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**REPORT OF THE JUDICIAL COUNCIL
GUARDIAN AD LITEM ADVISORY COMMITTEE
FEBRUARY 9, 2001**

BACKGROUND

The Legislature, through its SRS Transition Oversight Committee, requested that the Judicial Council undertake a study of the guardian ad litem system in Kansas and make suggestions to improve the system.

The Judicial Council agreed to appoint an advisory committee to conduct the study. The members of the Committee are:

- Hon. C. Fred Lorentz, Chair, District Court Judge, Fredonia;
- Mark Gleeson, Office of Judicial Administration-Family & Children Program Coordinator, Topeka;
- Kellie Hogan, Staff Attorney-Kansas Legal Services, Wichita;
- Hon. James R. Kepple, District Magistrate Judge, Ness City;
- Marie Landry, Director-Children's Advocacy Resource Center/Kansas Legal Services, Topeka;
- Roberta Sue McKenna, Staff Attorney-Social Rehabilitation Services, Topeka;
- Phillip Mellor, Practicing Attorney, Wichita;
- Janette Meis, State Coordinator for Kansas CASA, Hays;
- Rene Netherton, Practicing Attorney, Topeka;
- Rep. Melvin Neufeld, State Representative, Ingalls;
- Marty Snyder, Deputy Disciplinary Administrator, Topeka;
- Pat Thompson, Practicing Attorney, Salina; and
- Sen. John L. Vratil, State Senator, Overland Park.

The Judicial Council Guardian Ad Litem Advisory Committee met January 4, January 25, February 9 and February 22, 2001.

The Committee discussed problems facing Guardians Ad Litem (GAL's). The most common problems identified were that GAL's are overworked and underpaid. GAL's frequently have high caseloads and their average hourly wage for performing GAL work falls well below what a private practitioner would usually charge. Part-time GAL's can make significantly more money working on other cases rather than court appointed GAL cases. Many see their GAL work as nearly *pro bono*. GAL's with extremely high caseloads cannot be expected to stay in contact with so many clients. They cannot afford to do an independent investigation in every case, and must pick and choose when to do so. They commonly rely on CASA and SRS workers to perform that investigation.

Another problem is the lack of standardized training curriculum for GAL's. The field of juvenile law requires more specialized knowledge and expertise than it once did, and inadequate training and the lack of a support system leaves GAL's unprepared. GAL's need specialized skills, training, and resources to carry out their function of conducting an independent investigation and ascertaining the best interests of the child.

The Committee also discussed the distinction in roles between a child's attorney and a GAL. GAL's face an ethical dilemma of whether they serve as an officer of the court, representing the child's best interests, or whether they serve as the child's attorney, representing the child's wishes. The Committee discussed the GAL guidelines set out by the Supreme Court in Administrative Order No. 100. Neither the statute nor the rule clearly defines the role of the guardian ad litem.

The judge needs reliable information to make the best decision regarding the child. However, it is not the GAL's role to work for the judge in providing that information. CASA volunteers are more suited to be the eyes and ears of the judge, but they, too, need to maintain an independent role. Concern was raised that some judges consider GAL's to be their employees, and this presents a conflict of interest.

The Committee discussed the concept of a statewide GAL system, similar to the public defender system, which would allow GAL's to devote a full-time practice to representing children. Many committee members supported this idea and agreed that a statewide GAL system would allow more specialization and expertise. A statewide system would also eliminate the least qualified GAL's. However, the Committee recognized that asking the state to take over GAL programs from the counties is an expensive and complicated endeavor. If money were no object, a statewide GAL system might be a good idea. However, the Committee agreed that its goal should be to recommend steps toward improving representation of children in Kansas.

Based on the experience of Committee members and the recommendations contained in a 1997 report from the American Bar Association Center on Children and the Law, an appropriate caseload for a full time attorney serving as guardian ad litem would be a maximum of 54 new cases per year. Therefore a judicial district with 300 child in need of care petitions filed each year would require 5.5 full time attorneys in order to allow each attorney to begin minimally meeting the professional obligation described in K.S.A. 38-1505 and Supreme Court Administrative Rule No. 100. This estimate is based on an average of 40 hours per case but does not include any time for attendance at case planning conferences, independently investigating the facts and circumstances of the case or to monitor the implementation of service plans and compliance with court orders. See appendix pages 20 to 55.

RECOMMENDATIONS

- 1. The Committee recommends that the Legislature establish Guardian Ad Litem Pilot Projects in two judicial districts.**

The pilot projects will provide money to supplement the participating judicial district's existing GAL system in child in need of care cases. There will be three components of the pilot projects: (1) representation, (2) training, and (3) monitoring. This should result in lower caseloads and a better support system for the GAL's in the districts, which in turn should result in better representation for the children. The hypothesis to be tested is whether effective advocacy will improve the outcomes of safety, permanency and well being for children.

The Committee recommends the Legislature fund a contract to be administered by Kansas Social and Rehabilitation Services. The grant will fund two pilot projects, of three year's duration, in two judicial districts (one being a single county judicial district and one being a multi-county judicial district). Interested judicial districts, private corporations, counties or a combination of entities are invited to submit grant applications. Grant applications will be received and selection of projects overseen by the Supreme Court Task Force on Permanency Planning. The Task Force will review project reports and provide a report on the effectiveness of each project, including recommendations for future expansion of existing projects. Participating districts will be required to maintain current expenditures.

A copy of a proposed "Request for Proposal - Guardian Ad Litem Pilot Projects" is attached at pages A-1 to A-9 of the appendix to this report.

2. **The Committee recommends that Supreme Court Administrative Order No. 100, which provides guidelines for guardians ad litem, be amended to provide more responsibility to the appointing judge, change continuing education requirements, clarify the role of the guardian ad litem and make other minor changes.**

After considering Supreme Court Administrative Order No. 100, the Committee recommended amendment of the order. For a copy of existing Administrative Order No. 100, see page A-10 of the appendix to this report. For a copy of Administrative Order No. 100, showing the recommended changes by "strike-type" and underscoring and including comments, see pages A-11 to A-15 of the appendix to this report. For a copy of Administrative Order No. 100, including the proposed changes, but without the "strike-type" and underscoring, see pages A-16 to A-18 of the appendix to this report.

The amendments suggested to Administrative Order No. 100 by the Committee include the addition of a requirement that the appointing judge insure compliance with the order. Currently the Office of Judicial Administration does not have the capability of administering the order.

Proposed amendments to the order also clarify the role of the GAL. In the current order (subsection 4) the GAL is required to represent the best interests of the child. In the amended order this requirement is deleted. Instead, the GAL is to appear and represent the child. This amendment will bring the order in compliance with K.S.A. 38-1505. New subsection 3, of the amended administrative order, is proposed to read as follows:

File appropriate pleadings on behalf of the child. Appear for and represent the child at all hearings. All relevant facts should be presented to the court,

including the child's position. If the child disagrees with the guardian *ad litem*'s recommendations, the guardian *ad litem* must inform the court of the disagreement. The court may, on good cause shown, appoint an attorney to represent the child's expressed wishes. If the court appoints an attorney, that individual serves in addition to the guardian *ad litem*. The attorney must allow the child and the guardian *ad litem* to communicate with one another but may require such communications to occur in the attorney's presence.

In addition, the Order is proposed to be amended to require the appointing judge to issue the order appointing the GAL in a form substantially similar to the "Order Appointing Guardian Ad Litem" which will become a part of current Administrative Order No. 100 and appears at page A-19 of the appendix to this report.

The Committee also considered the subject of prerequisite and continuing education. The amendment to the order proposes that the prerequisite education requirement be decreased from ten hours to six hours and the annual continuing education requirement be increased from four hours to six hours. It is the opinion of the Committee that education is more commonly available in six hour increments rather than increments of ten hours or four hours.

In addition, the following areas of education were added: communication with children skills, investigatory techniques, professional responsibility, special education law, substance abuse issues and school law. The area of "court observation" was deleted. The order is also proposed to be amended to provide that the appointing judge, rather than the Chief Judge, may waive the requisite education hours upon a showing of a need for an emergency temporary appointment. The educational requirements must then be completed within six months of the appointment.

In addition, in subsection 1, the requirement of "regular contact" with the child is proposed to be amended to "ongoing contact" and in subsection 2 "permanency" is proposed to be added to the list of

factors to be considered in determining the best interests of the child.

3. **The Committee recommends K.S.A. 38-1505 relating to right to counsel, appointment of guardians ad litem and the duties of guardians be amended to provide a procedure to be followed when the child's position is not consistent with the determination of the GAL as to the child's best interest.**

The Committee recommends that K.S.A. 38-1505 be amended as follows:

38-1505. Right to counsel. (a) *Appointment of guardian ad litem; duties.* Upon the filing of a petition the court shall appoint a person who is an attorney to serve as guardian *ad litem* for a child who is the subject of proceedings under this code. The guardian *ad litem* shall make an independent investigation of the facts upon which the petition is based and shall appear for and represent the child. When the child's position is not consistent with the determination of the guardian *ad litem* as to the child's best interests, the guardian *ad litem* must inform the court of the disagreement. Upon good cause shown the court may appoint an attorney to represent the child's expressed wishes. The attorney shall allow the child and the guardian *ad litem* to communicate with one another but may require such communications to occur in the attorney's presence.

(b) *Attorney for parent or custodian.* A parent or custodian of a child alleged or adjudged to be a child in need of care may be represented by an attorney, other than the guardian *ad litem* or the attorney appointed for the child, in connection with all proceedings under this code. If at any stage of the proceedings a parent desires but is financially unable to employ an attorney, the court shall appoint an attorney for the parent. It shall not be necessary to appoint an attorney to represent a parent who fails or refuses to attend the hearing after having been properly served with process in accordance with K.S.A. 38-1534 and amendments thereto. A parent or custodian who is not a minor, a mentally ill person as defined in K.S.A. 1999 Supp. 59-2946 and amendments thereto or a disabled person as defined in K.S.A. 59-3002 and amendments thereto may waive counsel either in writing or on the record.

(c) *Attorney for parent who is a minor, mentally ill or disabled.* The court shall appoint an attorney for a parent who is a minor, a mentally ill person as defined in K.S.A. 59-2902 and amendments thereto or a disabled person as defined in K.S.A. 59-3002 and amendments thereto, unless the court determines that there is an attorney

retained who will appear and represent the interests of the person in the proceedings under this code.

(d) *Continuation of representation.* A guardian *ad litem* appointed for a child or an attorney appointed for a child or an attorney appointed for a parent or custodian shall continue to represent the client at all subsequent hearings in proceedings under this code, including any appellate proceedings, unless relieved by the court upon a showing of good cause or upon transfer of venue.

(e) *Fees for counsel.* A guardian *ad litem* or attorney appointed for parties to proceedings under this section shall be allowed a reasonable fee for their services, which may be assessed as an expense in the proceedings as provided in K.S.A. 38-1511 and amendments thereto.

The proposed amendment provides for a procedure to be followed when the child's position is not consistent with the determination of the GAL as to the child's best interests.