involving legal issues, and school case conferences concerning the child as needed;

(11) Assessing any physical, sexual, developmental, and/or emotional risks to or abuse of the child by utilizing: risk assessment tools; evaluations, assessments, and reports; medical records; observation; and interviews with appropriate persons;

(12) Working effectively with other professionals involved in the assessment or treatment of the child and/or parties to a child's case, to include:

(a) identifying the need for assessments related to domestic violence, abuse of a child, chemical dependency,

mental health, and/or special developmental, educational, or medical needs of a child and making referrals to appropriate specialists or treatment programs;

(b) requesting educational testing of, or an individualized education plan for a child;

(c) understanding measurement tools, risk assessments, and reports related to domestic violence, abuse of a child, chemical dependence, mental health, and/or the special needs of a child; and

(d) understanding scientific data related to paternity and/or medical needs of a child;

(e) disclosing information to other professionals, when it is in the child's best interests to do so, in order that they can adequately perform their functions, and reviewing tentative conclusions or recommendations with them in order to test their validity or appropriateness;

(13) inspiring confidence in the Guardian process by including parties in the investigation, utilizing effective communication techniques, and being sensitive to the culture and socio-economic status of the parties.

3.3 Explanation of Court Process. The Guardian ad litem shall explain, when appropriate, the court process and the **role** of the Guardian ad litem to the child. The Guardian ad litem will assure, when necessary, that the child is informed of the purpose of court proceeding.

3.4 Ascertain Child's Preferences. The Guardian ad litem should elicit the child's preferences in a developmentally appropriate manner, advise the child, and provide guidance. The Guardian ad litem should assure the child that the child's opinions and feelings will be made known to the Court even when not consistent with the recommendations of the Guardian ad litem.

3.5 Appointment of Counsel for Guardian. A Guardian ad litem may petition the Court to appoint a lawyer to represent the Guardian when, in the judgment of the Guardian, such appointment is necessary to protect the

legitimacy of the Guardian's role. The Guardian should understand that such an appointment is highly unusual, and that extraordinary cause will be necessary for such an appointment if the Guardian is an attorney.

3.6 Filing of Pleadings. The Guardian ad litem should file such reports, motions, responses or objections as necessary to represent the best interests of the child, and must provide copies to all parties of record.

Relief requested may include, but is not limited to:

- (1) A mental or physical examination of a party or the child;
- (2) A parenting, custody or visitation evaluation;
- (3) An increase, decrease, or termination of contact, or the imposition of conditions on contact;
- (4) Restraining or enjoining a change of placement;
- (5) Contempt for noncompliance with a court order;
- (6) Termination of the parent-child relationship;
- (7) Child support;
- (8) A protective order concerning the child's privileged communications or tangible or intangible property;
- (9) Request for services for child or family; and
- (10) Dismissal of petitions or motions.

4. COURT HEARINGS

4.1 Reconunendations to the Court. For interim or preliminary protection hearings, the Guardian should, except as otherwise required, appear in court and offer recommendations subject to questions by the Court and parties or counsel. In Title 19-A cases the Guardian ad litem should present written recommendations to the parties and the court at least 14 days prior to final hearing, and in Title 22 cases reasonably in advance of any interim or final hearing. The report shall be based on the Guardian's investigation and evaluation and provide reasons in support of these recommendations. In Title 22 proceedings, unless otherwise specified by the Court, the Guardian must make a subsequent report at least semi-annually.

Whether or not the Guardian's report is objected to, the report may be reviewed by the Court. In Title 22 cases it is fully admissible. In Title 19-A cases, it is fully admissible unless objected to at least 7 days prior to the hearing. Whether or not the Guardian's report is objected to, the Guardian ad litem may offer evidence to the court as set forth in Standard 4.2.

4.2 Participation in Hearing. The Guardian ad litem shall appear at all proceedings to represent the child's best interests, unless previously excused by order of the Court. The Guardian ad litem may present evidence and ensure that, where appropriate, witnesses are called and examined,

including, but not limited to, foster parents and psychiatric, psychological, medical, or other expert witnesses. If the Guardian ad litem testifies, the Guardian ad litem shall be duly sworn as a witness and be subject to cross-examination.

In the event any new developments or significant changes in the child's circumstances occur during the pendency of the court process, the Guardian ad litem may file appropriate pleadings.

4.3 Protection of Child as Witness. The Guardian ad litem should protect the interests of the child who is a witness in any judicial proceeding relating to the case in which the Guardian ad litem has been appointed. The Guardian ad litem may advocate for special procedures, including, but not limited to, special procedures to protect the child witness from **unnecessary** psychological harm resulting from the child's testimony, with or without the consent of other parties.

4.4 Court Orders. The Guardian ad litem should request orders that are clear, specific, and, where appropriate, include a time line for the assessment, services, placement, treatment and evaluation of the child and the child's family.

5. OTHRR ACTIVITIES

5.1 Participation. The Guardian ad litem should participate in the development and negotiation, including mediation, of any plans or orders that affect the best interests of the child. The Guardian ad litem should monitor implementation of service plans and court orders, through the termination or expiration of the Guardian's appointment, to determine whether services ordered by the court are being provided in a timely manner.

5.2 Development of Services. The Guardian ad litem should advocate for appropriate services (by motion for court order if necessary) to access entitlements, to protect the child's interests and to implement a service plan. These services may include, but not be limited to:

- (1) Family preservation prevention or reunification services;
- (2) Sibling and family visitation;
- (3) Child support;

- (4) Domestic violence prevention, intervention, and treatment;
- (5) Medical and mental health care;
- (6) Drug and alcohol treatment;
- (7) Parenting education;
- (8) Semi-independent and independent living services;
- (9) Foster care;
- (10) Termination of parental rights action;
- (11) Adoption services;
- (12) Education;
- (13) Recreational or social services; and
- (14) Housing.

5.3 Supplementary Family Services. When needs created by a disability are not otherwise being addressed the Guardian ad litem should advocate that a child or a child's family is referred to appropriate supplemental services to address the child's physical, mental, or developmental disabilities. These services may include, but are not limited

to:

- (1) Special education and related services;
- (2) Supplemental security income (SSI) to help support needed services;
- (3) Therapeutic foster or group home care; and
- (4) Residential/inpatient and outpatient psychiatric treatment.

6. OTHER

6.1 Mandated Reporting. Pursuant to 22 MRSA § 4011, while acting in their professional capacity as Guardian, Guardians are mandated reporters, and if a Guardian knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected, must make an immediate report to the Department of Human Services.

6.2 Confidentiality. A Guardian ad litem shall observe all statutes, rules and regulations concerning confidentiality. A Guardian ad litem shall not disclose information or participate in the disclosure of information relating to an appointed case to any person who is not a party to the case, except as necessary to perform the Guardian ad litem's duties, including those referenced in Standards 3.2, 5.2 and 5.3, or as may be specifically provided by law. Communications made to a Guardian, including those made to a Guardian by a child, are not privileged and may or may not be disclosed to the parties, the Court or to professionals providing services to the child or the family based on the Guardian's evaluation of the best interests of the child. A Guardian's notes and work papers are privileged and shall not be

disclosed to any person. A court may review a Guardian's decision not to disclose information after an in-camera examination of the information in question. If the Guardian is an attorney, she or he acts in his capacity as a Guardian, rather than as an attorney, and information he or she receives is not subject to the attorney-client privilege.

A Guardian or a judge may, when it is in the best interests of a child, initiate or participate in ex parte communications about a particular case pursuant to the Maine Code of Judicial Conduct, Canon 3 (B) (7) (c) . However, as a matter of due process and fundamental fairness, the Guardian or the court must promptly disclose the nature of the communication to the parties or their counsel, unless such disclosure is likely to present a risk of harm to the child or a party, in which case the court will take such steps as necessary to alleviate the potential for harm, and when the danger of harm has passed, disclose the nature of the communication to the parties or their counsel.

6.2 Conflicts. If a Guardian ad litem determines that there is a conflict of interest requiring withdrawal, the Guardian should continue to perform as the Guardian ad litem and seek permission from the court to withdraw. The Guardian should request appointment of a successor **Guardian** ad litem without revealing the details of the conflict, unless the Guardian determines that it is in the child's best interests to do so.

If a Guardian ad litem is also appointed for siblings, there may also be a conflict which could require that the Guardian seek to withdraw from representing all of the children.

6.3 Withdrawal. A Guardian ad litem may seek to withdraw by filing a motion with the court that appointed the Guardian. The Guardian must continue representation until the motion is granted, and if the Court's order so provides, until a successor Guardian is appointed. In Title 19-A cases, an order that appoints a Guardian "for the duration of the case" does not obligate the Guardian to serve once a final judgment has been rendered. In Title 22 cases, an order that appoints a Guardian "for the duration of the

case" obligates the Guardian to serve until final action, including adoption of the child.

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