



# Guardian ad Litem Program

2018  
EVALUATION REPORT

Program Evaluation Division

**OFFICE OF THE LEGISLATIVE AUDITOR**

STATE OF MINNESOTA

## Program Evaluation Division

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## OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA • James Nobles, Legislative Auditor

March 2018

Members of the Legislative Audit Commission:

The Guardian ad Litem Program was created to advocate for the best interests of children involved in certain types of court cases, such as those involving child abuse or neglect. The Guardian ad Litem Board administers the Program.

We found that the Board has not provided sufficient oversight of the Guardian ad Litem Program. It has established few standards to ensure guardians ad litem provide high-quality services statewide, and it has not regularly performed several important oversight activities. We make several recommendations for the Board to increase the level of supervision and direction it provides to the Program.

We also found that the number of cases to which guardians ad litem must be assigned increased significantly in recent years, and the Program has struggled to meet the increased demand for its services. We recommend the Legislature work with the Program and the state's judiciary to determine whether the requirements in law accurately reflect the needs of the state.

Our evaluation was conducted by Jodi Munson Rodríguez (project manager), Caitlin Badger, and Kristina Doan. The Guardian ad Litem Board and Program staff cooperated fully with our evaluation, and we thank them for their assistance.

Sincerely,

James Nobles  
Legislative Auditor

Judy Randall  
Deputy Legislative Auditor



# Summary

## Key Facts and Findings:

- Federal and state law require guardians ad litem to be appointed to certain types of court cases to advocate for a child's best interests. (pp. 6-8)
- Guardians ad litem investigate a child's situation and make recommendations to the court. (pp. 7-8)
- In 2010, the Legislature established the Guardian ad Litem Board to administer the statewide Guardian ad Litem Program in Minnesota. (p. 10)
- It is unclear how the guardian ad litem's role is different from some other court professionals whose roles guardians ad litem are prohibited from performing on the same case. (p. 18)
- The Guardian ad Litem Board has established few standards to ensure that guardians provide consistently high-quality services, and guardian ad litem work varied significantly across cases we reviewed. (pp. 28-29)
- In recent years, the number of court cases that required a guardian ad litem increased significantly, while the guardian ad litem workforce increased only modestly. (pp. 41, 45)
- As of the end of Fiscal Year 2017, the Guardian ad Litem Program had not assigned guardians ad litem to some cases for which they were required. (p. 43)
- The Guardian ad Litem Board adopted minimum training requirements for guardians ad litem that meet or exceed best practice standards for volunteer guardians ad litem, but the Board has not ensured all guardians ad litem comply with these requirements. (pp. 60, 63)

- The Guardian ad Litem Board has not actively monitored several aspects of the Guardian ad Litem Program. (pp. 71-73)
- Some aspects of the Guardian ad Litem Program's formal complaint resolution process are not transparent. (p. 83)

## Key Recommendations:

- The Legislature should clarify the role of guardians ad litem in certain types of court cases. (p. 20)
- The Guardian ad Litem Board should adopt clear standards for guardian ad litem work and establish formal caseload guidelines for guardians ad litem. (pp. 35, 49)
- The Guardian ad Litem Board should develop a plan for assigning guardians ad litem to all cases for which they are required. (p. 50)
- The Legislature should review the Board's plan in conjunction with guardian ad litem responsibilities listed in statute and determine the level of funding needed by the Program. (p. 50)
- The Guardian ad Litem Board should ensure all guardians ad litem comply with the Board's training policies. (p. 64)
- The Guardian ad Litem Board should provide greater financial oversight to the Program, regularly review its own and the program administrator's performance, establish measurable goals for the Program, and regularly monitor the Program's progress towards those goals. (pp. 71, 73-74)
- The Guardian ad Litem Board should clarify certain aspects of the formal complaint resolution process. (p. 84)

The Guardian ad Litem Board has provided limited oversight of the Guardian ad Litem Program.

The Guardian ad Litem Board has established few standards to guide guardian ad litem work.

## Report Summary

Each year, thousands of children in Minnesota are involved in court cases related to abuse, neglect, custody, and other matters. In some of these cases, the courts appoint a guardian ad litem to help ensure the child's needs are not overlooked during the court process. Guardians ad litem assess a child's situation and make recommendations to the court about a child's best interests.

Federal and state law outline requirements for guardian ad litem appointments. For example, the courts must appoint guardians to juvenile court cases that involve alleged child abuse, neglect, or abandonment.<sup>1</sup> The courts must also appoint guardians ad litem to family court cases involving custody or parenting time when the court has reason to believe the child is a victim of abuse or neglect.<sup>2</sup>

The Legislature created the Guardian ad Litem (GAL) Board in 2010 to administer the GAL Program. The Board must hire a program administrator to carry out the Program's operations.

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**State law directs guardians ad litem to perform some of the same activities as other court professionals whose roles guardians are prohibited from fulfilling.**

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State law provides relatively broad guidance about the activities guardians ad litem must perform. These activities include reviewing relevant documents and interviewing parents and caregivers. Further, guardians ad litem must make recommendations about the best interests of the child.<sup>3</sup> In custody, divorce, and legal separation cases to

which they are appointed, guardians ad litem must also advise the court about custody and parenting time.<sup>4</sup>

These activities are similar to those of some other court professionals whose role guardians ad litem are prohibited from performing on cases to which they are assigned. For example, court rules prohibit a person from acting as a guardian ad litem and custody evaluator on the same case. Yet, like a guardian ad litem, custody evaluators are to investigate, report, and make recommendations regarding custody and parenting time, including an evaluation of the child's best interests.

This lack of clarity can leave families unsure of the guardian ad litem's role and makes it difficult for managers to ensure guardians work within the scope of their role. We recommend the Legislature clarify the role of guardians ad litem, particularly in family court.

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**Without clear work standards, it was difficult to determine if the variation we encountered in guardian ad litem work was appropriate.**

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Statutory guidance is broad, and the GAL Board has created few standards to guide guardian ad litem work. For example, the Board has not established criteria guardians should consider when making recommendations or standards for how often guardians ad litem should meet with children.

The activities guardians performed varied significantly in GAL Program data and for a sample of cases we reviewed. For example, according to GAL Program data, guardians visited

<sup>1</sup> "Guardians" refers to guardians ad litem.

<sup>2</sup> Per state law, the court is either required or permitted to appoint guardians ad litem to several other types of court cases.

<sup>3</sup> *Minnesota Statutes* 2017, 260C.163, subd. 5(b); and 518.165, subd. 2a.

<sup>4</sup> *Minnesota Statutes* 2017, 518.165, subd. 2.

children a median of four times in the six months following their assignment, but the number of visits ranged from zero to more than eight.

Without clear standards in law or Board policy, it was difficult to determine whether guardians used their discretion appropriately while fulfilling their role. Further, without clear standards, it would also be difficult for the Board to ensure children receive the same level of service across the state. For that reason, we recommend the GAL Board establish guardian ad litem work standards.

Even when standards were clear, we found that guardians did not always comply with them. For example, we found that guardians ad litem did not submit the majority of the court reports included in our review within the required time period.

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**The Guardian ad Litem Program did not assign guardians ad litem to some cases for which they were required.**

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The number of juvenile court cases regarding child abuse, neglect, and abandonment increased by 25 percent between fiscal years 2015 and 2017—an increase of more than 1,900 cases. Because courts are required to appoint guardians ad litem to these cases, the demand for guardian services in juvenile court increased. As of the end of Fiscal Year 2017, the GAL Program had not assigned guardians ad litem to more than 500 cases for which a guardian appointment was required.

As appointments to juvenile court cases increased, appointments to family court cases decreased. This does not appear to correspond to a decrease in the court's demand for guardian services in family court. Half of the 145 judges who responded to our survey of district court judges and had recently appointed a guardian to a family court case

commented on the difficulties of obtaining a guardian in family court. Several judges told us they no longer request guardians for family court cases—even when the appointment is required—because they know the GAL Program does not have enough guardians ad litem to fulfill the request.

The GAL Program reported that it increased its workforce by 22 full-time-equivalent staff from Fiscal Year 2015 to Fiscal Year 2017. Despite this, some GAL Program managers and coordinators told us that they do not have enough staff or resources to handle all of the cases. Several judges, attorneys, and social work professionals with whom we spoke expressed concern about high caseloads or insufficient staffing levels.

We believe it is important for the GAL Board and Legislature to work together to determine whether current legal requirements for the GAL Program reflect the needs of the state. They should also identify the level of resources necessary for the Program to comply with requirements in law.

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**The Guardian ad Litem Board has not ensured all guardians ad litem comply with training requirements.**

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The GAL Board requires all guardians ad litem to complete 40 hours of initial training on juvenile court cases related to abuse and neglect, as well as 6 hours of training on domestic and family violence. Guardians ad litem that work on certain types of cases, such as family court cases, receive additional training. Guardians ad litem must also complete a specified number of hours of continuing education each year, including training on cultural competency.

Central office staff plan statewide training; district managers also provide on-the-job training locally. We surveyed guardians ad litem, and the vast majority

The number of cases to which guardians ad litem must be appointed increased significantly between fiscal years 2015 and 2017.

The Guardian ad Litem Board has provided little strategic direction to the Program in recent years.

of respondents agreed the GAL Program provided high-quality training.

At the same time, the Program does not centrally track guardian compliance with initial and ongoing training requirements. Therefore, the Board does not have information on the number of guardians ad litem that meet the training requirements. We recommend the Board ensure all guardians ad litem comply with the Board's training policies.

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**The Guardian ad Litem Board did not perform several key duties necessary to effectively monitor the Program's performance.**

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Board policies require the Board to establish goals to monitor the Program's impact on an annual basis. As of the end of Fiscal Year 2017, the Board had not revised those goals since they were established in 2011. Although the Board participated in a strategic planning session in 2016, it did not adopt a strategic plan and identified few measureable outcomes as a result of the planning process.

GAL Board policies also require the Board to regularly assess both its own performance and the performance of the program administrator. We could confirm that the Board evaluated its own performance and the performance of the program administrator each on only one occasion between 2010 and the end of Fiscal Year 2017.

Furthermore, state law requires that the Board establish a procedure for distributing funding. Despite operating with a deficit in four of the five years between fiscal years 2013 and 2017, the Board did not update its procedure for distributing funds until October 2017. The program administrator told us the Program previously had been distributing funds based on a procedure developed in 2008.

We recommend the Board take several actions to strengthen the oversight and direction it provides the Program, including setting measurable goals for the Program's performance and regularly monitoring those goals.

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**The Guardian ad Litem Board established a complaint resolution process, but several aspects of the process are not transparent.**

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The GAL Board has a formal complaint resolution process that provides complainants with an administrative avenue to address their concerns about guardian ad litem performance. The Board added a formal appeals option to the process in 2015.

However, some aspects of the process are unclear. For example, the required complaint form directs complainants to note any improper performance or conduct of the guardian ad litem; yet, the complaint resolution process does not clearly identify what criteria managers are expected to use to determine what constitutes "improper conduct or performance."

In addition, the process does not describe specific actions the district manager must take to investigate the complaint, other than request a response from the guardian ad litem. In a survey of managers, we asked them to describe step-by-step how they investigate complaints. All ten managers said they consulted documents filed with the court, but other activities varied. For example, three managers said they reviewed the guardians' case files.

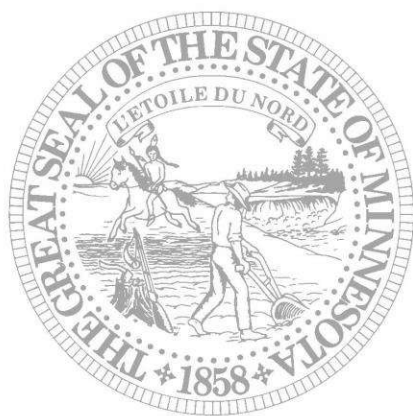
The GAL Board should clarify these aspects of the complaint resolution process to help complainants understand how their complaint will be addressed and ensure managers thoroughly and consistently investigate all complaints.

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# Introduction

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Each year, thousands of children in Minnesota are involved in court cases related to abuse, neglect, custody, and other matters. These court cases can be emotional and contentious, and in some cases, judges appoint a guardian ad litem to advocate for the best interests of the child. State laws require that courts appoint guardians ad litem in certain cases, such as those involving alleged child abuse or neglect. State law permits courts to appoint guardians ad litem in other cases, including cases involving custody or parenting time. In Minnesota, the Guardian ad Litem (GAL) Board oversees guardian ad litem services statewide.

Some members of the public and legislators have expressed concerns about the GAL Program, including that it lacks sufficient training requirements, minimum qualifications, and oversight for guardians ad litem. In response to these concerns, in April 2017, the Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate the GAL Program in Minnesota. We focused our evaluation on the following questions:

- **To what extent have guardians ad litem fulfilled their role as required by state law?**
- **To what extent has the GAL Board ensured the effective operation of the GAL Program?**
- **To what extent has the GAL Board established appropriate minimum qualifications, screening procedures, and training requirements for guardians ad litem?**
- **To what extent are the GAL Program’s policies and procedures for resolving complaints against guardians ad litem transparent, comprehensive, and consistently applied?**

During our evaluation, we examined relevant state and federal laws, court rules, and GAL Board policies and strategic planning documents. We analyzed financial and staffing data for fiscal years 2013 through 2017. We examined guardian ad litem appointment data from the State Court Administrator’s Office for fiscal years 2015 through 2017. We also examined employee performance evaluation data and GAL Program data on caseloads, case assignments, and guardian ad litem activities for fiscal years 2016 and 2017.

To learn more about GAL Board activities and operations, we reviewed Board meeting minutes and materials from fiscal years 2016 and 2017. We also attended Board meetings and interviewed all seven Board members.

We assessed GAL Program operations and the quality of guardian ad litem work using several methods. We sent a questionnaire to all ten GAL district managers and conducted site visits in the Fourth, Fifth, Sixth, Ninth, and Tenth judicial districts.<sup>1</sup> As part of these visits, we (1) interviewed a selection of GAL Program staff, county social workers, and others; (2) reviewed guardian ad litem reports and files from 124 randomly selected cases;

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<sup>1</sup> See Appendix A for a map of Minnesota’s judicial districts.

and (3) observed judicial proceedings for cases to which guardians ad litem were appointed in two districts. We provide additional site visit and file review information in Appendix B.

We reviewed guardian ad litem training materials regarding juvenile court, family court, domestic violence, and the Indian Child Welfare Act.<sup>2</sup> We also observed portions of the statewide juvenile court training and Hennepin County's training for new volunteer guardians ad litem to learn about the quality of training for guardians.

We obtained input from dozens of GAL Program stakeholders. These included domestic abuse, children's, and legal advocacy organizations; private attorneys; and social services organizations. We held a public open forum in May 2017, and heard from parents and other interested members of the public. We surveyed all guardians ad litem in Minnesota and all Minnesota district court judges.<sup>3</sup> We also spoke with the former and current GAL program administrators and central office staff.<sup>4</sup>

We analyzed GAL Program data on complaints filed in fiscal years 2015 through 2017. In addition, we reviewed written complaints and district managers' written responses to a sample of complaints from the five judicial districts included in our site visits. We also reviewed all of the appeals filed with the Program in fiscal years 2016 and 2017, as well as the written appeals decisions.

We determined that certain subjects were out of the scope of our review. We focused our evaluation on cases involving child abuse and neglect in juvenile court—these types of cases comprise the majority of cases to which guardians ad litem are appointed—and family court cases involving custody and parenting time. We largely excluded guardian ad litem work with vulnerable adults, minor parents, adoptions, and juvenile delinquency.

Our evaluation focused on the standards and monitoring efforts put in place by the GAL Board and staff. As such, we did not determine whether recommendations made by guardians ad litem in specific cases were appropriate, nor did we confirm or deny the merit of any complaint findings against individual guardians ad litem. Finally, we did not evaluate Minnesota's volunteer/employee guardian ad litem model or determine whether there were differences between services provided by volunteer guardians ad litem and employee guardians ad litem.

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<sup>2</sup> Indian Child Welfare Act of 1978, Public Law 95-608, codified as 25 *U.S. Code*, secs. 1901-1963 (2012). The Indian Child Welfare Act is a federal law that aims to protect the best interests of American Indian children by establishing standards for the removal of American Indian children from their families and the placement of American Indian children in foster or adoptive homes.

<sup>3</sup> We surveyed all 503 guardians ad litem on record at the end of Fiscal Year 2017 and received 359 responses, for a response rate of 71 percent. We surveyed 284 district court judges in September 2017 and received 219 responses, for a response rate of 77 percent.

<sup>4</sup> The former program administrator held her position from January 2011 through June 2017. The current program administrator has been in her position since June 2017.

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# Chapter 1: Background

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When a child becomes involved in a court case, the decisions made during the court process can often have a profound effect on the child's life. To help promote better outcomes for a child involved in a court case, the court may appoint a guardian ad litem.<sup>1</sup> Guardians ad litem are tasked with ensuring the child's interests are not overlooked during the court process.

Guardians ad litem assess a child's situation and make recommendations to the court about a child's best interests. This includes ensuring that the child is safe, and that the child's physical, mental health, and educational needs are met. Guardians ad litem are not legal guardians; they have no authority over the person or property of the child and do not provide a home for the child. They are not the child's attorney, and they do not provide any direct services—such as therapy—to the child.

In this chapter, we provide an overview of federal and state laws governing guardian ad litem appointments. We explain the governance and administrative structure of Minnesota's Guardian ad Litem (GAL) Program and provide information about the Program's staff and finances.

## Overview

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Children become involved in court cases for a variety of reasons. In some cases, a parent may physically abuse the child, while in others, a parent may have a chemical dependency issue that impairs his or her ability to care for the child. In yet other cases, a child's parents may disagree about how much time the child should spend with each parent.

Cases differ in many ways. For example, a case could involve one child or multiple children, from infants to teenagers. The children may live with a parent, another relative, in foster care, or in other living situations, such as group homes. The children involved in a case may live together or in separate homes, and they may share the same mother and father or share only one parent.

A guardian ad litem's role is similar in all of these cases. Generally, they: (1) investigate the child's situation, (2) prepare written reports about the child's best interests, and (3) advocate for the child's best interests in judicial proceedings.<sup>2</sup> A guardian may perform these activities only once throughout the course of a case, or many times.<sup>3</sup> For example, a guardian may submit multiple court reports for periodic judicial proceedings occurring over the course of a year or more, or a guardian may submit only one written report before the case closes or the guardian's appointment ends. Exhibit 1.1 shows an example of a typical process for a court case to which a guardian ad litem is assigned, including the activities the guardian may perform related to the case.

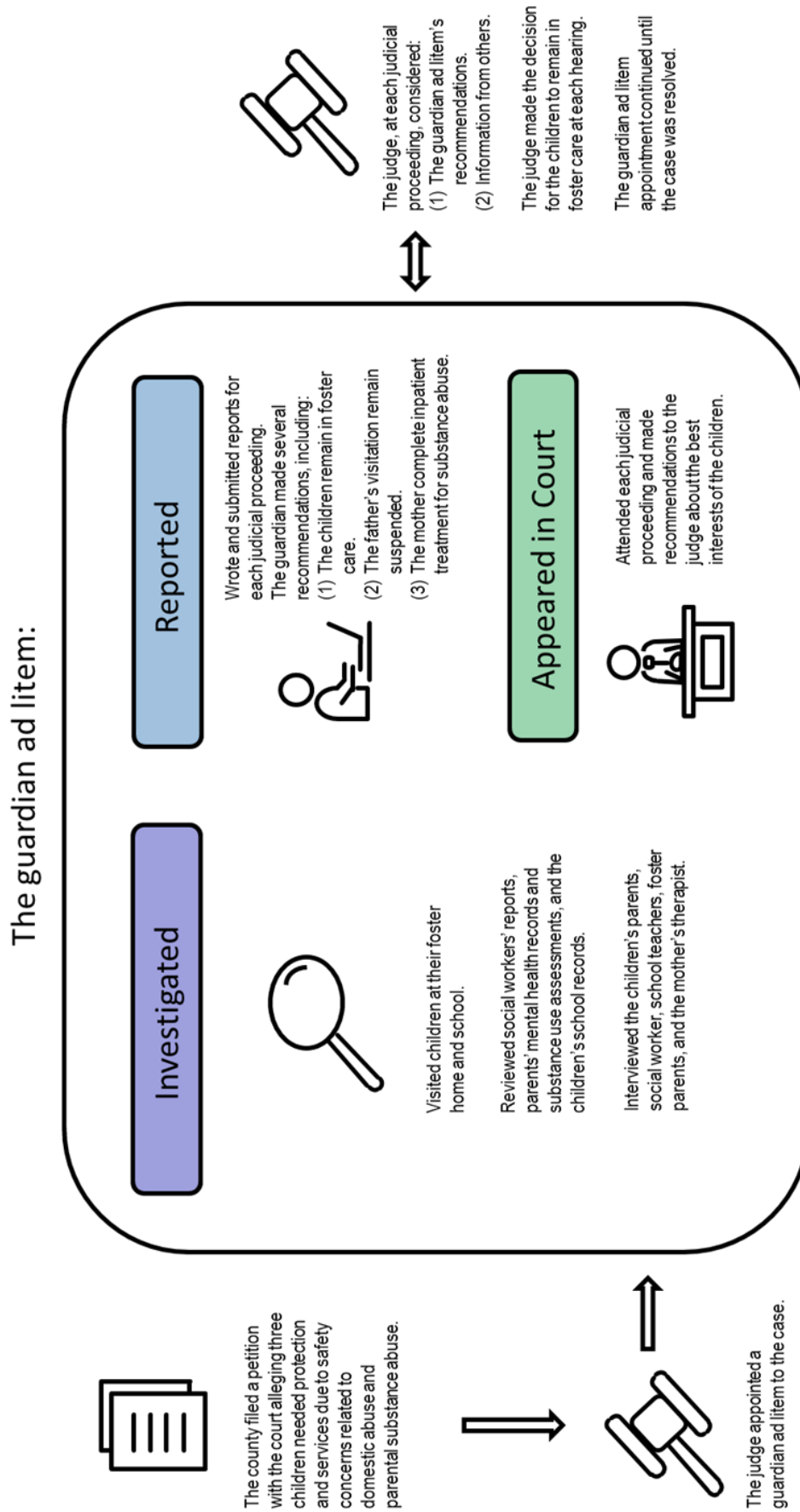
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<sup>1</sup> We use "the court" throughout this report to refer to judicial officers, including judges and referees. Like judges, referees listen to matters brought before them in court. Unlike judges, referees can only issue recommended findings or orders that must be confirmed by a district court judge.

<sup>2</sup> "Judicial proceedings" refer to actions carried out by a court of law, such as a hearing or trial.

<sup>3</sup> When we use the term "guardian" throughout this report, we are referring to guardians ad litem.

## Exhibit 1.1: Guardians ad litem perform a variety of activities throughout the course of a court case.



NOTE: The example above is based on juvenile court cases we reviewed with identifying details changed to protect individuals' privacy.

SOURCE: Office of the Legislative Auditor, review of sample of guardian ad litem reports and files.

A guardian ad litem's first responsibility is to investigate the child's situation and needs. In the course of their investigations, guardians ad litem may meet with the child and speak to the child's parents, foster parents, therapists, or others who know the child well. Guardians often also speak with individuals familiar with the child's court case, such as social workers. Guardians may observe the child in the home or interacting with one or both parents in other settings. The guardian may also review information, such as the child's school records or mental health records.

Guardians ad litem are expected to use the information they gather to make recommendations to the court about the child's best interests. They often make these recommendations in written reports that they submit to the court. In their reports, guardians typically summarize the information they gathered during their investigation and make recommendations about what a child needs to be safe and healthy. For example, guardians often provide information in their reports about a child's cultural or religious needs, the child's relationships with family members, and the child's educational needs. Guardians may also recommend that a child or a parent receive certain services, such as a mental health assessment or therapy. Guardians file their reports with the court, making them available to parents, judges, and others involved in the case.

#### Examples of Guardian ad Litem Recommendations

- The children remain in their foster care placement.
- The parents have supervised parenting time with the children at least twice per week.
- Children receive educational programming and mental health services to meet their needs.
- The parent attends chemical dependency treatment.

Guardians also are expected to use the information they gather to advocate for a child's best interests in judicial proceedings. Just as they do in their written reports, in court, guardians may summarize the information they gathered during their investigation and make oral recommendations about what a child needs to be safe and healthy.

The court often uses the information guardians ad litem provide through their written reports and oral presentations, along with other sources of information—such as information provided by parents or the county social worker—to make decisions about the child's case.

## Legal Requirements

For over 40 years, guardians ad litem have advocated for children's best interests in court cases in Minnesota. Minnesota is not unique in this respect—the National Center for State Courts reported that every state has enacted laws requiring the appointment of guardians ad litem in cases of child abuse or neglect.<sup>4</sup> However, the provision and administration of guardian services varies widely across the country.

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<sup>4</sup> National Center for State Courts, *Assessment of the Organizational Structure and Service Delivery Model of the Minnesota Guardian Ad Litem Program* (Denver, CO, 2017), 9.

Guardians ad litem in Minnesota most frequently work in juvenile and family court. In juvenile court, guardians largely work on cases related to child abuse or neglect. These cases may involve instances in which a parent is physically abusing a child or where the parent is providing the child with an unsafe living environment. When guardians work in family court, they may work on cases where parents are struggling to agree on custody or parenting time arrangements for their child and there are allegations of abuse or neglect. Exhibit 1.2 provides examples of different situations that resulted in the court appointing a guardian ad litem to a case.

### **Exhibit 1.2: Courts appoint guardians ad litem to different types of cases.**

#### **Example: Juvenile Court Case History**

The county social services agency filed a petition with juvenile court stating that three children (ages three, four, and seven) needed protection and services because of issues of domestic violence, negligence, and parental substance abuse. The county social services agency first provided the children's parents with services, including mental health therapy and a domestic abuse intervention program. The county eventually removed the children from the parents' home when the father threatened the mother with a knife in front of the children.

#### **Example: Family Court Case History**

The child's mother filed a motion for sole custody of her two-year-old child, stating that the child's father was violent and she feared for her child's safety in the father's care. The mother based her motion on the father's actions with a second child. The father had a second child with a second mother, and social services had been involved in three instances of alleged abuse with the second child.

NOTE: Examples are based on cases we reviewed with identifying details changed to protect individuals' privacy.

SOURCE: Office of the Legislative Auditor, review of sample of guardian ad litem reports.

The courts appointed guardians ad litem to about 8,100 cases in Fiscal Year 2017, the majority of which (79 percent) were juvenile court cases.

### **Both federal and state law outline requirements for the appointment of guardians ad litem in certain types of court cases.**

In 1974, the United States Congress passed the Child Abuse Prevention and Treatment Act (CAPTA) to provide funding for programs that prevent, identify, and treat child abuse and neglect.<sup>5</sup> CAPTA established requirements states must meet to qualify for federal funding. One requirement is that states operate a program or enforce a law that mandates that guardians ad litem be appointed to children in every case involving a victim of child abuse or neglect that results in a judicial proceeding.<sup>6</sup>

<sup>5</sup> Child Abuse Prevention and Treatment Act of 1974, Public Law 93-247, codified as amended at 42 *U.S. Code*, secs. 5101-5119 (2016).

<sup>6</sup> 42 *U.S. Code*, sec. 5106a(b)(2)(B)(xiii) (2015).

Minnesota law requires guardians ad litem in	
Juvenile Court Cases	Family Court Cases
regarding <ul style="list-style-type: none"><li>• Alleged abuse, neglect, or abandonment</li><li>• Other cases when parents are absent, incompetent, indifferent, or hostile to the child's interests</li></ul>	regarding <ul style="list-style-type: none"><li>• Child custody</li><li>• Divorce</li><li>• Legal separation</li></ul> <i>when custody or parenting time is an issue and when the court has reason to believe a child is abused or neglected</i>
There are other cases to which guardians may or must be appointed.	

State laws outline additional instances in both juvenile and family court in which the courts must appoint guardians ad litem. For example, the courts must appoint guardians to juvenile court cases pertaining to *alleged* abuse, neglect, or abandonment.<sup>7</sup> The courts must also appoint guardians in juvenile court cases when the child’s parents are absent, incompetent, indifferent, or hostile to the child’s interests. In family court, the court must appoint a guardian ad litem in child custody, divorce, or legal separation proceedings when custody or parenting time with a child under the age of 18 is an issue and the court has reason to believe the child is a victim of abuse or neglect.<sup>8</sup>

State law also gives the courts the authority to appoint guardians ad litem in both juvenile and family court at their discretion under certain circumstances. For example, the courts may appoint guardians ad litem to child custody cases to represent the interests of a child and advise the court on custody and parenting time, even when the court does not have reason to believe the child was abused or neglected.<sup>9</sup>

**Federal and state law provide broad guidelines about the activities guardians ad litem must perform.**

Federal law provides only broad guidance on the activities guardians ad litem should perform to fulfill their role. Federal law requires guardians ad litem to “obtain first-hand, a clear understanding of the situation and needs of the child” and “make recommendations to the court concerning the best interests of the child.”<sup>10</sup>

State laws provide more specific guidance than federal law about the activities guardians ad litem must perform, although that guidance is still relatively broad. Guardians ad litem *must* conduct an independent investigation that includes reviewing relevant documents; meeting with and observing the child in the home; and interviewing parents, caregivers, and others with knowledge relevant to the case.<sup>11</sup> State law outlines other activities that guardians *may* perform on a discretionary basis, including advocating “for appropriate

<sup>7</sup> *Minnesota Statutes* 2017, 260C.163, subd. 5; and 260C.007, subd. 6. Minnesota statutes also direct or permit the court to appoint guardians ad litem to other types of court cases, such as juvenile delinquency and adoption. However, these types of cases were outside the scope of our review.

<sup>8</sup> *Minnesota Statutes* 2017, 518.165, subd. 2.

<sup>9</sup> *Minnesota Statutes* 2017, 518.165, subd. 1.

<sup>10</sup> 42 *U.S. Code*, sec. 5106a(b)(2)(B)(xiii) (2015).

<sup>11</sup> *Minnesota Statutes* 2017, 260C.163, subd. 5(b); and 518.165, subd. 2a. Guardian ad litem investigations must include each of the listed components unless “specifically excluded by the court.”

community services when necessary.”<sup>12</sup> As we previously noted, the cases to which guardians are assigned can be very different from one another, and guardians may perform different activities to fulfill their role in each case. We provide a complete list of activities required of guardians ad litem in Exhibit 1.3.

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### **Exhibit 1.3: Minnesota statutes list some activities guardians ad litem must perform.**

#### **Guardians ad litem are expected to:**

- Conduct an independent investigation to determine facts relevant to the situation of the child and family. The investigation must include:<sup>a</sup>
  - The review of relevant documents.
  - Meetings with and observations of the child in the home setting.
  - Consideration of the child’s wishes, as appropriate.
  - Interviews with parents, caregivers, and others with knowledge relevant to the case.
- Advocate for the child’s best interests by:
  - Participating in appropriate aspects of the case.
  - Advocating for appropriate community services when necessary.
- Maintain the confidentiality of information related to a case.<sup>b</sup>
- Monitor the child’s best interests throughout judicial proceedings.
- Present written reports on the child’s best interests that include conclusions and recommendations and the facts upon which they are based.

<sup>a</sup> Guardian ad litem investigations must include each of the listed components unless “specifically excluded by the court.”

<sup>b</sup> Statutes permit guardians ad litem to share information “as permitted by law to promote cooperative solutions that are in the best interests of the child.”

SOURCE: Office of the Legislative Auditor, based on *Minnesota Statutes* 2017, 260C.163, subd. 5(b); and 518.165, subd. 2(a).

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Both federal and state law require guardians ad litem to provide recommendations regarding the best interests of a child. State law lists numerous factors that the social services agency or the court must consider when determining what is in the best interest of a child. These factors include the child’s medical, educational, religious, and cultural needs, among others. State law does not direct guardians to consider the same factors when making recommendations to the court, but in many cases, guardians provide the court with information on these factors.

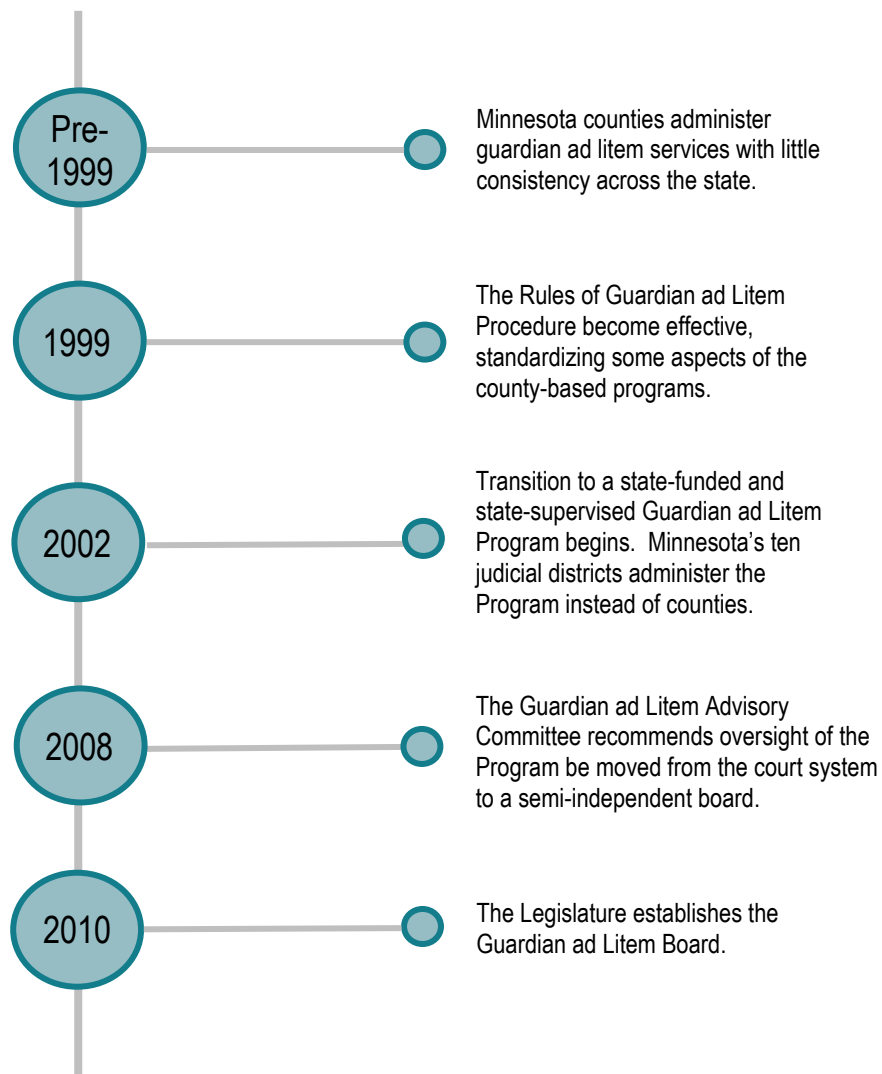
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<sup>12</sup> *Minnesota Statutes* 2017, 260C.163, subd. 5(b); and 518.165, subd. 2a. Statutes do not describe what constitutes a community service or for whom the guardian ad litem should recommend services. In our review of a random selection of cases, we found that guardians recommend services for both children and parents. Examples of services guardians recommended included therapy, mental health evaluations, medical services, or parenting classes.

## Governance

Administration of guardian ad litem services in Minnesota has changed greatly in the last 20 years, as shown in Exhibit 1.4. In order to understand these changes, it is important to understand the structure of the district court system in Minnesota. The court system is divided into ten judicial districts, each of which is led by a chief judge.<sup>13</sup> Most judicial districts are composed of eight or more counties. Each county has a court administrator to oversee day-to-day operations of courts at the county level.

### Exhibit 1.4: The administration of the Guardian ad Litem Program has changed greatly over the last 20 years.



SOURCE: Office of the Legislative Auditor.

<sup>13</sup> See Appendix A for a map of Minnesota's judicial districts.

When the Office of the Legislative Auditor (OLA) completed its last evaluation of the GAL Program in 1995, Minnesota counties administered guardian ad litem services.<sup>14</sup> At that time, OLA found there was no central authority over the state's guardian ad litem services and little consistency in service provision across the state's county-run GAL programs. The state funded guardian ad litem services in only one judicial district; counties funded services in all other districts.

The Supreme Court adopted the Rules of Guardian ad Litem Procedure in 1997 to bring more consistency to guardian ad litem services.<sup>15</sup> These rules, which became effective in 1999, set statewide standards for training, complaint processing, and supervision, among other things. At the same time, the Legislature prompted a move towards centralizing the administration of the GAL Program. In 1999, the Legislature passed a law giving the state court system responsibility for funding guardian ad litem services across the state.<sup>16</sup> As a result, in 2002, judicial branch officials began designing a GAL Program that the state court system funded and supervised, and Minnesota's ten judicial districts administered.

In 2006, the Minnesota Judicial Council commissioned the Guardian ad Litem Advisory Committee to "examine the long-term and systemic challenges facing the Guardian ad Litem Program" and make recommendations.<sup>17</sup> In 2008, the Committee released a report in which it recommended that the GAL Program be supervised by an independent board, rather than the court system.

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### **Since 2010, an independent board of directors has governed the Guardian ad Litem Program.**

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In 2010, the Legislature established the GAL Board to create and administer a statewide GAL Program.<sup>18</sup> While the Legislature established the Board in the judicial branch, it is not under the administrative control of the court system or judges. Instead, it is an independent board that consists of seven members, three appointed by the Supreme Court and four appointed by the governor.<sup>19</sup>

The Board's mandated duties include approving and recommending to the Legislature a budget for the Board and Program; distributing funds; and establishing standards, administrative policies, procedures, and rules for the Program.<sup>20</sup> The Board must also appoint a guardian ad litem program administrator who is responsible for carrying out administrative and budgeting functions for the operation of the GAL Program and Board.<sup>21</sup> We describe the Board's composition and duties in more detail in Chapter 5.

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<sup>14</sup> Office of the Legislative Auditor, Program Evaluation Division, *Guardians ad Litem* (St. Paul, 1995).

<sup>15</sup> Minnesota General Rules of Practice for the District Courts, *Title X. Rules of Guardian ad Litem Procedure*, Rules 901-913 (1999).

<sup>16</sup> *Laws of Minnesota* 1999, chapter 216, sec. 22.

<sup>17</sup> Guardian ad Litem Advisory Committee, *A Report to the Minnesota Judicial Council*, March 2008. The Judicial Council is the Minnesota Judicial Branch's administrative policy-making body. It is composed of the Chief Justice, the Chief Judge of the Court of Appeals, the Chief Judges of the ten judicial districts, the Minnesota District Judges Association president, the State Court Administrator, and 11 appointed members.

<sup>18</sup> *Laws of Minnesota* 2010, chapter 309, sec. 5, codified in *Minnesota Statutes* 2017, 480.35.

<sup>19</sup> *Minnesota Statutes* 2017, 480.35, subd. 1.

<sup>20</sup> *Minnesota Statutes* 2017, 480.35, subd. 2(b).

<sup>21</sup> *Minnesota Statutes* 2017, 480.35, subd. 3.

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## Program Staff

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By law, the GAL program administrator is responsible for carrying out administrative functions of the GAL Program.<sup>22</sup> The program administrator must also implement standards and policies approved by the Board, recommend new policies to ensure efficient operations of the Program, keep the Board informed of the Program's financial condition, and perform any other duties assigned by the Board. The GAL program administrator oversees the operation of a small central office. In Fiscal Year 2017, central office staff generally included a human resources manager, a human resources assistant, a program and training analyst, and a part-time administrative assistant.

As shown in Exhibit 1.5, the GAL program administrator also oversees ten district managers—one in each of Minnesota's ten judicial districts. District managers for the GAL Program are responsible for management of guardian ad litem services in their judicial district. This includes managing district budgets, hiring guardians ad litem and support staff, and overseeing the work of guardians ad litem. Most districts employ coordinators who also directly supervise guardians' work.

The organizational structure is different in each judicial district. For example, in 2017, the Ninth Judicial District manager oversaw three coordinators who directly supervised 17 guardians. In the Seventh Judicial District, the manager oversaw one coordinator and directly supervised the work of 13 guardians. Two district managers told us they also worked directly on cases as guardians ad litem.

The GAL Program has both employee and volunteer guardians ad litem.<sup>23</sup> The GAL Program employed 237 full- and part-time staff at the end of Fiscal Year 2017. These employees included 194 guardians ad litem; 30 managers and coordinators; 6 central office staff; and 7 staff in various positions, including office assistants.<sup>24</sup> In addition, the Program reported that it had 323 volunteer guardians ad litem at the end of Fiscal Year 2017.

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### **At the end of Fiscal Year 2017, over half of Minnesota's 517 guardians ad litem were volunteers in Hennepin and Ramsey counties.**

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Volunteers comprised 62 percent of Minnesota's 517 guardians ad litem at the end of Fiscal Year 2017. Ninety-seven percent of all volunteer guardians worked in the Fourth and Second judicial districts, which encompass Hennepin and Ramsey counties. The remaining 3 percent of volunteers (9 individuals) worked in the First, Fifth, Sixth, or Ninth judicial districts. While volunteers made up the majority of the guardian ad litem workforce, they managed fewer cases than employee guardians. Volunteers worked on 13 percent of cases to which guardians were assigned at the end of Fiscal Year 2017.

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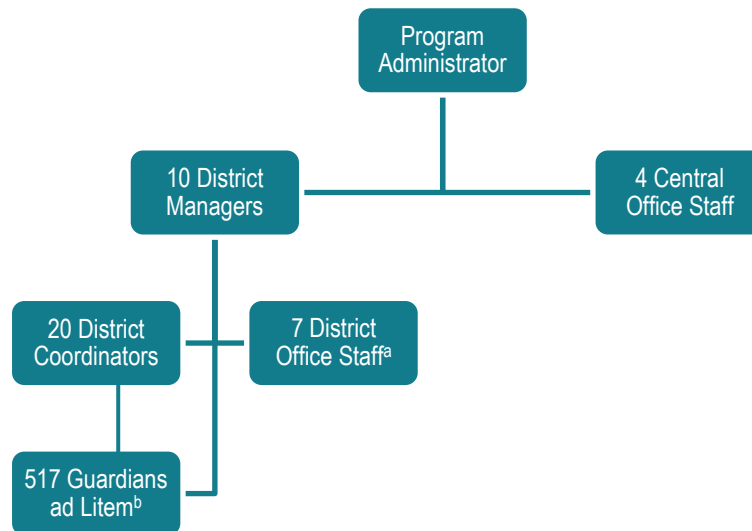
<sup>22</sup> *Minnesota Statutes* 2017, 480.35, subd. 3.

<sup>23</sup> Minnesota statutes do not explicitly state that the GAL Program may use volunteer guardians ad litem. However, the statute establishing the GAL Board states the Board may "establish guardian ad litem program standards...that affect a volunteer or employee guardian ad litem's work..." *Minnesota Statutes* 2017, 480.35, subd. 2(b)(3).

<sup>24</sup> As previously noted, the central office generally consisted of a program administrator and four staff. At the end of Fiscal Year 2017, both the former and current program administrator were employed for a period of three weeks, bringing the total number of central office staff to six for a brief period.

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**Exhibit 1.5: The Guardian ad Litem Program was composed of more than 550 staff and volunteers at the end of Fiscal Year 2017.**



<sup>a</sup> District office staff included office assistants, an attorney, screener/collectors, a volunteer coordinator, and a staff generalist.

<sup>b</sup> The GAL Program had 194 employee guardians ad litem and 323 volunteer guardians at the end of Fiscal Year 2017.

SOURCE: Office of the Legislative Auditor, analysis of State of Minnesota's payroll system data and GAL Program information.

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## Finances

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Since Fiscal Year 2013, GAL Program revenues and expenditures have both increased, although, as we discuss below, program expenditures have generally exceeded revenues. For the last several years, the GAL Program received the majority of its funding from one source.

### Revenue

GAL Program revenues have increased in recent years. As shown in Exhibit 1.6, between fiscal years 2013 and 2017, GAL Program revenues increased from \$12.7 million to \$15.8 million—an increase of 24 percent. The increase was due almost entirely to an increase in General Fund appropriations.

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**Exhibit 1.6: General Fund appropriations accounted for nearly all Guardian ad Litem Program revenue in fiscal years 2013 through 2017.**

	2013	2014	2015	2016	2017
General Fund Appropriations	\$12,067,000	\$12,414,000	\$12,756,000	\$14,063,000	\$15,289,000
Guardian ad Litem Fee Revenue <sup>a</sup>	634,000	655,000	593,000	499,000	495,000
Donations	1,000	–	–	2,000	1,000
Interagency Agreements <sup>b</sup>	13,000	–	–	48,000	22,000
<b>TOTAL</b>	<b>\$12,715,000</b>	<b>\$13,069,000</b>	<b>\$13,349,000</b>	<b>\$14,612,000</b>	<b>\$15,807,000</b>

NOTE: Amounts are rounded to the nearest thousand.

<sup>a</sup> “Guardian ad Litem Fee Revenue” includes fees for guardian ad litem services collected by the courts and transferred to the Guardian ad Litem Program.

<sup>b</sup> “Interagency Agreements” include revenues used to fund guardian ad litem operations and grant funds from the Department of Human Services for guardian ad litem training.

SOURCE: Office of the Legislative Auditor, analysis of the State of Minnesota’s accounting system data.

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**In recent years, the state General Fund provided the majority of the Guardian ad Litem Program’s funding.**

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The General Fund provided an average of 96 percent of the GAL Program’s revenue during fiscal years 2013 through 2017. The program administrator told us that the GAL Program allocated these funds to judicial districts using a procedure that took into account the total number of juvenile abuse and neglect cases filed in each district and a percentage of the family court cases filed in each district. The GAL Board voted to change this procedure in October 2017. The new formula will allocate money to districts based only on the number of court cases filed in juvenile court for which a guardian appointment is required.

The remaining average of 4 percent of revenues during fiscal years 2013 to 2017 came almost entirely from fees. By law, a judge may charge families a fee for guardian ad litem services.<sup>25</sup> The fee is based on the type of case and the parties’ ability to pay. While General Fund revenues increased from Fiscal Year 2013 to Fiscal Year 2017, fee revenues decreased by 22 percent, from about \$634,500 to \$495,000.<sup>26</sup>

The Program also received a small percentage of revenues from donations and interagency agreements. An interagency agreement is an arrangement between two state agencies to share resources or work. In this case, the Department of Human Services provided the GAL Program with a specified amount of funding to be used for guardian training on child welfare.

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<sup>25</sup> *Minnesota Statutes* 2017, 260C.331, subd. 6; and 518.165, subd. 3; and State Guardian ad Litem Board Policies Manual, Guardian ad Litem Fees Structure. The GAL Board established the following fees: \$1,000 for juvenile abuse and neglect cases; \$500 for all other juvenile court cases; \$1,500 for family court cases; and \$500 for other cases, except orders for protection, which do not have a fee. Fee revenues must be spent in the district in which they were collected.

<sup>26</sup> The reported revenues and expenditures are not adjusted for inflation.

## Expenditures

Program expenditures also increased in fiscal years 2013 through 2017. As shown in Exhibit 1.7, GAL Program expenditures increased from \$13.8 million in Fiscal Year 2013 to \$16.1 million in Fiscal Year 2017—an increase of 17 percent. The GAL Program used an average of 82 percent of total expenditures for payroll and 15 percent for purchased services, such as computer and system services, employee development, and office space rental. Most of the remaining expenditures were for miscellaneous “other” expenses, such as mileage reimbursement, conference room rentals, and leasing equipment. The Program also had “indirect costs,” such as its contract with the State Court Administrator’s Office to provide financial and information technology services.

### Exhibit 1.7: Payroll costs comprised the majority of Guardian ad Litem Program expenditures in fiscal years 2013 through 2017.

	2013	2014	2015	2016	2017
Capital Outlay – Real Property	\$ 8,000	\$ 1,000	\$ –	\$ 1,000	\$ 6,000
Indirect Costs <sup>a</sup>	11,000	282,000	281,000	–	15,000
Non Capital – Assets	28,000	13,000	27,000	15,000	6,000
<b>Payroll<sup>b</sup></b>	<b>11,076,000</b>	<b>11,369,000</b>	<b>11,593,000</b>	<b>12,171,000</b>	<b>13,443,000</b>
Purchased Services	2,408,000	1,866,000	2,218,000	2,260,000	2,428,000
Repairs – Maintenance	5,000	7,000	11,000	9,000	10,000
Supplies and Materials	115,000	87,000	89,000	80,000	89,000
Other Expenses <sup>c</sup>	169,000	138,000	160,000	49,000	130,000
<b>TOTAL</b>	<b>\$13,820,000</b>	<b>\$13,763,000</b>	<b>\$14,379,000</b>	<b>\$14,585,000</b>	<b>\$16,127,000</b>

NOTE: Amounts are rounded to the nearest thousand.

<sup>a</sup> “Indirect Costs” include expenses paid to the State Court Administrator’s Office to provide financial, human resource, and information technology services. Fluctuations in indirect costs are due to the Guardian ad Litem Program’s categorization of expenditures.

<sup>b</sup> “Payroll” includes expenses for salaries and wages and employee insurance.

<sup>c</sup> “Other Expenses” include costs associated with interpreter services, document shredding, background studies, workers’ compensation insurance, mileage reimbursement, conference room rentals, equipment capital leases, and miscellaneous other expenses.

SOURCE: Office of the Legislative Auditor, analysis of the State of Minnesota’s accounting system data.

Program expenditures did not increase at the same rate across all judicial districts. Expenditures for the Fourth and Seventh judicial districts increased more than 30 percent over the five-year period. Conversely, expenditures for the Tenth Judicial District remained relatively steady, with a 4 percent decrease in expenditures from Fiscal Year 2013 to Fiscal Year 2017.

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**The Guardian ad Litem Program's expenditures exceeded revenues in four of the past five fiscal years, from Fiscal Year 2013 to Fiscal Year 2017.**

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As program expenditures increased, revenues did not keep pace. In fiscal years 2013 through 2015, the GAL Program had a budget deficit of between \$693,000 and \$1.1 million. In Fiscal Year 2016, the Program's financial situation improved, with a surplus of \$27,715. However, the Program had a budget deficit of \$319,000 in Fiscal Year 2017. The program administrator told us the Board changed the Program's funding procedure to address funding shortfalls and ensure the program was distributing funding proportionally to districts according to the number of cases filed in the district.



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# Chapter 2: Guardian ad Litem Services

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As we discussed in Chapter 1, guardians ad litem are required to advocate for the best interests of the child in certain court cases. However, some parents and community members have expressed concerns about the quality of guardians' work.<sup>1</sup> Dozens of parents contacted the Office of the Legislative Auditor (OLA) during the course of our evaluation to share with us their personal experiences with guardians ad litem. While we did not review specific cases, we took a systematic look at issues affecting the quality of guardian ad litem services. In this chapter, we discuss the role of guardians ad litem and the extent to which guardians are performing certain activities related to their role. We also describe ways in which the Guardian ad Litem (GAL) Program supervises guardian performance.

We found there is some confusion about the guardian ad litem's role—particularly in family court. We also found significant variation in guardian work. There are few standards guiding the work of guardians ad litem, which has inhibited the Board's ability to monitor whether guardians consistently provide quality services across the state.

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## Guardian ad Litem Role

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In Minnesota, state laws provide a broad description of the role of a guardian ad litem. Statutes direct guardians to “protect the interests of the minor” or “represent the interests of the child” in judicial proceedings.<sup>2</sup> Guardians most frequently advocate for children in juvenile and family court cases, and the role of the guardian, as written in statute, is the same for all cases.<sup>3</sup> However, the context in which guardians work is different in juvenile and family court.

In juvenile court, there are often multiple professionals involved in a case, such as the guardian ad litem, county attorney, county social worker, and parent attorney(s). County social workers, for example, gather information about the family, investigate abuse allegations, and develop a plan for the parent(s) to resolve issues that may be harmful to the child. In addition to the parent(s), each professional affiliated with the case may provide information to the court and advocate for what he or she sees as the best outcome for the family.<sup>4</sup>

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<sup>1</sup> When we use the term “guardian” throughout this report, we are referring to guardians ad litem.

<sup>2</sup> *Minnesota Statutes* 2017, 260C.163, subd. 5(a); and 518.165, subd. 2. “Judicial proceedings” refer to actions carried out by a court of law, such as a hearing or trial.

<sup>3</sup> In juvenile court, guardians largely work on cases related to child abuse or neglect. These cases may involve instances in which a parent is physically abusing a child or where the parent is providing the child with an unsafe living environment. When guardians work in family court, they often work on cases where parents are struggling to agree on custody or parenting time arrangements for their child and the court has reason to believe the child is a victim of abuse or neglect.

<sup>4</sup> For clarity, we refer in this section to “parents,” which may include the child's parent(s) and/or other parties to the case. We use “the court” throughout this report to refer to judicial officers, including judges and referees. Like judges, referees listen to matters brought before them in court. Unlike judges, referees can only recommend findings or orders that must be confirmed and signed by a district court judge.

In family court, on the other hand, there may be few—if any—court professionals involved in a case; guardians ad litem could be the only individuals other than parents providing information to the court. To learn more about the work of guardians ad litem, we conducted site visits, during which we interviewed a selection of GAL Program staff, county social workers, judges, and others.<sup>5</sup> During our interviews, several judges told us that some parents do not have attorneys in family court. While parents may be guaranteed the right to an attorney for juvenile court cases—even if they cannot afford one—parents generally are not guaranteed an attorney at no cost for family court cases. In some cases, a custody evaluator or other professional may provide information to the court.<sup>6</sup> However, several judges told us the services of court professionals are prohibitively expensive for some families. County social workers often are not involved in family court cases.

For cases to which they are assigned as a guardian ad litem, court rules prohibit guardians from performing the roles of some other professionals commonly involved in court cases.<sup>7</sup> For example, a person may not act as both a guardian ad litem and as a child’s attorney on the same case. A child’s attorney is responsible for advocating for the child’s *wishes*, while a guardian is responsible for advocating for the child’s *best interests*. We provide a list of roles guardians are prohibited from performing in Exhibit 2.1.

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**It is unclear—especially in family court—how the role of a guardian ad litem is different from the roles of some other court professionals whose roles guardians are prohibited from performing.**

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The activities guardians ad litem are required to perform are similar to activities performed by some other court professionals, including professionals whose roles guardians are prohibited from fulfilling. For example, for cases to which they serve as a guardian ad litem, court rules prohibit a guardian from acting as a custody evaluator.<sup>8</sup> As described in state law, custody evaluators are to investigate, report, and make recommendations regarding custody and parenting time, including an evaluation of the child’s best interests.<sup>9</sup> Guardians ad litem are also required to advise the court with respect to custody and parenting time, including investigating and reporting on the child’s best interests.<sup>10</sup> It is unclear how activities performed by a custody evaluator are substantively different from those performed by a guardian ad litem, yet court rules prohibit guardians from acting as custody evaluators. Some other roles court rules prohibit guardians from fulfilling—such as a parenting time consultant or evaluator—are not clearly defined in statute or rule.

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<sup>5</sup> We conducted interviews in the Fourth, Fifth, Sixth, Ninth, and Tenth judicial districts. See Appendix A for a map of Minnesota’s judicial districts.

<sup>6</sup> Custody evaluators may be appointed to a case by the court and are typically paid for—at least in part—by the parent(s).

<sup>7</sup> Court rules do not prohibit guardians from performing these roles for cases to which they are not assigned as a guardian ad litem. Minnesota General Rules of Practice for the District Courts, *Title X. Rules of Guardian ad Litem Procedure in Juvenile and Family Court*, Rule 903.04 (2015).

<sup>8</sup> Minnesota General Rules of Practice for the District Courts, *Title X. Rules of Guardian ad Litem Procedure in Juvenile and Family Court*, Rule 903.04 (2015).

<sup>9</sup> *Minnesota Statutes* 2017, 518.167, subds. 1-2.

<sup>10</sup> *Minnesota Statutes* 2017, 518.165, subds. 1-2a.

## Exhibit 2.1: Court rules outline some prohibited roles for guardians ad litem.

Prohibited Roles	Description
Arbitrator or individual authorized to decide disputes between parties	Considers evidence and decides disputes between opposing parties.
Child's attorney	Conducts investigations, interviews relevant witnesses, and advocates for the stated wishes of the child during the court process.
Custody evaluator <sup>a</sup>	Investigates, reports, and makes recommendations regarding custody and parenting time issues in accordance with best interest factors. <sup>b</sup>
Early neutral evaluator	Meets with parents and their attorneys, provides statute-based feedback on custody and parenting time concerns, and assists parents in reaching an agreement.
Family group decision-making facilitator	Brings together the family group, social services staff, and other relevant individuals to create a plan to address concerns about child safety, well-being, and permanency.
Home-study evaluator <sup>a</sup>	Determines the initial suitability of emergency foster care placements and/or assesses adoptive placements for a child.
Mediator <sup>a</sup>	Reduces acrimony and facilitates communication between parents in custody or parenting time disputes, and assists parents in developing an agreement that is supportive of the child's best interests.
Parenting time consultant	May work with families—potentially on an ongoing basis—to resolve disputes over parenting time issues.
Parenting time evaluator	Investigates, reports, and makes recommendations regarding custody and parenting time issues. Typically observes parents and children in their homes.
Parenting time expeditor <sup>a</sup>	Uses mediation-arbitration to resolve parenting time disputes by enforcing, interpreting, clarifying, and addressing circumstances not specifically addressed by an existing parenting time order, and if appropriate, makes a determination about the dispute.
Substitute decision-maker <sup>a</sup>	Consents or withholds consent to the administration of physician-recommended neuroleptic medications—also known as antipsychotics—to an individual who lacks the capacity to make decisions regarding his or her own medication.

NOTE: Per court rule, guardians ad litem must not perform the roles listed above for cases to which they are assigned as a guardian ad litem.

<sup>a</sup> Denotes roles that are defined in *Minnesota Statutes* 2017. All other roles listed above are not defined in statute.

<sup>b</sup> State law lists numerous best interest factors that custody evaluators must consider when making recommendations in the best interest of a child. These factors include the child's medical, educational, and cultural needs, among others.

SOURCE: Office of the Legislative Auditor, based on Minnesota General Rules of Practice for the District Courts, *Title X. Rules of Guardian ad Litem Procedure in Juvenile and Family Court*, Rule 903.04 (2015).

Board members, GAL program staff, attorneys, and a judge told us there is a lack of clarity about the guardian's role, especially in family court. For example, one Board member told us that the line between a custody evaluator and guardian ad litem can be blurry, and that custody evaluators and guardians ad litem consider some of the same factors when conducting their investigations. In another instance, a judge told us she was unclear about the differences between a guardian ad litem and a parenting time expeditor or custody evaluator.



Occasionally judges will order us to complete tasks outside of our roles. This puts us in a complicated situation of either obeying the Court's order while disobeying our own Guardian ad Litem rules OR obeying our rules while failing to complete a Court order, which can have legal ramifications (such as jail).

—Guardian ad Litem

We also heard comments from attorneys, GAL district coordinators, and others that judges periodically order guardians to perform activities that more closely align with the roles of other court professionals. For example, one district manager said that some judges in his district want guardians to submit a report outlining each best interest factor, similar to reports prepared by custody evaluators.<sup>11</sup> As another example, one parent told us the judge in her case ordered the guardian ad litem to modify parenting time, an activity that appears to more closely align with the role of an arbitrator or the judge.

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## RECOMMENDATION

**With input from the Guardian ad Litem Board and the state's judiciary, the Legislature should clarify the role of guardians ad litem in family court cases.**

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A lack of clarity about the guardian's role in family court ultimately leaves families and children unsure of what to expect from the GAL Program, undermines the ability of guardians ad litem to perform their work effectively, and makes it difficult for managers to ensure guardians work within their appropriate role.

In a recent evaluation of Minnesota's GAL Program, the National Center for State Courts (NCSC) determined there is confusion about guardians' role in family court.<sup>12</sup> We agree that their role lacks clarity. NCSC recommended that the GAL Board consider developing a separate and distinct best interests advocacy system to meet the needs of children in family court. Since receiving that recommendation, the GAL Board convened a committee to determine the best advocacy model for children in family court. As the Legislature more clearly defines expectations for guardians ad litem in family court, we recommend that the Legislature consider any recommendations this committee produces.

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<sup>11</sup> State law lists numerous factors that social services agencies or the court must consider when determining what is in the best interest of a child. These factors include the child's medical, educational, and cultural needs, among others. State law does not direct guardians to consider the same factors when making recommendations to the court.

<sup>12</sup> National Center for State Courts, *Assessment of the Organizational Structure and Service Delivery Model of the Minnesota Guardian Ad Litem Program* (Denver, CO, 2017), 25.

We further recommend the Legislature consider the role of guardians ad litem in family court in light of the needs of and resources available in family courts in general. We surveyed all district court judges in Minnesota to learn more about their experiences with guardians ad litem.<sup>13</sup> Many respondents wrote about a great need for guardians ad litem in family court. Some judges we interviewed highlighted the need for neutral sources of information on a case. Without guardians ad litem, some judges told us they must make decisions based on little information or information from sources that are not impartial. On the other hand, some parents told us guardians should not be used in family court, or should only be appointed to family court cases involving abuse. When clarifying the role of guardians ad litem, we recommend the Legislature take into account the full contingent of court professionals—including custody and parenting time evaluators—and whether and when it may be more appropriate for other professionals to provide services to the court.



I have no ability to investigate cases, and it is common that the parties will have widely different descriptions of what is occurring outside the home. The guardian ad litem provides me with an independent, impartial perspective on what is taking place in cases where abuse is alleged.

—District Court Judge

## Guardian ad Litem Activities

As discussed in Chapter 1, guardians ad litem fulfill their role by performing certain activities, such as visiting the child, speaking with the child's parents, and reviewing documents relevant to the child's case. To learn more about guardian ad litem activities, we reviewed a sample of cases to which guardians were assigned in five judicial districts.<sup>14</sup> For each case, we read guardian reports and reviewed guardians' electronic case notes and personal files, which included documents and additional notes related to the case.

Certain factors, however, made it difficult to assess the extent to which guardians ad litem performed certain activities. For example, some GAL managers told us the Program does not yet have reliable data on whether guardians perform certain activities—such as submitting reports—on each case. In addition, the manner in and degree to which guardians documented their work varied from guardian to guardian. For these reasons—and because the cases were varied and complex—we could not always make clear determinations about guardians' compliance with requirements. At the same time, the review provided us with valuable information about the work guardians do. We outline our findings below.

## Prohibited Activities

Just as court rules list several *roles* guardians ad litem must not fulfill, GAL Board policy lists several *activities* guardians should not perform.<sup>15</sup> For example, Board policy states guardians should not provide counseling or therapy to a child or parent or remove the child from the home. We provide a complete list of activities guardians should not perform in Exhibit 2.2.

<sup>13</sup> We surveyed all 284 district court judges and received 219 responses, for a response rate of 77 percent.

<sup>14</sup> We reviewed a sample of 124 randomly selected cases, for a total of 379 guardian reports and 234 children. Fifty-nine of the reports we read were for family court cases, and 320 of the reports were for juvenile court cases. The sample was not large enough to be representative, and the results cannot be projected to the entire universe of guardian ad litem cases. We provide additional information about our file review methodology in Appendix B.

<sup>15</sup> State Guardian ad Litem Board Policies Manual, Guardian ad Litem Program Requirements and Guidelines IV.

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## **Exhibit 2.2: Guardian ad Litem Board policies outline some activities guardians ad litem should not perform.**

### **Prohibited Activities**

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- Providing “counseling” or “therapy” to a child or parent
- Inviting the child or parent into the home of the guardian
- Entertaining the child or parent on a routine basis
- Giving money or gifts to the child or parent
- Giving legal advice to the child or parent
- Hiring an attorney for the child or parent
- Supervising visits between the child and parent or third parties
- Providing child care services for the child
- Making placement arrangements for the child
- Removing the child from the home
- Providing a “message service” for parents to communicate with each other
- Conducting custody evaluations<sup>a</sup>
- Transporting the child

<sup>a</sup> Guardians ad litem should not conduct custody evaluations as described in *Minnesota Statutes* 2017, 518.167.

SOURCE: Office of the Legislative Auditor, based on State Guardian ad Litem Board Policies Manual, Guardian ad Litem Program Requirements and Guidelines IV; and Minnesota General Rules of Practice for the District Courts, *Title X. Rules of Guardian ad Litem Procedure in Juvenile and Family Court*, Rule 903.04 (2015).

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## **Guardians ad litem did not perform explicitly prohibited activities in nearly all of the cases we reviewed.**

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We found that guardians ad litem did not perform explicitly prohibited activities in 97 percent of the cases we reviewed. We did not, for example, find evidence that guardians provided child care services or invited children or parents into their homes, both of which are prohibited. In the four cases where we found evidence that guardians had performed prohibited activities, these activities included transporting children and supervising visits between a child and parent.<sup>16</sup>

## **Required Activities**

In Chapter 1, we described activities guardians ad litem must perform. These activities include investigating the child’s situation, preparing reports with recommendations about what is in the best interests of the child, and monitoring the child’s best interests in judicial proceedings. In this section, we describe the extent to which guardians performed required activities for the cases we reviewed.

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<sup>16</sup> We based our determination on information contained in guardian ad litem reports and personal files. We did not determine whether a judge ordered guardians to perform prohibited activities.

## Investigations

Guardians ad litem are expected to objectively investigate the details of each case, including the history, environment, relationships, and needs of the child. State law outlines specific investigatory activities guardians must perform; however, we encountered difficulties in determining whether guardians performed these activities.

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### **It was not clear whether guardians ad litem performed all required investigatory activities for the majority of the cases we reviewed.**

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Statutes require guardians to interview parents, caregivers, and others “with knowledge relevant to the case.”<sup>17</sup> Based on the evidence listed in guardians’ reports, electronic case notes, and files, we were unable to confirm for 18 percent of cases that guardians interviewed all mothers associated with the case at any time during their investigation. Similarly, for 42 percent of cases we were unable to confirm that guardians interviewed all fathers associated with the case at any time during their investigation.<sup>18</sup> We also looked at the frequency with which guardians contacted non-parental caregivers, such as foster parents and daycare providers.<sup>19</sup> Based on evidence from the guardians’ reports, case notes, and files, we found that guardians did not contact caregivers in 17 percent of the cases we reviewed for which we determined individuals other than parents provided care to the child.

Statutes also state that guardians ad litem must meet with and observe the child “in the home setting.”<sup>20</sup> We reviewed evidence listed in guardians’ reports, electronic case notes, and files to determine whether guardians fulfilled this requirement. We were unable to find evidence that guardians observed each child in the home for 23 percent of the cases we reviewed.<sup>21</sup>

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<sup>17</sup> *Minnesota Statutes* 2017, 260C.163, subd. 5(b)(1); and 518.165, subd. 2a(1).

<sup>18</sup> We excluded cases where the guardian indicated in his or her report(s) that the parent was deceased, the parent’s identity was unknown, or that the court had terminated the mother or father’s parental rights. If cases included children with the same mother but different fathers or the same father and different mothers, we looked at whether the guardian contacted all of the fathers and all of the mothers the guardian identified in his or her report(s).

<sup>19</sup> While statutes require guardians to contact caregivers, statutes do not define who caregivers are. *Minnesota Statutes* 2017, 260C.163, subd. 5(b)(1); and 518.165, subd. 2a(1). For our file review, we defined caregivers as foster parents; daycare providers; after-school program staff; and other individuals—other than parents—who were responsible for providing ongoing care to the child. We did not classify preschool or school staff as caregivers. We based our analysis on whether guardians indicated the child had a non-parental caregiver in their reports or physical files. It is possible that there were additional cases for which guardians did not contact caregivers that we were not aware of due to a lack of documentation in the guardians’ records.

<sup>20</sup> *Minnesota Statutes* 2017, 260C.163, subd. 5(b)(1); and 518.165, subd. 2a(1). Statutes state that the guardian shall conduct an independent investigation that “must include, unless specifically excluded by the court...meeting with and observing the child in the home setting and considering the child’s wishes, as appropriate....” This language could be interpreted in two ways: (1) that guardians are required to meet with all children in the home setting in all cases, and that guardians are required to consider the child’s wishes as appropriate, or (2) that guardians are required to meet with all children in the home setting as appropriate, and that guardians are required to consider the child’s wishes as appropriate. The current program administrator told us it is a Program expectation that guardians meet with children in the home setting at least once. Based on the Program’s expectation and additional OLA analysis, we determined home visits were required.

<sup>21</sup> For our file review, we defined the home setting as the place at which the child was residing during the time addressed by the guardian’s report, such as the child’s foster placement or with the child’s parents.

While the previous discussion describes the extent to which guardians fulfilled *each individual* requirement for each case in our file review, we also examined the extent to which guardians met *all* requirements for each case. For 56 percent of the cases we reviewed, we were unable to find evidence that guardians both observed all children in the home setting *and* interviewed parents and caregivers.<sup>22</sup>

We were concerned that we were unable to verify that guardians fulfilled all investigatory requirements for a substantial number of the cases we reviewed. However, the cases we selected for our file review, especially those in juvenile court, may be just one court case of several associated with a particular family. A guardian, for example, may first establish contact with a family during a case in which the court has determined a child is in need of protection or services. Then, the guardian may continue his or her involvement with the family in a subsequent case to terminate parental rights. It is possible that the guardian interviewed the parent(s) during his or her investigation into the first case, but did not interview the parent(s) for his or her investigation into the second case.

## Report Writing

As we discussed in Chapter 1, guardians ad litem are expected to use the information they gather during their investigations to produce reports that they submit to the court. By law, guardians must provide written reports that include recommendations about the child's best interests and the facts upon which the recommendations are based.<sup>23</sup>

### Report Content

Although state law provides little guidance about the content and format of guardian ad litem reports, court rule specifies several pieces of information reports must contain. For example, court rule requires guardians to provide a brief summary of the issues related to the child and family, a list of the dates and type of contacts the guardian had with the child, and recommendations advocating for the best interests of the child.<sup>24</sup> The GAL Program has devised report templates that the program administrator told us guardians are required to use for juvenile court cases.<sup>25</sup> These templates generally require guardians to provide: (1) a brief history of the case; (2) information on court-ordered living arrangements for the child, such as with a foster parent; (3) information about any changes that impacted the child since the last hearing; (4) information about the child's wishes regarding the case; and (5) factors related to a child's best interests, such as the mental health, medical, educational, cultural, and religious needs of the child. These templates also require guardians to list: (1) their recommendations regarding the best interests of the child, and (2) who they contacted and what documents they reviewed during the course of their investigation.

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<sup>22</sup> We reviewed cases that had been open for varying amounts of time; some were open for several years, others for a couple of months. Our sample included active cases, so guardians may have interviewed parents or caregivers or visited the children in the home after we performed our review.

<sup>23</sup> *Minnesota Statutes* 2017, 260C.163, subd. 5(b)(5); and 518.165, subd. 2a(5).

<sup>24</sup> Rules of Juvenile Protection Procedure, Rule 38.11, subd. 5 (2016).

<sup>25</sup> The GAL Board has also approved a template for family court reports. However, the GAL program administrator told us that guardians ad litem are not required to use the template for family court reports because judges in some judicial districts did not like the template. In our file review, we found guardians used the template for family court reports for only 3 of the 59 family court reports we reviewed.

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**Based on our file review, guardians ad litem did not always include all required information in their reports.**

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In conducting our file review, we found that guardians used templates when required to do so for the vast majority of reports. However, 11 percent of the reports we reviewed that followed the required template were incomplete; guardians left one or multiple sections of the report template blank. Further, we found several instances in which guardians chose not to provide information for one or more sections of the report, instead stating that the factors—such as the child’s cultural or religious needs—were “not applicable.” Report templates help to ensure that guardians complete a well-rounded assessment of the child’s best interests in a standardized manner across the state. When a guardian does not follow the prescribed template or submits incomplete reports, the likelihood increases that the guardian may overlook some of the child’s needs.

In addition to being an element of the required report template, court rules require guardians ad litem to list the documents they consulted and persons they contacted during their investigations.<sup>26</sup> In our file review, we found that guardians did not always list all sources of information in their reports. For 87 percent of the cases we reviewed, guardians’ files contained additional documents pertinent to the case that guardians did not list as evidence in their reports.<sup>27</sup> Likewise, for 52 percent of cases we reviewed, guardians’ files contained evidence they had interviewed additional contacts that they did not list as sources in their reports. If guardians do not provide the court with accurate accounts of the sources they consulted during their investigation, it is more difficult for the court to determine the quality of information presented in guardians’ reports.

### *Report Submission and Timeliness*

Court rule and Board policies provide some guidance as to how frequently guardians ad litem should submit a report. However, the court process typically involves many different types of proceedings throughout the lifetime of a case, and this guidance does not clearly indicate for which proceedings guardians should submit a report. Through our interviews, we found that some district managers had differing expectations about when guardians must submit reports. For instance, one district manager told us that guardians are expected to submit reports for juvenile court hearings occurring only after the court has confirmed that a child is in need of protection or services. Another manager said guardians are expected to submit reports for all hearings—including those in the early stages of a case—except for short-term progress reviews.

During our file review, we found that guardians submitted reports for slightly less than half of all judicial proceedings held on cases in our review.<sup>28</sup> Report submissions varied among

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<sup>26</sup> Rules of Juvenile Protection Procedure, Rule 38.11, subd. 5 (2016).

<sup>27</sup> We did not include cases in which a guardian did not list documents—such as court orders or county social worker reports—that were already available to the court.

<sup>28</sup> We based our analysis on data available to us through Minnesota Government Access, which allows government agencies to view certain electronic court documents. The results of our analysis are dependent on the quality of the data input by court staff. For questions pertaining to guardian ad litem attendance in court and report submission, we reviewed a sample of 160 randomly selected cases, including the previously mentioned 127 cases and an additional 39 randomly selected cases. Data were not available in Minnesota Government Access for six cases in our sample. The sample was not representative and results cannot be projected to the entire universe of guardian ad litem cases. We did not include in our analysis judicial proceedings occurring before or on the same day as the guardian’s appointment.

the five judicial districts included in our review, with guardians in the Sixth Judicial District submitting reports for nearly 70 percent of proceedings, and guardians in the Ninth Judicial District submitting reports for slightly more than 30 percent of proceedings.<sup>29</sup>

Court rules outline how many days in advance of the judicial proceeding guardians must submit a report. Per court rules, guardians must submit written reports to the court five business days before juvenile court hearings and ten days before family court hearings.<sup>30</sup>

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**Guardians ad litem submitted about one-quarter of reports to the court on time, based on our file review.**

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We found in our file review that guardians ad litem did not submit most reports on time. Of the 348 reports we reviewed for timeliness, guardians ad litem submitted only 28 percent of reports on time.

Failure to provide reports in a timely manner can impact the ability of others involved in the court process to adequately advocate for families' interests and needs. The managing attorney for a county public defender office, for example, told us that attorneys need time to read and discuss the guardian's report with their clients. Two other attorneys told us that it is harder to advocate for their clients when guardians submit reports at the last minute. A representative from the Office of Ombudsperson for Families told us that the failure to provide written reports in a timely manner is particularly problematic for families with limited English proficiency.<sup>31</sup> In these cases, guardian reports must be translated in order for parents to understand them, which the representative said is challenging to do on short notice.



The reason the reports are late is because our Guardian ad Litem system is burdened to the point of breaking. There are too many cases and not enough guardians ad litem. Lateness is not a guardian problem, but rather a systemic issue.

—District Court Judge

In addition to expressing concern about reports that were submitted late, some parents and professionals involved in the court system expressed frustration that guardians sometimes provided oral reports or recommendations to the court instead of written ones. Twenty-nine percent of judges who responded to our survey reported that guardians ad litem at least sometimes presented information or recommendations orally in family court hearings or trials instead of written reports.<sup>32</sup> Thirty-one percent of judges who responded to our survey reported that guardians ad litem at least sometimes presented information or recommendations

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<sup>29</sup> The Sixth Judicial District is in northeast Minnesota, and the Ninth Judicial District is in northwest Minnesota, as shown in Appendix A.

<sup>30</sup> For family court cases, court rule merely stipulates when guardians must submit written recommendations to the court, not reports. However, statute requires guardians to submit reports that include recommendations. Rules of Juvenile Protection Procedure, Rule 38.11, subd. 2 (2016); Minnesota General Rules of Practice for the District Courts, *Title II. Rules Governing Civil Actions*, Rule 108.01 (2015); and *Minnesota Statutes* 2017, 518.165, subd. 2a(5).

<sup>31</sup> The Office of Ombudsperson for Families is a state agency that assists families of color in Minnesota with child protection or social services matters.

<sup>32</sup> In contrast, 71 percent of judges who responded to our survey reported that guardians ad litem never or rarely presented information or recommendations orally instead of written reports in family court hearings or trials. We asked this question to judges who had appointed guardians ad litem to family court cases since January 1, 2016.

orally in juvenile court hearings or trials instead of written reports.<sup>33</sup> Similar to reports that are not submitted on time, oral reports provide little opportunity for parents and attorneys to review guardian recommendations and provide an informed response to the court.

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## RECOMMENDATION

### The Guardian ad Litem Board should:

- **Clarify for which judicial proceedings guardian ad litem reports are required.**
  - **Ensure guardian ad litem reports are written.**
  - **Ensure guardian ad litem reports are submitted on time.**
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We recommend that the GAL Board clearly identify the instances in which a written guardian report is required, and if applicable, the instances in which a written guardian report is not required. After formalizing and communicating the Board's expectations to guardians and the public, the program administrator should regularly collect and examine data regarding report submission and timeliness and provide the findings to the Board. This will help to ensure that guardians ad litem are meeting requirements program-wide, that courts have timely access to guardian reports and recommendations, and that parents have adequate time to review guardian reports.

## Advocating in Court

Guardians ad litem not only advocate for a child's best interests through written reports, they are also expected to attend judicial proceedings to advocate for a child's needs in person. As mentioned earlier, state law requires guardians to "monitor the child's best interests throughout judicial proceedings" and to advocate for the child's best interests by "participating in appropriate aspects of the case."<sup>34</sup>

While statute is silent as to when or how frequently guardians ad litem should attend judicial proceedings for each case, GAL Board policy requires guardians to attend all court hearings related to the cases to which guardians are appointed.<sup>35</sup> In the event a guardian is unable to attend a hearing, Board policy states that the guardian must contact his or her supervisor to make "adequate arrangements." Managers or coordinators in four of the five districts we visited told us they expect or would like guardians to attend all or most hearings.

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<sup>33</sup> In contrast, 67 percent of judges who responded to our survey reported that guardians ad litem never or rarely presented information or recommendations orally instead of written reports in juvenile court hearings or trials. We asked this question to judges who had appointed guardians ad litem to juvenile court cases since January 1, 2016.

<sup>34</sup> *Minnesota Statutes* 2017, 260C.163, subd. 5(b); and 518.165, subd. 2a.

<sup>35</sup> State Guardian ad Litem Board Policies Manual, Court Appearance Policy. Board policy requires guardians to attend all "court hearings" related to a case, not all judicial proceedings.

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### **Based on our file review, guardians ad litem attended most court hearings as required.**

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We included about 700 court hearings in our file review, and we found evidence that guardians attended hearings nearly 85 percent of the time.<sup>36</sup> In our file review, guardian attendance at court hearings varied by judicial district; guardians in the Tenth Judicial District attended slightly more than 70 percent of hearings, while guardians in the Sixth Judicial District attended about 95 percent of hearings.<sup>37</sup>

In addition to being required by the Program, judges overwhelmingly indicated that guardians' attendance in court is important to them. Ninety percent of judges who responded to our survey stated that guardians' participation in hearings or trials in juvenile court cases to which the guardians are assigned is important or very important.<sup>38</sup> Similarly, 97 percent of judges who responded to our survey said guardians' participation in hearings or trials in family court cases to which the guardians are assigned is important or very important.<sup>39</sup>

## **Discretionary Activities**

Because federal and state law provide only broad direction as to the activities guardians ad litem must perform, guardians have discretion to decide on a case-by-case basis how they conduct many activities central to their role. For example, state law requires guardians to consider the child's wishes *as appropriate* and to review documents *relevant* to a case.<sup>40</sup> Yet statutes are silent as to when it is appropriate to consider a child's wishes or what makes documents relevant or irrelevant to a case.

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### **The Guardian ad Litem Board has established few standards to ensure that guardians provide consistently high-quality services.**

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The GAL Board has not clarified its expectations for several aspects of guardian work. For example, the Board has not established concrete expectations regarding the activities guardians should perform during their investigations, how guardians should document their work, or the criteria guardians should use when making recommendations.

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<sup>36</sup> We based our analysis on data available to us through Minnesota Government Access. There appeared to be some inconsistencies in the degree to which the courts tracked guardian attendance in court, and it was not clear as to whether guardians attended an additional 2 percent of hearings. We also looked at the extent to which guardians attended all *judicial proceedings* for cases in our review; we found guardians attended 84 percent of judicial proceedings. We excluded from our analysis proceedings that occurred on or before the date of the guardian's appointment or after the guardian's dismissal. We included instances in which *any* guardian attended the judicial proceeding, even if it was not the guardian assigned to the case.

<sup>37</sup> The Tenth Judicial District includes counties directly west, north, and east of the Twin Cities, and the Fourth Judicial District encompasses Hennepin County, as shown in Appendix A.

<sup>38</sup> We asked this question to judges who had appointed guardians ad litem to juvenile court cases since January 1, 2016.

<sup>39</sup> We asked this question to judges who had appointed guardians ad litem to family court cases since January 1, 2016.

<sup>40</sup> *Minnesota Statutes* 2017, 260C.163, subd. 5(b)(1); and 518.165, subd. 2a(1).

We had hoped to determine whether guardians ad litem exercised their discretion appropriately and in similar ways across the state. However, without work standards, it was difficult to determine the extent to which a guardian appropriately used his or her discretion on any given case. For example, state law requires guardians ad litem to advocate “for appropriate community services when necessary,” and we found that guardians recommended services for at least one child or parent on a case in about two-thirds of the cases in our file review.<sup>41</sup> Statute provides guardians with discretion to decide if services are warranted, and it is possible that services simply were not needed in all cases. However, without standards, it was unclear how guardians determined in what instances services were necessary.

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### Guardian ad litem work varied significantly across cases in our file review.

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A degree of variation in guardian investigations and reports is neither unexpected—due to the unique nature of each case—nor inherently good or bad. However, as we discuss in the following paragraphs, we found that the activities guardians performed varied significantly. We were concerned with the degree of these variations.

## Investigations

As previously noted, guardians ad litem have substantial discretion in how they conduct their investigations. For example, state law and Board policy do not require guardians to observe children with their parents, but in our file review, we found that some guardians did. We found evidence that guardians ad litem observed 41 percent of children included in our file review with their mother and 28 percent of children with their father at some point during the guardian’s investigation.<sup>42</sup>



There can be five children on one case. Plus almost all those five kids are usually...not at the same location. Two kids could be placed up in Red Lake, two at Cass Lake, and one in White Bear Lake. All of these kids need to be seen.... The most important part of the [guardian ad litem] job is to see the children....

—Guardian ad Litem

Additionally, there are no standards regarding the frequency with which guardians ad litem should contact children. Using GAL Program data, we looked at the number of contacts guardians made with a child in the six months immediately following the date a guardian was assigned as an advocate for a child.<sup>43</sup> The median number of visits in the six-month time period was four. However, we found the frequency with which guardians contacted children varied widely. Guardians did not contact

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<sup>41</sup> *Minnesota Statutes* 2017, 260C.163, subd. 5(b)(2); and 518.165, subd. 2a(2). Statutes do not describe what constitutes a community service, for whom the guardian ad litem should recommend services, or when it is appropriate to do so. In our file review, we found that guardians recommended services for both children and parents. Examples of services guardians recommended included therapy or counseling, mental health evaluations, medical services, or parenting classes.

<sup>42</sup> For our file review, we defined an observation as any instance in which the guardian saw the child and parent interact. We included only instances in which we deemed it feasible for a guardian to observe the parent with the child. For example, we did not include instances in which the guardian indicated in his or her report that the parent was deceased or for whom the court had issued a no-contact order.

<sup>43</sup> Our review included cases to which the GAL Program assigned a guardian ad litem during fiscal years 2016 and 2017. GAL Program staff reported during interviews that there are varying levels of compliance with data entry protocols across and within districts. It is likely this had a negative impact on the overall quality of GAL Program data and affected the results of our analysis. Program data did not include information on how the guardian contacted the child, such as in-person, by telephone, by e-mail, or by text message.

12 percent of children at all during the six months immediately following a guardian's assignment, and guardians contacted 10 percent of children only one time in the first six months. In contrast, guardians contacted 7 percent of children eight or more times during the first six months.

The amount of time guardians spent meeting with children in the six months immediately following their assignment also varied. The median number of hours guardians spent with a child in the first six months was two hours and 30 minutes. Guardians met with 26 percent of children for a total of an hour or less over the first six months, while guardians met with 11 percent of children for a total of six or more hours over the same time period.

State laws require guardians to consider a child's wishes, *as appropriate*, but again, there is no guidance as to when it is appropriate.<sup>44</sup> In our file review, we looked at whether guardians provided information in each of their reports about the wishes or opinions of each child on a case. We found that guardians did not consistently provide information about the child's wishes or opinions for 60 percent of children in our review.<sup>45</sup> The program administrator told us it is important for guardians to use discretion when asking children about their wishes for a case. One district manager told us that guardians, for example, should not directly ask children where they would like to live because it places too much stress and pressure on the children. While we understand the need for sensitivity when interviewing a child, we were concerned with the frequency with which guardians did not report—and potentially did not consider—the child's desires.

#### Example of Document Types Reviewed by Guardians ad Litem

- Child medical records
- Child mental health records
- County social worker reports
- Court orders
- Criminal records
- Drug test results
- Parent mental health records
- Police reports
- School records
- Supervised visitation summaries

Guardians ad litem also have discretion regarding the types of documents they consult during their investigation. State laws require guardians to review *relevant* documents, but there is no guidance about when a document should be considered relevant.<sup>46</sup> In our file review, we found variations in the types of documents—such as medical and mental health records, school records, or police reports—that guardians ad litem reviewed in different cases. Based on the information provided in their reports, we found that guardians reviewed a median of three different document types per case, although two guardians reviewed as many as eight different document types for a case.<sup>47</sup> It was not clear that guardians reviewed any documents for 16 percent of cases we reviewed.

<sup>44</sup> *Minnesota Statutes* 2017, 260C.163, subd. 5(b)(1); and 518.165, subd. 2a(1).

<sup>45</sup> By law, guardians must only *consider* a child's wishes—not report them. OLA excluded from this calculation children under the age of three.

<sup>46</sup> *Minnesota Statutes* 2017, 260C.163, subd. 5(b)(1); and 518.165, subd. 2a(1).

<sup>47</sup> Guardians reviewed miscellaneous other documents that we did not classify by type for 32 cases. In our file review, we found that guardians sometimes reviewed multiple documents of the same document type. For example, guardians often reviewed several different court orders for a case.

### Example of Individuals Contacted by Guardians ad Litem

- Child's doctors
- Child's therapists
- County attorneys
- County social workers
- Daycare providers
- Foster parents
- Law enforcement personnel
- Maternal relatives
- Parent's attorneys
- Parent's friends
- Parent's therapists
- Paternal relatives
- School social workers
- Supervised visitation workers
- Tribal representatives

Likewise, statutes require guardians ad litem to interview people with knowledge *relevant* to a case, but neither statutes nor Board policy provides guidance on why a certain individual might have relevant knowledge.<sup>48</sup> We found in our file review that guardians contacted at least one individual—other than a parent or the child—for nearly all cases. Based on the information presented in their reports, guardians contacted a median of four individuals per case in our file review; however, the number of individuals guardians spoke to on any given case varied from 13 people to none.<sup>49</sup>

## Report Writing

Just as guardians ad litem have discretion to determine how they will investigate a case, they also have some discretion to choose the format of their reports. As mentioned earlier, the program administrator told us that guardians must use report templates for juvenile court cases. The Program has designed both long and short templates. The longer templates direct guardians to provide a comprehensive assessment of several of the best interest factors outlined in law; the short template does not. As seen in Exhibit 2.3,

the long template provides substantially more information about the child than the short one.

The GAL Board has not developed guidelines for when a guardian ad litem should use the abbreviated report template instead of the longer one. The GAL program administrator told us that the abbreviated template was designed to be used when the guardian was expected to provide the court with updates in short 30-day intervals. It was not intended to be a substitute for the longer template. However, one GAL manager told us some guardians have begun using the short template in order to accommodate their heavy workloads. We found that guardians submitted *only* short reports for 10 percent of cases we reviewed, and in several other cases, guardians used a combination of long and short report templates. While an abbreviated report may be appropriate in certain circumstances, its overuse could lead to a less comprehensive assessment of the child's best interests.



[Guardian ad litem reports] vary in quality—sometimes greatly. I've received very thorough ones from some guardians. But I've also reviewed others that have been lacking, particularly those "reports" that are stated or read into the record.

—District Court Judge

Even when guardians ad litem used the report templates, we found large variation in how much information they included in their reports. Exhibit 2.4 shows excerpts from two different guardians' reports submitted for the same type of judicial proceeding. Guardians prepared both reports for juvenile abuse or neglect court cases in the same judicial district and county.<sup>50</sup> As shown in the exhibit, the first report provided far more detail about the child than the

second. For example, the first report provided information on the child's attendance and grades. The second report noted only where the child went to school. Additionally, the guardian that wrote the first report frequently stated the sources of her information and the dates when she obtained the information; the author of the second report did not.

<sup>48</sup> *Minnesota Statutes* 2017, 260C.163, subd. 5(b)(1); and 518.165, subd. 2a(1).

<sup>49</sup> These calculations reflect cases for which we were able to determine the number of people the guardian contacted (69 cases). In the remaining 55 cases, we could not determine the number of individuals guardians contacted. We did not include guardian contacts with parents or children in these calculations.

<sup>50</sup> The guardian writing the first report had been appointed to the case for two months prior to submitting this report; the guardian writing the second report had been appointed to the case for over four months.

## Exhibit 2.3: The information included in guardian ad litem report templates for juvenile court varies.

Short Report Template	Long Report Template
<ul style="list-style-type: none"> <li>• Guardian name</li> <li>• Child(ren) name</li> <li>• Changes impacting child(ren) since last review</li> <li>• Guardian recommendations and rationale</li> <li>• Documents reviewed</li> <li>• Persons contacted</li> </ul>	<ul style="list-style-type: none"> <li>• Guardian name</li> <li>• Child(ren) name</li> <li>• Changes impacting child(ren) since last hearing</li> <li>• Guardian recommendations</li> <li>• Documents reviewed</li> <li>• Persons contacted</li> <li>• Report date</li> <li>• Hearing date</li> <li>• Guardian ad litem appointment date</li> <li>• Indian Child Welfare Act (ICWA) status<sup>a</sup></li> <li>• Number of moves into out-of-home placement</li> <li>• Days in out-of-home placement</li> <li>• Date of six-month permanency progress review hearing <i>or</i> date child(ren) ordered into placement</li> <li>• Child(ren)'s wishes regarding placement</li> <li>• Permanency/concurrent planning <i>or</i> appropriateness of current placement</li> <li>• Establishing and maintaining connections with parents/siblings/tribe/significant others</li> <li>• Relative search efforts</li> <li>• Child safety and wellbeing:             <ul style="list-style-type: none"> <li>○ Mental health/medication</li> <li>○ Current functioning and behaviors</li> <li>○ Medical/dental/vision</li> <li>○ Education</li> <li>○ Community connection/social/recreational activities</li> <li>○ Cultural</li> <li>○ Religious</li> <li>○ Safety concerns</li> <li>○ Independent living skills</li> </ul> </li> <li>• Summary of strengths and issues for the family <i>and/or</i> additional information</li> <li>• Parent information</li> <li>• Brief history of case</li> <li>• Placement information</li> <li>• Services provided for the child(ren)</li> <li>• Date and type of contact with child(ren)</li> </ul>

NOTE: While the Guardian ad Litem Board has also approved a template for family court reports, the program administrator told us guardians ad litem are not required to use it.

<sup>a</sup> Indian Child Welfare Act of 1978, Public Law 95-608, codified as 25 *U.S. Code*, secs. 1901-1963 (2012). The Indian Child Welfare Act is a federal law that aims to protect the best interests of American Indian children by establishing standards for the removal of American Indian children from their families and the placement of American Indian children in foster or adoptive homes.

SOURCE: Office of the Legislative Auditor, review of guardian ad litem juvenile court training materials.

## Exhibit 2.4: The content of guardian ad litem reports varies from guardian to guardian.

REPORT EXCERPT 1	REPORT EXCERPT 2
<p><b>Current Functioning and Behaviors</b></p> <p>This guardian ad litem last had a face to face visit with Child 1 at her placement on 4/18/17. Child 1 was distracted because she needed to change rooms, but appeared to remain distracted when she returned after finishing this task. She asked me, “Is this going to take long?” almost immediately. This was markedly different from our last visit on 3/29/17 when she told me she wanted to make sure I knew “everything that’s been going on,” and we met for over two hours. This most recent visit on 4/18/17 ended with a request from Child 1 to get more passes and wondering if she could become emancipated. This guardian ad litem recommended Child 1 contact her attorney to advocate on her behalf and notified her attorney as well. Child 1 has since run away from her placement on 5/9/17, seemingly in response to being denied additional passes after her approved outing to the zoo with her boyfriend.</p> <p><b>Medical/Dental/Vision</b></p> <p>Child 1 was scheduled for a medical exam on 5/15/17 at [medical clinic] at 2:30 pm to complete a physical and determine if a referral is needed to a psychiatrist. She did not attend as she absented from her placement on 5/9/17. Child 1 is not on any medication at this time and there are no immediate dental or vision concerns. Child 1’s intake form for the [youth education program] dated 12/16/2016 indicates she needs the Inactivate Polio Virus (IPV) immunization which can be addressed at a future medical exam.</p> <p><b>Education</b></p> <p>Child 1 has not attended school since she ran away from her placement on 5/9/17. In addition, when this guardian ad litem spoke to the [school name] school social worker on 4/5/17, she stated that Child 1 had missed “weeks of school” since December 2016, and in “mid-March she missed several full days.” Child 1 had failing grades in six out of seven of her classes at that time as well. The school social worker also mentioned Child 1 sometimes needs a break when she feels overwhelmed. Child 1 has permission to do this as long as she informs her teacher. Despite this, the school social worker told this guardian ad litem that Child 1 is “very bright and capable” and had good grades in middle school. At that time, the school social worker believed Child 1 could get caught up with help from her [subject matter] teacher and after school credit recovery next school year if needed. This changed on 5/12/17 when Child 1 missed more school due to running away on 5/9/17, and the school social worker stated Child 1 now needs to enroll in summer school in order to get caught up.</p> <p><b>Community Connection/Social/Recreational Activities</b></p> <p>Child 1 was participating in the [youth education program] after school until she absented from her placement on 5/9/17. Child 1 shared with this guardian ad litem that she is interested in participating in a hip hop class exclusively for girls. When this guardian ad litem spoke to the school social worker on 4/5/17, she stated there is only a co-ed hip hop after school class at [school name].</p>	<p><b>Current Functioning and Behaviors</b></p> <p>At [school name] she is a leader of her negative peers but she has recently stopped testing boundaries.</p> <p><b>Medical/Dental/Vision</b></p> <p>Unknown to this guardian ad litem.</p> <p><b>Education</b></p> <p>She is at school at [school name].</p> <p><b>Community Connection/Social/Recreational Activities</b></p> <p>Unknown to this guardian ad litem.</p>

NOTES: The text above shows excerpts from two different guardian ad litem reports submitted for the same type of judicial proceeding. Guardians prepared both reports for abuse or neglect court cases in the same judicial district and county. The guardian writing the first report had been appointed to the case for about two months prior to submitting this report; the guardian writing the second report had been appointed to the case for over four months. We redacted identifying details to protect individuals’ privacy.

SOURCE: Office of the Legislative Auditor, review of guardian ad litem reports.

## Discussion

We would expect to see some individual variation in the quality of employee work in all professions. For the GAL Program, as we noted previously, we further expected some degree of variation on a case-by-case basis due to the unique nature of each case.

Despite this, we were concerned that the degree of variation we observed across guardians' work indicated that the quality of services children receive may depend upon which guardian ad litem is assigned to their case.



The basic duties of our jobs do have clear expectations, but how we go about them is different in each case, and not entirely clear, as each case is so vastly unique.

—Guardian ad Litem

The evidence and information guardians ad litem collect over the course of their investigations directly impact guardians' knowledge of a child's needs and a case in general. For example, it seems unlikely that a guardian ad litem who spends less than one hour talking to a child one time in six months will understand the child's needs and situation to the same degree as a guardian who spends multiple hours talking with a child over the same timeframe.

Further, a guardian ad litem's knowledge of a case directly impacts what information the guardian can provide to the court through the guardian's reports. If guardians do not include important information about the case—either because they conduct only a cursory investigation and are not aware of the information, or because they fail to write complete reports—it may impact the information the court has to guide its decisions on a case. This may have an impact on the outcomes for the child.

Several judges, county social workers, and attorneys also told us that the performance of guardians ad litem varied widely from one guardian to the next. One county social worker, for example, described a difference in the comprehensiveness of guardian ad litem investigations in two counties where she had worked. Guardians ad litem in one county, she said, were “always there”; the guardians were very involved, even in very early stages of the case, and often attended home visits with the social worker. Guardians in the other county, she said, told her they did not have to meet with the child's parents. An attorney told us the quality of guardian ad litem reports varied greatly; some guardians provided comprehensive reports with a lot of information, while other reports were quite short.

Despite these concerns, judges who responded to our survey were largely satisfied with the work of guardians ad litem. About 90 percent of judges who appointed guardians to family court cases and about 90 percent of judges who appointed guardians to juvenile court cases agreed or strongly agreed that guardian reports in family and juvenile court: (1) clearly identified the evidence used to support guardian recommendations, (2) included sufficient evidence to support guardian recommendations, and (3) provided judges with useful information.<sup>51</sup> Similarly, over 90 percent of judges who responded to our survey described the quality of guardian performance in family court hearings or trials, on average, as good or very good, and over 90 percent of respondents described the quality of guardian performance in juvenile court hearings or trials, on average, as good or very good.<sup>52</sup>

<sup>51</sup> We asked these questions to judges who had appointed guardians ad litem to family court cases since January 1, 2016, and to judges who had appointed guardians ad litem to juvenile court cases since January 1, 2016.

<sup>52</sup> We asked these questions to judges who had appointed guardians ad litem to family court cases since January 1, 2016, and to judges who had appointed guardians ad litem to juvenile court cases since January 1, 2016.

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## RECOMMENDATION

### **The Guardian ad Litem Board should adopt clear standards for guardian ad litem work.**

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Children involved in court cases to which a guardian ad litem is appointed are often in situations that could dramatically impact the rest of their lives. In our file review, we found examples of truly exemplary guardian ad litem work where it was clear that the guardian had gone to great lengths to understand the needs of the child and to clearly communicate that information to the court. We also reviewed cases where it appeared that the guardian had done so little work it was unclear what new information the guardian contributed to the case. Different guardians working on similar types of cases should not conduct drastically different investigations that may result in different recommendations and, possibly, different outcomes for a child. It is concerning to us that there are few standards to ensure that children receive a similar level of service across the state, regardless of the individual guardian ad litem appointed to their case.

Further, while judges reported great satisfaction with guardian ad litem work, without clear standards, it is difficult for parents, children, and other court professionals to know what to expect of the guardian. As we discuss in Chapter 5, some people have filed complaints about guardian ad litem performance with the GAL Program. Seventeen percent of complaints, for example, included allegations that guardians ad litem had not performed a thorough investigation.<sup>53</sup> Without uniform standards against which to evaluate guardian activities, district managers and coordinators are left to make individual determinations as to whether a guardian's investigation was sufficiently comprehensive on any given case. While establishing work standards is unlikely to address all parent frustrations with the GAL Program, clearer expectations of guardian performance may help to address some complaints. At a minimum, clearer expectations would help to increase Program accountability.

We recommend that the GAL Board—in conversation with district managers, coordinators, and guardians ad litem, and in light of requirements in rule and statute—create guidelines outlining expectations for guardians. Earlier in this chapter we recommended that the GAL Board clarify for which judicial proceedings guardians should submit reports. In addition, the Board should identify: (1) the activities guardians are required to perform during investigations, (2) guidelines for determining which discretionary activities guardians should complete, (3) the frequency with which guardians should contact children, (4) the manner in which guardians should document their work, and (5) the criteria guardians should use when making recommendations.

As every case is different, we understand the need for guardians to have flexibility in the work they do. However, we believe the Board can devise policies outlining minimum standards that will not hinder guardians' ability to use their discretion on a case-by-case basis. Work standards for guardians are an important accountability tool for the Board, GAL district managers, and the public, and we think that more clearly defined standards will improve guardians' ability to effectively represent children's best interests in a more consistent manner statewide.

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<sup>53</sup> We reviewed the GAL Program's formal complaint data from fiscal years 2015 through 2017.

## Performance Management

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Board policy requires district managers and coordinators to supervise and assess guardian ad litem work. In the following sections, we discuss ways in which district managers and coordinators monitor guardian ad litem performance through ongoing performance monitoring and formal performance evaluations.

### Performance Monitoring

While Board policy requires district managers and coordinators to provide “support, advice, and supervision” to guardians, it does not stipulate how they should do so.<sup>54</sup> Managers and coordinators told us they relied on a combination of activities to monitor guardians’ work. For example, several managers told us they held case consultations with guardians to discuss specific cases or answer guardian questions. Two managers said these consultations helped them understand the process guardians used to conduct their work. District managers and coordinators also told us they periodically observed guardians’ performance in court, reviewed guardians’ reports, and/or consulted information about guardians’ work in the Program’s case management system.

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#### **Some district managers and coordinators inconsistently examined evidence guardians used to write reports and formulate recommendations.**

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While district managers and coordinators told us they monitored certain aspects of guardian performance, some did not consistently review the evidence upon which guardians based their written reports and court testimony. Throughout their investigations, guardians collect information from various written documents and conversations with people who are knowledgeable about the case or family. Guardians must then synthesize the evidence they collected into a report that includes recommendations and the facts used to support those recommendations. Guardians ad litem typically store evidence to support their recommendations in their physical case file and/or the GAL Program’s online case management system. Yet some managers and coordinators told us they rarely review guardians’ physical case files. One manager, for example, said she does not review guardians’ files because it is logistically challenging—some guardians keep paper files in home offices—and because she does not find such reviews helpful. Some managers also told us they rarely—if ever—attend interviews or home visits to observe guardians.

We think the current evaluation activities—such as conducting case consultations, reviewing guardian reports, and observing guardians in court—are important and should continue. However, without reviewing the evidence guardians collect to support their recommendations, it is difficult to evaluate the quality of their overall work. While case consultations may provide some insight into the *types* of evidence guardians collect, they fall short of evaluating whether guardians collect and present that evidence in an objective and accurate manner. The manager, for example, has no way to determine whether a guardian accurately summarized documents related to the case. The manager also has no way to determine whether the guardian conducted interviews that were sensitive to the

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<sup>54</sup> State Guardian ad Litem Board Policies Manual, Guardian ad Litem Program Requirements and Guidelines VIII.

cultural and religious needs of the family, or that the guardian objectively summarized the interviews.

For district managers to evaluate the quality of evidence guardians ad litem collect, the evidence must be sufficiently documented. In the majority of cases we reviewed, it was not. As previously mentioned, the Board has not established standards for documenting the evidence guardians ad litem collect. Through our file review, we found widespread issues with a lack of documentation. For example, many of the guardian reports we read provided information obtained through interviews with therapists, school staff, and others. Yet, about 60 percent of the cases we reviewed lacked documentation of at least one of the interviews the guardian listed as a source of evidence in his or her reports. Likewise, we found in our review that guardians often listed documents—such as mental health records—as sources of information in their reports; however, we found that at least one of the listed documents was missing from guardian files in 32 percent of these cases.<sup>55</sup> Currently, even if a district manager reviewed a guardian’s source material, the manager may have difficulty determining whether the guardian presented information accurately and objectively because not all evidence was documented.

The lack of documentation also makes it difficult to confirm that guardians ad litem completed activities required by law. As mentioned earlier in this chapter, we intended to determine through our file review whether guardians performed activities required by statute, but in some cases, we were unable to do so. For example, it is possible that a greater share of guardians did, in fact, interview all parents associated with each case. However, the lack of consistent documentation prevented us from making a clear determination. Just as we struggled to determine whether guardians performed activities required by law, it would be similarly difficult for managers to do so.

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## RECOMMENDATION

**The Guardian ad Litem Board should require managers to periodically evaluate how well guardians collect and summarize the evidence used in their investigations.**

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As we recommended earlier in this chapter, we advise the GAL Board to adopt standards regarding documentation as part of its broader efforts to develop standards for guardian ad litem work. A lack of consistently documented evidence makes it difficult for district managers to systematically assess whether and how well guardians are performing required activities. An important part of guardian ad litem work is the collection, analysis, and synthesis of evidence. A guardian may collect appropriate types of evidence and create a report that is well-written with recommendations that are well-supported by information in the report, but if the evidence itself is of poor quality or incorrectly summarized, even the best written report is fundamentally flawed.

We recognize that assessing the degree to which guardians ad litem collect, analyze, and synthesize evidence objectively and accurately could quickly monopolize a district manager’s time. In our conversations with managers, some commented that they already perform periodic “spot-checks” on guardian work. We recommend that managers

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<sup>55</sup> Some guardians ad litem list documents that are part of the court record—such as county social worker reports or court orders—as evidence for their reports. We excluded documents that were directly available to the court from this analysis.

incorporate an evaluation of guardian files and evidence into those spot-checks if they have not already done so. Alternatively, for instances in which access to the guardian's physical files is logistically challenging, managers and coordinators could select a random set of cases and request that guardians provide their physical files as part of their annual performance evaluation.

We also recommend that managers periodically join guardians on home visits or interviews. Doing so will help to ensure that guardians are interacting with children, parents, and others with knowledge of the case appropriately, and that guardians are accurately summarizing the content of those meetings in their reports.

## Performance Evaluation

In addition to monitoring guardian performance on a more regular basis, district managers and coordinators are required to formally evaluate guardian ad litem performance at least once per year.

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**The Guardian ad Litem Board established a policy requiring regular performance reviews for all guardians; the majority of employees received annual performance reviews in recent years.**

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Board policy requires district managers or coordinators to conduct a “periodic” evaluation of all guardians in their district pursuant to the Minnesota Judicial Branch Human Resources Policies.<sup>56</sup> Per Judicial Branch policies, managers or coordinators must review guardian ad litem performance prior to the completion of 6 months of service, prior to completion of 12 months of service, and annually thereafter.<sup>57</sup> A guardian's performance review may include input from judges that presided over cases to which the guardian ad litem was appointed, a review of complaints filed against the guardian, and a review of other miscellaneous information that may have come to the attention of district managers or coordinators.

We reviewed data on annual employee performance reviews for fiscal years 2016 and 2017. The former program administrator, district managers, and coordinators performed annual reviews for 85 percent of staff in Fiscal Year 2016 and 83 percent of staff in 2017 for whom the Program determined an annual performance review was required.<sup>58</sup> Managers and coordinators evaluated employee guardians on specific criteria in six competency areas, including the overall quality of the guardian's work and the guardian's communication skills. The majority of guardians for whom supervisors completed the annual performance review process met or exceeded expectations in all competencies in 2017.<sup>59</sup> Managers and

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<sup>56</sup> State Guardian ad Litem Board Policies Manual, Guardian ad Litem Program Requirements and Guidelines VIII.

<sup>57</sup> Minnesota Judicial Branch Human Resources Rules, *Performance Evaluations*, Rule 6.1a (2016).

<sup>58</sup> Human resources staff told us that temporary staff and staff that have been employed less than one year do not receive annual performance reviews.

<sup>59</sup> Human resources staff told us the GAL Program data included information on competencies only for guardians whose performance evaluation had completed all steps in the evaluation process. These steps included reviews by district managers and the human resources manager.

coordinators also reviewed whether the guardian fulfilled continuing education requirements.<sup>60</sup>

District practices vary with regard to the evaluation of volunteer guardians ad litem. For example, district coordinators in the Fourth Judicial District told us that, because of the sheer number of volunteers, district coordinators are unable to conduct formal evaluations of volunteers in the same manner as they do for employee guardians. One coordinator in the Fourth Judicial District told us, for example, that because volunteer guardians carry so few cases, it is easier to do an informal review of volunteers' work at the conclusion of each case. On the other hand, the manager for the Second Judicial District told us that coordinators in her district have not conducted performance evaluations for volunteer guardians for several years.<sup>61</sup>

According to the GAL Program administrator, managers or coordinators should annually review the performance of volunteer guardians. While, due to their small caseloads, it may not make sense for the Program to evaluate volunteer guardians in the same manner as employees, we believe the GAL Program should consistently evaluate all volunteer guardians ad litem.

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<sup>60</sup> We discuss continuing education requirements in greater detail in Chapter 4.

<sup>61</sup> The Second Judicial District encompasses Ramsey County, as shown in Appendix A.



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# Chapter 3: Demand for Guardian ad Litem Services

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As we noted in Chapter 1, state and federal laws outline the types of cases to which courts must appoint a guardian ad litem.<sup>1</sup> During the course of our evaluation, we heard concerns from judges and attorneys about difficulties they experienced in recent years with guardian ad litem appointments. Many people expressed concern that the Guardian ad Litem (GAL) Program has been unable to meet the court's demand for guardian services.<sup>2</sup> In this chapter, we describe the appointment process; the extent to which the GAL Program has met the demand for guardian ad litem services; and factors that affect the Program's ability to do so, including the size of the GAL Program's workforce.

We found that the GAL Program has not complied with statutory requirements regarding guardian ad litem appointments. The number of cases to which guardians must be appointed has increased in recent years, contributing to the Program's difficulty meeting the court's demand for guardian services.

## Guardian ad Litem Appointments

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Federal and state law require guardians ad litem to be appointed to cases involving child abuse or neglect; in Minnesota, these cases are heard in juvenile court.<sup>3</sup> State law also requires that the court appoint guardians in matters involving custody or parenting time when the court has reason to believe the child is a victim of abuse or neglect; these cases are heard in family court.<sup>4</sup> In addition, the court has discretion to appoint a guardian ad litem for a child involved in certain other juvenile and family court cases, as described in Chapter 1.

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### **The number of juvenile court cases that required a guardian ad litem increased substantially in recent years.**

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From Fiscal Year 2015 to Fiscal Year 2017, the number of juvenile court cases related to abuse and neglect rose 25 percent, an increase of more than 1,900 cases. The 2018-2019 Governor's Budget attributed this increase to changes made to Minnesota's child protection system.<sup>5</sup> In response to several high profile child maltreatment cases, Governor Dayton created the Governor's Task Force on the Protection of Children to advise the Governor and Legislature on changes necessary to improve the child protection system. The Task Force

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<sup>1</sup> We use "the court" throughout this report to refer to judicial officers, including judges and referees. Like judges, referees listen to matters brought before them in court. Unlike judges, referees can only recommend findings or orders that must be confirmed and signed by a district court judge.

<sup>2</sup> When we use the term "guardian" throughout this report, we are referring to guardians ad litem.

<sup>3</sup> *Minnesota Statutes* 2017, 260C.163, subd. 5(a); and 260C.101, subd. 1; and 42 *U.S. Code*, sec. 5106a(b)(2)(B)(xiii) (2015).

<sup>4</sup> *Minnesota Statutes* 2017, 518.165, subd. 2.

<sup>5</sup> State of Minnesota, *2018-19 Biennial Budget, Guardian ad Litem Board* (St. Paul, January 2017).

released a report in 2015 that prompted reforms in Minnesota’s child protection system during the 2015 legislative session.

Guardian ad Litem Appointments			
	Fiscal Year 2015	Fiscal Year 2017	Change
Juvenile Court Cases	4,661	6,431	+ 38%
Family Court Cases	2,053	1,540	- 25%

Because courts must appoint guardians ad litem to all child abuse and neglect cases, the demand for guardian ad litem services in juvenile court has also increased since Fiscal Year 2015. Courts appointed guardians ad litem to more than 6,400 juvenile court cases in Fiscal Year 2017—a 38 percent increase from Fiscal Year 2015. The majority of those appointments were made to cases involving abuse or neglect.

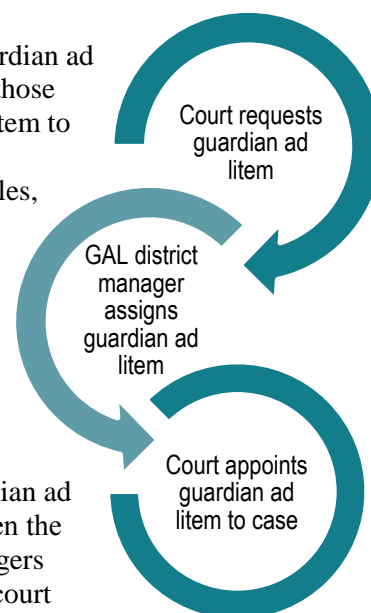
### The number of guardian ad litem appointments in family court cases decreased in recent years.

During the same time period—fiscal years 2015 to 2017—the number of guardian ad litem appointments in family court decreased significantly, even as the number of cases filed in family court decreased by only 3 percent. As the number of guardians appointed to juvenile court cases rose by 38 percent, the number of guardians appointed to family court cases decreased by 25 percent, down to only 1,540 appointments in Fiscal Year 2017. This represents an increase of nearly 1,800 appointments in juvenile court and a decrease of about 500 appointments in family court.

## Guardian ad Litem Assignments

While state and federal laws specify which cases require a guardian ad litem appointment, court rules specify the process for making those appointments.<sup>6</sup> In this process, courts *appoint* a guardian ad litem to a case only after the GAL district manager or the manager’s designee *assigns* the specific guardian.<sup>7</sup> According to court rules, courts may not appoint guardians unless they are recommended by the GAL district manager or the manager’s designee.<sup>8</sup> Because of this requirement, district managers have a high degree of control over which cases receive a guardian ad litem.

To address the increased demand for guardian ad litem services in juvenile court cases, the Board established a policy directing district managers and coordinators to prioritize guardian ad litem assignments to certain cases. The policy states that “when the GAL Program experiences issues with funding,” district managers and coordinators should assign guardians ad litem to juvenile court



<sup>6</sup> Minnesota General Rules of Practice for the District Courts, *Title X. Rules of Guardian ad Litem Procedure in Juvenile and Family Court*, Rule 903.01 (2015).

<sup>7</sup> The program administrator told us that coordinators also assign guardians ad litem to cases.

<sup>8</sup> Minnesota General Rules of Practice for the District Courts, *Title X. Rules of Guardian ad Litem Procedure in Juvenile and Family Court*, Rule 903.01 (2015).

cases involving abuse and neglect before assigning guardians to any other matter.<sup>9</sup> After assigning guardians to these cases, the policy prioritizes family court cases where guardian appointments are required.<sup>10</sup> Despite prioritizing guardian assignments to cases where an appointment is required, the Program has been unable to meet the court's demand for these services.

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**As of the end of Fiscal Year 2017, the Guardian ad Litem Program had not assigned guardians ad litem to some court cases for which they were required.**

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According to GAL Program data, as of the end of Fiscal Year 2017, the GAL Program had not assigned guardians to 494 juvenile court cases for which a guardian ad litem appointment was required.<sup>11</sup> When district managers determined they did not have sufficient resources to cover all requests, they placed cases on a waiting list. All ten judicial districts reported having cases waiting for a guardian assignment at the end of Fiscal Year 2017, but the number of cases varied by district. The Fourth Judicial District reported the highest number of juvenile court cases without an assigned guardian (235), followed by the Second and Tenth districts (111 and 65, respectively).<sup>12</sup>

The GAL Program has similarly not assigned guardians to family court cases as required in law. As of the end of Fiscal Year 2017, program data indicated that the GAL program had not assigned guardians to 29 family court cases for which a guardian ad litem appointment was required.



...right now we can't get a guardian on family law cases, even on mandatory appointment cases. The negative impact is that (1) we have had to continue cases, (2) I have had to make decisions about the safety of the children without any neutral input when I don't know who to believe because I am operating off of affidavits and am unable to assess credibility, and (3) children in high conflict situations where neglect or abuse has been alleged have no voice and inadequate safeguards.

—District Court Judge

While the number of family court cases awaiting a guardian ad litem assignment is low relative to the number of juvenile court cases awaiting assignment, it is likely not indicative of the true demand for guardian services in family court. Several judges and GAL staff told us that the court has largely stopped requesting guardians for family court. We discuss this issue later in this chapter.

## Wait Times for Assignment

Due to the increase in juvenile court cases in recent years, district managers did not always assign guardians immediately after the courts requested them. Program-wide, it took a median of ten days to assign a guardian ad litem to juvenile court cases for which an appointment was required in fiscal years 2016 and 2017.

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<sup>9</sup> State Guardian ad Litem Board Policies Manual, Case Prioritization and Fees Structure, Policy No. 1.

<sup>10</sup> *Ibid.* The policy states that the Program should then prioritize juvenile delinquency and voluntary placement cases. “Voluntary placement” refers to children who are in foster care for medically necessary purposes, such as to receive treatment for an emotional disturbance, through an agreement between the parent and social services agency.

<sup>11</sup> GAL Program staff reported during interviews that there were varying levels of compliance with data entry protocols across and within districts. It is likely this had a negative impact on the overall quality of GAL Program data and affected the results of our analysis.

<sup>12</sup> The Fourth Judicial District encompasses Hennepin County and the Second Judicial District encompasses Ramsey County. The Tenth Judicial District includes counties directly west, north, and east of the Twin Cities, as shown in Appendix A.

However, the amount of time it took district managers or coordinators to assign a guardian varied by judicial district. For example, during fiscal years 2016 and 2017, it took GAL Program staff a median of one day in the Third and Eighth judicial districts to assign a guardian to juvenile court cases for which a guardian was required.<sup>13</sup> In contrast, it took GAL Program staff a median of 41 days in the Fourth Judicial District to assign a guardian to juvenile court cases for which a guardian was required.<sup>14</sup>

We surveyed all district court judges in Minnesota and asked them the extent to which the timeliness of guardian ad litem appointments had an impact on judicial proceedings.<sup>15</sup> (As we noted previously, judges cannot appoint a guardian until a GAL district manager or manager's designee recommends a specific guardian.) Judges in districts with longer wait times were more likely to report that the timeliness of guardian appointments had a negative impact on judicial proceedings. For example, 88 percent of judges in the Fourth

**Median Wait Time for  
Guardian Assignments in  
Juvenile Court**

Judicial District	Days
First	6
Second	30
Third	1
Fourth	41
Fifth	6
Sixth	24
Seventh	6
Eighth	1
Ninth	6
Tenth	13

Data reflect fiscal years 2016 and 2017.



A delay in appointment creates unproductive court hearings and increases the frustration level for the parties in already highly emotional cases.

—District Court Judge

Judicial District who responded to our survey reported that the timeliness of recent guardian appointments to juvenile court cases had a negative impact.<sup>16</sup> One judge noted that appointment delays slow down the court process, while another said the process proceeds, but children's voices are lost.

Judges in districts in which wait times were shorter were more likely to state that the timeliness of guardians' appointments had a positive effect. For example, 52 percent of responding judges from the Third and Eighth judicial districts—where wait times for juvenile court assignments were the shortest—responded that the timeliness of appointments in juvenile court had a positive impact on judicial proceedings.

## Guardian ad Litem Staffing

The GAL Program's ability to assign guardians ad litem to cases in a timely manner and as required by law is directly related to several factors, including the total number of guardians ad litem in Minnesota.

<sup>13</sup> The Third Judicial District is in southeast Minnesota, and the Eighth Judicial District is in west-central Minnesota, as shown in Appendix A.

<sup>14</sup> We were unable to accurately calculate how long it took the Program to assign guardians to family court cases due to limitations with GAL Program data.

<sup>15</sup> We surveyed all 284 district court judges in Minnesota to gain their perspective on various aspects of the GAL Program. We received 219 responses, for a response rate of 77 percent. "Judicial proceedings" refer to actions carried out by a court of law, such as a hearing or trial.

<sup>16</sup> We asked this question of judges who indicated they had appointed a guardian ad litem to a juvenile court case since January 1, 2016.

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**While the number of cases for which guardians ad litem are required increased substantially from Fiscal Year 2015 to Fiscal Year 2017, the guardian ad litem workforce increased only modestly.**

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As we previously noted, juvenile court cases for which a guardian appointment was mandatory increased by 25 percent (1,900 cases) between fiscal years 2015 and 2017. During the same time period, GAL Program staffing increased by about 13 percent. The GAL Program reported it increased its workforce by 22 full-time-equivalent (FTE) staff, from 176 FTE in 2015 to 198 FTE in 2017.<sup>17</sup>

The GAL Program's ability to hire additional guardians ad litem was affected by the Program's revenues. The GAL Board approved a legislative request for up to a \$4.7 million increase to the GAL Program budget in the 2016-2017 biennium, *before* the increase in cases that require guardian appointments. The budget increase was intended to address the program's persistent issues with budget deficits (which we described in Chapter 1) and compensation issues, including pay parity for guardians within the program.<sup>18</sup> The Legislature provided additional funding to the GAL Program in fiscal years 2016 and 2017, but it provided just over half of the funding for the Board's legislative request. The program received an additional \$1.3 million to its base budget in Fiscal Year 2016 and another \$1.2 million in Fiscal Year 2017, a 10 and 9 percent increase over the previous fiscal year, respectively. Therefore, the Program received less funding than it had requested to maintain its operations at levels prior to the increase in juvenile court cases.

Several district managers told us the principal reason for delays in assigning guardians ad litem to cases is that the program does not have enough staff or resources to handle all of the cases. One district manager told us that, in a perfect world, it would take only a few days to assign a guardian ad litem to a case, but in her district, she had cases on the waiting list for as long as seven months. She said her district simply does not have the resources to cover all cases.

Similarly, some judges told us that the program's inability to meet the demand for guardians in family court is a result of staffing issues. Half of the 146 judges who responded to our survey and had recently appointed a guardian to a family court case commented on the difficulties of obtaining guardians for family court cases. Several judges told us they no longer request

guardians for family court cases—even when the appointment is mandatory—because they know the GAL program does not have enough guardians to fulfill the request. One judge noted: “We don’t get guardians ad litem. I have quit even appointing them because it is an



More guardians ad litem are needed.

There are not nearly enough to cover the cases which I want to have a guardian ad litem appointed, and the guardians ad litem appointed on mandated cases are struggling to continue to do their work timely and effectively.

—District Court Judge

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<sup>17</sup> FTE is a unit that measures the workload of an employed person in a way that makes workloads comparable across different contexts. An FTE of one equals one full-time staff person. Figures are based on GAL Program calculations.

<sup>18</sup> The program administrator told us that district managers hired guardians ad litem at different pay rates when the Program transitioned from the court system to Board oversight. This resulted in guardians with the same qualifications and years of experience making different salaries in different judicial districts.

exercise in futility.” More than 50 out of 219 judges responding to our survey commented on the GAL Program’s need for additional staff or funding.

## Guardian ad Litem Caseloads

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The GAL Program’s ability to assign guardians to court cases is also affected by the total number of cases each guardian ad litem can effectively manage. Most guardians are assigned to several cases simultaneously; this group of cases makes up their caseload.

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### **The Guardian ad Litem Board has not established a formal caseload limit for guardians ad litem.**

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The median caseload statewide as of the end of Fiscal Year 2017, for one FTE employee guardian ad litem, was 40 cases.<sup>19</sup> Caseloads ranged from fewer than 5 cases per one FTE to more than 100 per one FTE. Median guardian ad litem caseloads also varied across judicial districts. Exhibit 3.1 shows median caseload levels by district per one FTE guardian ad litem. As seen in Exhibit 3.1, caseloads ranged from a median of 30 cases per one FTE in the Eighth Judicial District, to 51 cases per one FTE in the Third Judicial District.<sup>20</sup>

While the Board has not established a formal caseload limit, district managers have established an internal goal that a full-time employee guardian would not carry more than 30 cases at once. As evidenced in Exhibit 3.1, the program is meeting its caseload goal in only one district.

In addition, the Board has not established caseload limits for volunteer guardians ad litem. Caseloads for volunteer guardians ad litem were much smaller than those of employee guardians; volunteer guardians managed a median of two cases each at the end of Fiscal Year 2017.

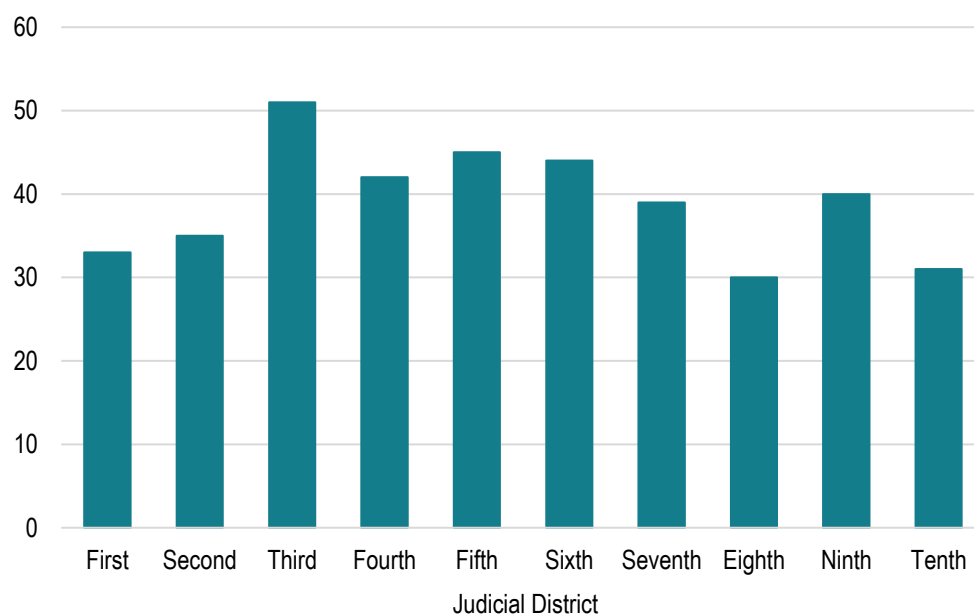
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<sup>19</sup> Data presented include all part-time and full-time guardians adjusted to full-time-equivalent (FTE) status. We did not include managers and coordinators, who also often carry caseloads, because their caseloads are not comparable to guardians due to their other responsibilities. The GAL Program provided these data from its case management system.

<sup>20</sup> The First Judicial District includes counties directly south of the Twin Cities, as shown in Appendix A.

### Exhibit 3.1: The median number of cases one full-time-equivalent guardian ad litem managed varied by judicial district.

Cases per Employee  
Guardian ad Litem



NOTES: Data show median caseloads for non-managerial employee guardians ad litem as of the end of Fiscal Year 2017. Data include all part-time and full-time employee guardians ad litem, adjusted to one full-time-equivalent (FTE) employee.

SOURCE: Office of the Legislative Auditor, analysis of Guardian ad Litem Program data.

### Guardian ad litem staff and other professionals working in the court system expressed concerns about the ability of guardians ad litem to effectively perform their work given current caseloads.



We are completely understaffed. We worry daily about not seeing children often enough, not being able to see parents to keep sufficient tabs on their progress.... We worry about complaints about our efficiency and effectiveness because of our caseloads.... There are not enough hours in one day to complete tasks within the 40 hour week framework.

—Guardian ad Litem

In a survey of all guardians ad litem, 63 percent of full-time and 44 percent of part-time employee respondents disagreed or strongly disagreed that they had sufficient time to complete their duties for each case.<sup>21</sup> One guardian ad litem commented that, when she had a lower caseload, she was able to spend more time meeting with parents and children and contacting other individuals with knowledge of the case or family. One district manager said that she expects guardians to visit each child monthly—or at least every

<sup>21</sup> In contrast, 36 percent of full-time and 54 percent of part-time employee respondents agreed or strongly agreed that they had sufficient time to complete their duties for each case. We surveyed all 503 guardians ad litem on record at the end of Fiscal Year 2017 and received 359 responses, for a response rate of 71 percent.

six weeks—but that this is not always possible given current guardian caseloads. Another district manager said guardians struggle to submit their reports on time because of their high caseloads. In contrast to employee guardians ad litem, the vast majority (95 percent) of volunteer guardians who responded to our survey said they had sufficient time to complete their duties for each case.

Attorneys and social work professionals also told us that high caseloads had a negative impact on the comprehensiveness and independence of guardians' work. For example, one social work professional said that guardian ad litem investigations became less consistent as caseloads increased, and that high caseloads affected the quality and timeliness of guardian ad litem reports. An attorney overseeing juvenile court services in one county told us there can be serious consequences when a guardian does not conduct a thorough and independent investigation. For example, he said, a county social worker may have time to take only a cursory look at a child's medical issue before making a recommendation to the court. If a guardian ad litem does not have time to take a deeper look at the issue and determine whether the social worker's recommendations are truly in the child's best interests, there can be long-term ramifications for the child's health.

## Discussion and Recommendations

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It is clear that the number of juvenile court cases to which guardians ad litem must be appointed increased substantially between fiscal years 2015 and 2017, which affected the GAL Program's ability to assign guardians to all cases for which they were required. However, it is unclear how much of a strain this increase placed on the program's resources.

The GAL Board has not established two important standards that would provide the Legislature, judiciary, and public with concrete information about the GAL Program's ability to meet the court's demand for guardian ad litem services. As we discussed in Chapter 2, the GAL Board has not established work standards to define the level of service guardians ad litem should provide for each case. In this chapter, we noted that the GAL Board also has not established caseload guidelines for guardians. These issues are related; the more activities guardians are required to complete on each case, the fewer cases guardians can effectively manage. Until the Board adopts work standards and caseload guidelines, it is unclear how many guardians are needed in order for the program to assign guardians to all cases as required. It follows that, without concrete information to support the GAL Program's staffing needs, it is difficult for the Program to effectively advocate for the necessary resources.

As the number of juvenile court cases to which guardians ad litem must be appointed increased, the GAL Board approved a policy to prioritize guardian ad litem assignments to certain cases when the program "experiences issues with funding." In doing so, the GAL Board made decisions that are the responsibility of the Legislature. The Legislature passed laws that require or permit the court to appoint guardians ad litem to several types of court cases; state law does not indicate that appointments to any one type of case are more important than others. However, the GAL Board, through its case prioritization policy, prioritized assignments to juvenile court cases related to abuse and neglect over other types of cases to which appointments are required by state law.

Furthermore, some district managers have made decisions that, by law, are the responsibility of the courts. State law grants the courts—not the GAL Program—the responsibility to appoint guardians ad litem to certain types of cases. Yet, in practice, some

district managers have exercised discretion over which cases receive a guardian. One judge commented that she received “pushback” on her determination that an appointment was mandatory in a family court case. This judge stated: “...a judicial officer’s view of whether an appointment is mandatory should be given substantial if not binding weight. Instead, the GAL supervisor has this authority.”

We think that it is important for the GAL Program to assign guardians ad litem to cases as required by law. However, assigning guardians to all cases without considering guardians’ workloads may negatively affect the quality of guardian services. State law requires guardians ad litem to perform certain activities and stipulates to which cases guardian appointments are required or permitted. Because of this, it is important for the GAL Board and Legislature to work together to determine whether current legal requirements for the GAL Program continue to reflect the needs and priorities of the state. It is also important for the Board and Legislature to determine the level of resources necessary to comply with requirements in law.

To address the issues we identified in this chapter, we provide several recommendations.

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## RECOMMENDATION

### **The Guardian ad Litem Board should develop and implement guidelines outlining appropriate caseloads for guardians ad litem.**

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We recommend that the GAL Board formally adopt caseload guidelines for employee and volunteer guardians ad litem. Establishing guidelines for appropriate caseloads will help to ensure that guardians are able to provide an adequate level of service to all children. The Board must determine appropriate caseloads in conjunction with establishing guardian ad litem work standards, as recommended in Chapter 2, as these issues are related.

District managers and the program administrator should monitor guardian ad litem caseloads, and the GAL program administrator should regularly report to the GAL Board the Program’s progress towards meeting caseload goals. If the GAL Program continues to struggle to meet caseload goals, the Board must take appropriate action to adjust guardian work expectations, find new efficiencies, communicate program needs to the Legislature, or all of the above.

We do not specify here what an appropriate guardian ad litem caseload should be. We found large differences in guardian ad litem caseload practices nationwide, partly because of broad variation in the way guardian ad litem services are structured and administered across the country. For example, the National Court Appointed Special Advocate Association recommends that volunteer guardians carry no more than two cases at one time, while the National Association of Counsel for Children recommends that attorneys acting as guardians ad litem serve no more than 100 children at once.<sup>22</sup> The GAL Board must consider the unique aspects of its program when determining appropriate caseloads.

Further, caseload guidelines may take different forms. For example, the Board may choose to establish guidelines based on the number of cases guardians carry at one time, based on

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<sup>22</sup> National Court Appointed Special Advocate Association, *Standards for Local CASA/GAL Programs* (Seattle, WA, 2012), 31; and National Association of Counsel for Children, *NACC Recommendations for Representation of Children in Abuse and Neglect Cases* (Aurora, CO, 2001), 4.

the number of children guardians serve at one time, or based on some other metric. Various factors may influence appropriate guardian caseloads, and the Board may choose to take those factors into account. Guardians ad litem working in rural areas, for example, may spend many hours driving to court and to observe children. As a result, it may be reasonable for guardians in these areas to carry fewer cases to accommodate the amount of time they spend driving.

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## RECOMMENDATION

**The Guardian ad Litem Board should develop a clear plan for assigning guardians ad litem to all cases for which they are required and submit it to the Legislature.**

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The Board should provide the Legislature with concrete information about the current demands for the GAL Program's services and the Program's efforts to meet those demands. After establishing guardian ad litem work standards and caseload guidelines, the GAL Board should share them with the Legislature. It should also use those standards to clearly articulate the number of guardians needed—and thus, the amount of funding necessary—to provide a specified level of service for all cases. At the same time, the Board should clearly communicate the impact on the program's service levels or ability to assign guardians at lower levels of funding. The Legislature can then use that information to determine whether the program's actions and priorities are in line with the needs of the courts and priorities of the Legislature.

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## RECOMMENDATION

**The Legislature should:**

- **Examine the plan submitted by the Guardian ad Litem Board.**
  - **Review statutory requirements related to guardian ad litem appointments and activities and determine whether they continue to reflect the needs and priorities of the state.**
  - **Determine the level of funding necessary for the Guardian ad Litem Program to fulfill requirements in law.**
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To address the increase in juvenile court abuse and neglect cases that require a guardian ad litem, the GAL Board has made policy decisions that we believe are the responsibility of state lawmakers. As such, we recommend the Legislature examine the plan submitted by the GAL Board. If the Legislature determines that (1) the level of service the GAL Board commits to providing aligns with Legislative expectations, and (2) the types of cases to which courts are required or permitted to appoint guardians best meet the needs of the state, then the Legislature should fund the program accordingly.

If the Legislature determines that the state's needs or priorities are different, it should re-examine the activities guardians are required to perform and the types of cases to which guardians are required or permitted to be assigned. As the Legislature considers these policy questions, it should take into consideration the amount of funding the program will need to perform the required work; the comprehensiveness of guardian ad litem services is

directly related to the level of funding provided to the GAL Program. If the Legislature chooses to re-examine requirements for guardians ad litem, then it should consult with the GAL Board, judges, and members of the public.

If Minnesota is to remain eligible for federal funding through the Child Abuse Protection and Treatment Act (CAPTA), there are limitations to the degree to which the Legislature can restrict guardian appointments to court cases involving child abuse or neglect. Minnesota received an average of about \$434,000 in CAPTA grants each year in federal fiscal years 2013 through 2017.<sup>23</sup> CAPTA funding is contingent upon Minnesota providing the federal government with a plan that includes requirements for appointing guardians ad litem to cases of child abuse or neglect.

While the GAL Program does not receive any of the funding from CAPTA, a Department of Human Services official told us the department uses the funds to pay for staff positions related to supervising and administering child welfare services. The official expressed concern that a failure to appoint guardians to court cases for which a guardian assignment is mandatory may place federal funding in jeopardy. However, as we noted in Chapter 1, federal law provides states with a great deal of flexibility to meet federal requirements.

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<sup>23</sup> Federal fiscal years begin October 1 and end September 30 of the next year.



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# Chapter 4: Guardian ad Litem Selection and Training

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The Office of the Legislative Auditor last evaluated the Guardian ad Litem (GAL) Program in 1995 and found that there was little consistency across the state in the recruitment and selection of guardians ad litem. We also found that the GAL Program lacked statewide training requirements. Since then, some parents and community members have continued to express concern about the adequacy of guardian ad litem selection procedures and training. In this chapter, we describe the GAL Program's current recruitment and selection processes. We also discuss initial and ongoing training requirements for the GAL Program's staff and volunteers.

We found that the GAL Program has established an adequate selection process. However, the GAL Board has not tracked progress towards the Program's goals related to diversity and cultural competency. We also found that the Board has established minimum training requirements for guardians, but it has not ensured all guardians comply with these requirements.<sup>1</sup>

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## Recruitment and Selection

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Recruiting and selecting a well-qualified and diverse pool of applicants is an important first step towards providing quality guardian ad litem services. In this section, we describe the steps the GAL Program takes to recruit and select guardians. We also discuss the GAL Program's diversity goals and minimum qualifications for guardians ad litem.

### Guardian ad Litem Recruitment

GAL Program staff told us they recruit employees in different ways. First, the GAL Program recruits staff at the state level through the GAL central office. The GAL Program human resources manager told us that central office staff attend job fairs, community events, and recruitment events at universities to inform people about the GAL Program; they also post GAL Program positions on the Minnesota Judicial Branch employment website.

The GAL Program also recruits staff at the district level.<sup>2</sup> In a survey of all GAL district managers, managers told us they recruit applicants through various methods, including publishing guardian ad litem job postings in local newspapers, on college websites, or at local tribal offices. One district manager we interviewed said—among other recruitment strategies—she recruits through word of mouth, and at times she has received referrals from judges.

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<sup>1</sup> When we use the term “guardian” throughout this report, we are referring to guardians ad litem.

<sup>2</sup> As we noted in Chapter 1, the GAL Program organizes its work by judicial district. District managers lead GAL Program operations in each of Minnesota's ten judicial districts.

As we discussed in Chapter 1, some guardians are employees and others are volunteers.<sup>3</sup> While GAL central office *and* district staff recruit employee guardians, district staff recruit the majority of volunteer guardians.<sup>4</sup>

## Guardian ad Litem Selection

The selection process is also important to ensure that the Program builds a quality workforce. After applicants express interest in the guardian ad litem position, GAL Program staff review applicants' qualifications to determine whether the applicants meet the minimum qualifications for the Program.

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### **The Guardian ad Litem Board has established adequate policies and procedures to screen and select employee and volunteer guardians ad litem.**

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Board policy requires that GAL Program staff take the following steps in screening and selecting guardians: (1) review the written application, (2) interview the applicant, (3) check the applicant's references, and (4) conduct a criminal background check of the applicant. We found that Board screening and selection policies are similar to the National Court Appointed Special Advocate (CASA) Association's Standards for Local CASA/GAL Programs.<sup>5</sup> For example, the CASA standards require GAL Programs to secure a completed written application, conduct an interview, secure references, and conduct a background check for guardian ad litem applicants.

Minnesota's GAL Program staff told us they follow the Board's multi-step policy to select employee guardians ad litem. Central office human resources staff review applications to determine whether applicants meet the minimum qualifications for the guardian ad litem position.<sup>6</sup> Central office staff next provide qualifying applications to the appropriate district manager for review. District managers and/or coordinators then interview prospective guardians ad litem. One district manager we spoke with told us he uses interviews to assess how applicants process and prioritize information. In a survey of all GAL district managers, we asked about hiring practices. Seven district managers told us they ask applicants to either provide a writing sample or participate in a writing exercise as part of the interview process. Once a district manager selects an applicant to hire, the central office staff check applicant references, and the district manager makes an offer contingent on the applicant passing the background check.

The GAL Program uses a somewhat different selection process for volunteer guardians ad litem. Unlike for employee applicants, central office staff are minimally involved in selecting volunteer guardians ad litem. The Fourth Judicial District manager and/or

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<sup>3</sup> Minnesota statutes do not explicitly state that the GAL Program may use volunteer guardians ad litem. However, the statute establishing the GAL Board states the Board may "establish guardian ad litem program standards...that affect a volunteer or employee guardian ad litem's work..." *Minnesota Statutes* 2017, 480.35, subd. 2(b)(3).

<sup>4</sup> As we stated in Chapter 1, 97 percent of volunteer guardians ad litem serve in the Second and Fourth judicial districts. The staff in those districts manage volunteer recruitment for their respective districts.

<sup>5</sup> The National CASA Association promotes court-appointed volunteer advocacy and sets standards for the administration of member volunteer guardian ad litem programs across the country. National Court Appointed Special Advocate Association, *Standards for Local CASA/GAL Programs* (Seattle, WA, 2012).

<sup>6</sup> We discuss minimum qualifications later in this chapter.

coordinators review applications and conduct interviews.<sup>7</sup> Some guardians in the district also conduct interviews of applicants. District staff also perform background checks for all of the volunteer applicants in that district. Similarly, district staff in the Second Judicial District review applications and interview volunteers, but the central office human resources staff perform the background checks for volunteers in that district.<sup>8</sup>

## Diverse and Culturally Competent Workforce

Minnesota statutes, GAL Board recruitment policies, and the GAL Program's strategic planning documents indicate the need for a diverse, culturally competent guardian ad litem workforce.<sup>9</sup> American Indian children and children from certain racial and ethnic minority groups are involved in the child protection system in disproportionate numbers in Minnesota. For example, Minnesota's Department of Human Services reported that, compared to white children, "American Indian children were 17.6 times more likely, African-American children were more than 3.1 times more likely, and those identified as two or more races were 4.8 times more likely" to experience out-of-home care.<sup>10</sup>

Although the GAL Program has emphasized workforce diversity, Program demographic data indicate that the current guardian workforce does not reflect the racial composition of the population of children it serves. Of the guardians ad litem who reported their race or ethnicity to the GAL Program, 90 percent of employee and volunteer guardians were White.<sup>11</sup> In comparison, about 50 percent of children the GAL Program served during fiscal years 2016 and 2017, and for whom the Program had data on race, were White.<sup>12</sup>

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**State laws and Guardian ad Litem Board policy emphasize the importance of a diverse and culturally competent guardian ad litem workforce, but the Board has not regularly tracked its progress towards achieving this objective.**

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By law, courts must consider cultural factors when appointing a guardian ad litem for an American Indian or minority child in cases of alleged child abuse or neglect.<sup>13</sup> Specifically, in cases involving an American Indian or minority child, the court must consider whether a guardian who is of the same racial or ethnic heritage as the child or, if that is not possible, whether a guardian who "knows and appreciates the child's racial or ethnic heritage" is

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<sup>7</sup> The Fourth Judicial District encompasses Hennepin County, as shown in Appendix A.

<sup>8</sup> The Second Judicial District encompasses Ramsey County, as shown in Appendix A.

<sup>9</sup> *Minnesota Statutes* 2017, 260C.163, subd. 5(e); and State Guardian ad Litem Board Policies Manual, Guardian ad Litem Program Requirements and Guidelines II.

<sup>10</sup> Department of Human Services, Child Safety and Permanency Division, *Minnesota's Out-of-Home Care and Permanency Report, 2016* (St. Paul, 2016), 9. State law defines foster care (which the Department of Human Services uses interchangeably with the term out-of-home care) as "24 hour substitute care for children placed away from their parents or guardian and for whom a responsible social services agency has placement and care responsibility." *Minnesota Statutes* 2017, 260C.007, subd. 18.

<sup>11</sup> About 16 percent of guardians did not report data on race or ethnicity to the Guardian ad Litem Program.

<sup>12</sup> The Guardian ad Litem Program did not have data on race or ethnicity for nearly 30 percent of the children the Program served in fiscal years 2016 and 2017. The program administrator told us the GAL Program receives its data on children's race and ethnicity from the courts.

<sup>13</sup> We use "the court" throughout this report to refer to judicial officers, including judges and referees. Like judges, referees listen to matters brought before them in court. Unlike judges, referees can only recommend findings or orders that must be confirmed and signed by a district court judge.

available for appointment.<sup>14</sup> Board policy also indicates a number of factors that district managers and coordinators must consider when assigning a guardian ad litem to a case, including the “race, cultural heritage, and needs of the child” and “the cultural heritage, understanding of ethnic and cultural differences, background, and expertise of each available guardian ad litem, as those factors relate to the needs of the child.”<sup>15</sup>

The Board’s guardian ad litem recruitment policy also emphasizes the importance of a diverse workforce. For example, Board policy states that “active recruitment shall be made to solicit applications from individuals whose gender, ethnic, racial, cultural, and socio-economic backgrounds reflect the diversity of the population the applicant is expected to serve.”<sup>16</sup> Furthermore, the Board has emphasized increasing cultural competency among employees and volunteers. For instance, the Board requires that guardians complete three hours of continuing education each year on topics related to cultural awareness.

In addition to emphasizing the importance of diversity in policy, the GAL Program has established diversity goals through its strategic planning initiatives. The GAL Program formed a diversity committee, and its members drafted several diversity goals, including developing a culturally sensitive and culturally competent workforce. The Program has also established employee positions to better address the needs of certain populations. For instance, the Program hires guardians specifically to work on cases subject to the Indian Child Welfare Act (ICWA).<sup>17</sup>

The GAL Board, however, has not regularly tracked the Program’s progress toward meeting diversity-related goals. The GAL Board discussed diversity-related goals in October 2016, but one year later, the Board had not revisited or taken action on them. In addition, Board minutes indicate the Board had not discussed whether establishing cultural specialist positions, such as ICWA specialists, or requiring continuing education on topics related to cultural diversity had an impact on the quality of GAL Program services. It is unclear to us if efforts to diversify the workforce resulted in hiring more staff from diverse communities or whether training requirements increased guardians’ cultural competency.

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## RECOMMENDATION

**The Guardian ad Litem Board should track the Program’s progress towards its goals for a diverse, culturally competent workforce.**

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Although statute, GAL Board policies, and the GAL Program’s strategic planning documents indicate the importance of a diverse guardian ad litem workforce, it is unclear to us whether the GAL Program has met its diversity or cultural competency goals. In January 2018, the human resources manager presented the Board with demographic information about GAL Program staff, and the Board discussed information they would like presented in future meetings. The Board should continue these discussions and ensure it monitors progress

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<sup>14</sup> *Minnesota Statutes* 2017, 260C.163, subd. 5(e).

<sup>15</sup> State Guardian ad Litem Board Policies Manual, Guardian ad Litem Program Requirements and Guidelines VII.

<sup>16</sup> State Guardian ad Litem Board Policies Manual, Guardian ad Litem Program Requirements and Guidelines II.

<sup>17</sup> Indian Child Welfare Act of 1978, Public Law 95-608, codified as 25 *U.S. Code*, secs. 1901-1963 (2012). The Indian Child Welfare Act is a federal law that aims to protect the best interests of American Indian Children by establishing standards for the removal of American Indian children from their families and the placement of American Indian children in foster or adoptive homes.

towards all of its diversity-related goals. A diverse, culturally competent workforce would help ensure the Program is following state law and that the Program is appointing guardians that are sensitive to the cultural needs of the children they serve.

## Guardian Minimum Qualifications

In addition to establishing a process for guardian ad litem selection, the GAL Board has established minimum qualifications for guardians ad litem. However, these minimum qualifications are broad. Board policy identifies few specific skills guardians must possess, stating only that guardians must have “sufficient listening, speaking, and writing skills to successfully conduct interviews, prepare written reports, and make oral presentations.”<sup>18</sup> Board policy also identifies more general qualifications, such as the ability to “relate to a child, family members, and professionals in a careful and confidential manner,” and an ability to “exercise sound judgment and good common sense.”<sup>19</sup>

Board policy also requires guardians to have either a bachelor’s degree in one of several relevant fields or “an equivalent combination of training, education or experience.”<sup>20</sup> The policy identifies several relevant fields of study, including psychology, nursing, and law. However, the Board has not defined what qualifies as “an equivalent combination of training, education or experience.”<sup>21</sup>

The Board may have established broad qualifications for at least two reasons. First, guardians are required to be knowledgeable in at least three distinct subject areas. These include: (1) child development and family dynamics, (2) the family social services and child welfare system, and (3) the legal system.<sup>22</sup> Second, there is no degree or certification program for guardian ad litem work. A person with an education degree may be very knowledgeable about child development, but unfamiliar with the legal system. Likewise, an attorney may be very familiar with the legal system, but have little experience with the child welfare system. Finding guardians ad litem who have education or prior work experience related to all required competencies could be prohibitively difficult. For that reason, broad qualifications may be necessary.



In my opinion, hiring people with the right combination of education, experience, and temperament is crucial...I have noticed that it is extremely difficult for people with no background in the court system or human services to get the hang of this job and fully understand the role of the guardian ad litem.

—Guardian ad Litem

At the same time, there is some support for professionalizing the Program by increasing minimum qualifications. Some GAL Program staff told us they have discussed changing minimum qualifications to require a degree. The human resources manager told us the level of complexity of the GAL position calls for a degree, and one district manager said communicating clearly—an important skill for guardians—is something you learn in college. We surveyed all district court judges in Minnesota, and 76 percent of judges who

<sup>18</sup> State Guardian ad Litem Board Policies Manual, Guardian ad Litem Program Requirements and Guidelines I.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> Guardian ad Litem Advisory Committee, *A Report to the Minnesota Judicial Council* (2008), 7.

responded to our survey said the minimum educational qualifications for guardians should be a bachelor's degree or higher.<sup>23</sup>

Ultimately, it is unclear whether requiring a more specific degree or work experience would better ensure that guardians are prepared to advocate for children's best interests. As we discussed in Chapter 2, the Legislature should clarify the role of guardians ad litem and the GAL Board should establish clear standards for guardians' work. Once these recommendations have been implemented, the GAL Board should re-evaluate its minimum qualifications in light of the work guardians are required to perform. In the meantime, guardian ad litem training is important to prepare guardians to effectively carry out their duties.

## Training

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Training is essential to ensure guardians ad litem have the knowledge and skills necessary to perform their role effectively. In 2006, the Minnesota Judicial Council convened the Guardian ad Litem Advisory Committee to provide recommendations about the GAL Program.<sup>24</sup> The Committee stated that, in the absence of national standards, formal certificate programs, or educational degrees for the profession of guardian ad litem, the courts were "in the business of 'growing and nurturing'" their own guardians ad litem.<sup>25</sup> This is still largely the case, but that responsibility now falls to the GAL Board.

To prepare guardians ad litem for their role, the GAL Board requires guardians to complete a training program that covers a broad range of topics. As we noted in the previous section, effective guardians ad litem must have knowledge and applicable skills in at least three main areas: child development and family dynamics, the child welfare system, and the legal system. The GAL Program's broad minimum qualifications allow for employees and volunteers to enter the Program with a wide variety of skills, education, and work experiences that may be related to only one or two of these topic areas. Because training is designed to introduce guardians ad litem to the complex issues they will confront, as well as concrete skills they will need to complete their work, the training program covers many topics in a short period of time.

Staff from the GAL central office plan statewide juvenile court training for new guardians.<sup>26</sup> Exhibit 4.1 shows examples of topics that the GAL Program covered in the statewide juvenile court training in the last two years.<sup>27</sup> Statewide juvenile court trainings are infrequent; training was offered only once in 2017, three times in 2016, and twice in 2015. District managers or coordinators train guardians that cannot attend statewide training using

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<sup>23</sup> We surveyed all 284 district court judges and received 219 responses, for a response rate of 77 percent. We asked these questions of judges who had appointed a guardian ad litem to a case since January 1, 2016.

<sup>24</sup> The Guardian ad Litem Program was under the administration of the judicial branch at the time the Minnesota Judicial Council convened the committee.

<sup>25</sup> Guardian ad Litem Advisory Committee, *A Report to the Minnesota Judicial Council* (2008), 8.

<sup>26</sup> District staff also plan training for volunteer guardians ad litem in the Fourth Judicial District; these trainings are held separately from the statewide training planned by central office staff.

<sup>27</sup> Statewide juvenile court training provided by the GAL Program is also referred to as "pre-service training" or "juvenile protection training." We use juvenile court training and "pre-service training" interchangeably in this report. The former GAL program administrator told us guardians ad litem should complete pre-service training before they begin their work. Guardians must also complete domestic violence training within the first 12 months of their service.

Board-approved curriculum. In addition, GAL central office staff and some district staff plan family court training for guardians who work on family court cases. Family court training was not offered in 2017 but was offered once in 2016 and once in 2015.<sup>28</sup>

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### **Exhibit 4.1: The statewide juvenile court training covered a variety of topics in 2016 and 2017.**

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#### **Training Topics**

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- Role of the Guardian ad Litem and the Child Protection System
- Juvenile Court Statutes, Rules, Process, and Procedures
- Ethics and Professionalism
- Guardian ad Litem Safety
- Information Gathering and Report Writing
- Courtroom Skills
- Child Development and Positive Attachment
- Father Involvement
- Cultural Diversity
- Culture of Poverty
- Alcohol, Drugs, and Chemical Dependency
- Mental Health of Children and Adults

NOTE: Listed above is a selection of training topics covered by the Guardian ad Litem Program.

SOURCE: Office of the Legislative Auditor, analysis of guardian ad litem juvenile court training schedules and materials for fall 2016 and summer 2017.

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In addition to training guardians on broad content areas related to their work, district managers indicated that they provide more individualized training within their districts. District managers told us they provide new guardians ad litem with on-the-job training that may include court observations, additional guidance on how to conduct investigations and how to document recommendations, and/or shadowing more experienced guardians, among other activities.

The GAL central office also organizes an annual GAL Training Institute at which guardians can obtain their continuing education hours. The 2017 GAL Training Institute covered a number of topics, including ICWA, understanding the trial court process and cross-examination, and how to handle stress and work-life balance.



I also think it is very important that the GAL Institute continue to be offered on a yearly basis. I really appreciate the opportunities the GAL Institute provides, such as networking, and learning from other guardians, and I find the trainings are usually very helpful, as they are geared to guardians and the kind of work we do.

—Guardian ad Litem

District staff also provide opportunities for guardians to receive continuing education throughout the year. For example, one district coordinator said she organizes learning lunches to which she invites speakers—such as judges and service providers—to present information on relevant topics.

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<sup>28</sup> The Guardian ad Litem Program training analyst told us the program has offered limited family court training over the past year because the Program has not been able to assign guardians to as many family cases as in the past.

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**The Guardian ad Litem Board adopted minimum training requirements for guardians that meet or exceed best practice standards for volunteer guardians.**

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The GAL Board requires guardians ad litem—both employees and volunteers—to complete a minimum of 40 hours of pre-service training on juvenile court cases related to child abuse and neglect, as well as 6 hours of training on domestic and family violence. In addition to the mandatory juvenile court training, employee guardians who work on cases in family court and all guardians who work on cases subject to ICWA must complete additional training relevant to those types of cases.<sup>29</sup> The GAL Board must approve all training. Exhibit 4.2 shows the required number of initial training hours and annual continuing education hours that guardians must complete.

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**Exhibit 4.2: The Guardian ad Litem Board hourly training requirements meet or exceed national standards.**

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	Employees	Volunteers	National CASA Standards
<b>Initial Training (in hours)</b>			
Juvenile Court <sup>a</sup>	40	40	30
Domestic and Family Violence	6	6	–
Family Court <sup>b c</sup>	16	–	–
Indian Child Welfare Act <sup>c</sup>	6	6	–
<b>Annual Training (in hours)</b>			
Continuing Education <sup>d</sup>	15	12	12

NOTE: The National Court Appointed Special Advocate (CASA) Association promotes court-appointed volunteer advocacy and sets standards for the administration of member volunteer guardian ad litem programs across the country.

<sup>a</sup> Statewide juvenile court training provided by the Guardian ad Litem Program is also referred to as “pre-service training” or “juvenile protection training.”

<sup>b</sup> The program administrator told us that the Program generally does not allow volunteer guardians ad litem to manage family court cases.

<sup>c</sup> Family court and Indian Child Welfare Act trainings are required only for guardians who are assigned those types of cases. They are required in addition to the mandatory juvenile court training. The program administrator told us that, although the Board policy has not changed, the Program currently provides 28 hours of classroom training for family court.

<sup>d</sup> Guardians ad litem are required to complete annual continuing education requirements. Guardian ad Litem Board policy requires that three continuing education hours pertain to cultural awareness.

SOURCE: Office of the Legislative Auditor, based on State Guardian ad Litem Board Policies Manual, Guardian ad Litem Program Requirements and Guidelines V; and National Court Appointed Special Advocate Association, *Standards for Local CASA/GAL Programs* (Seattle, WA, 2012).

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<sup>29</sup> The program administrator told us that the Program generally does not allow volunteer guardians ad litem to manage family court cases.

The pre-service training requirements established by the GAL Board exceed those recommended by the National CASA Association. For example, their Standards for Local CASA/GAL Programs state that volunteer guardians should receive at least 30 hours of pre-service training, whereas Minnesota's GAL Program requires 40 hours of training.

Continuing education requirements set by the GAL Board also meet or exceed national standards. CASA's Standards for Local CASA/GAL Programs require volunteer guardians ad litem to complete 12 hours of continuing education each year. GAL Board policy states that volunteer guardians must complete 12 hours of continuing education each year, and employee guardians must complete 15 hours. District managers approve the types of training that can count towards continuing education requirements.

## Quality of Guardian ad Litem Training

Guardians ad litem make recommendations that impact the lives of children and families. Because of this, the training provided to guardians ad litem must be of high quality in order to prepare guardians for their roles and responsibilities.

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### **Many factors—including training provided by the Guardian ad Litem Program—prepare guardians ad litem to perform their role.**

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We surveyed all guardians ad litem in Minnesota and asked them about their experience with training. The vast majority of guardians who responded to our survey—90 percent—reported that pre-service training provided by the GAL Program was important or very important in preparing them to perform their guardian ad litem duties.<sup>30</sup> Eighty-six percent of respondents said that continuing education training offered by the Program also helped to prepare them for their duties.

In addition, as shown in Exhibit 4.3, the majority of guardians ad litem that responded to our survey indicated that several other factors, such as their formal education and prior work experience, were also important in preparing them to perform their duties. We interviewed more than a dozen guardians ad litem in three judicial districts. Several guardians said that personal life experience, such as being a parent, helped them better understand parents' perspectives. In our survey of guardians, some noted that trainings and certifications presented by universities and community organizations helped them in their role as a guardian.

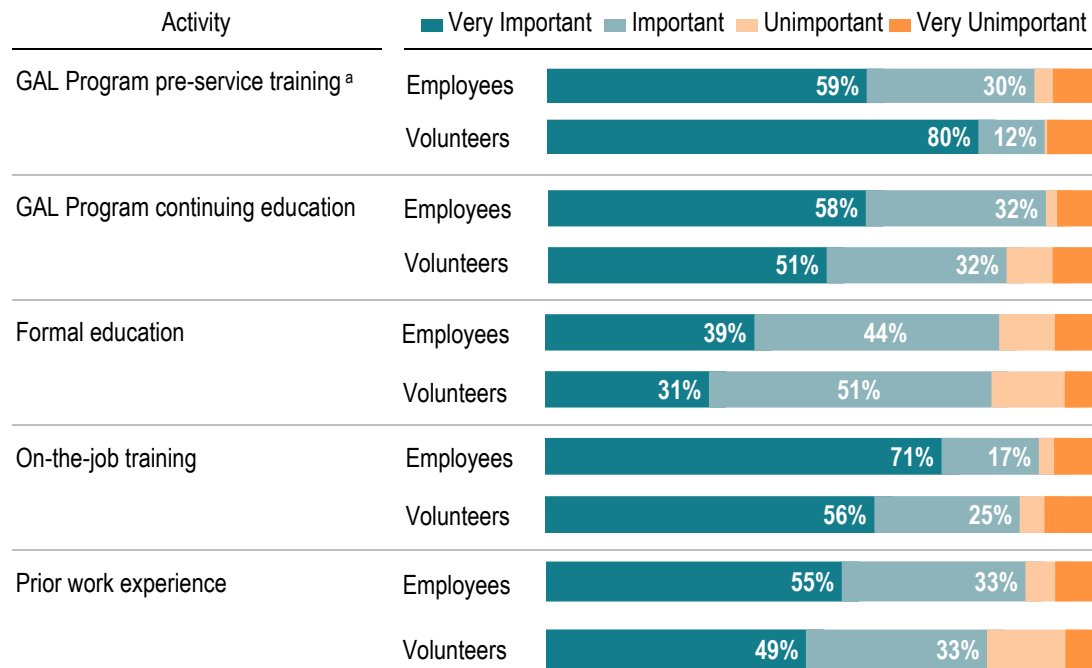
Judges also indicated that a variety of experiences are important to prepare guardians ad litem for their responsibilities. More than 90 percent of judges who responded to our survey said that relevant formal education and relevant prior work experience are important in preparing guardians for their roles.<sup>31</sup>

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<sup>30</sup> We surveyed all 503 guardians ad litem on record at the end of Fiscal Year 2017 and received 359 responses, for a response rate of 71 percent.

<sup>31</sup> We asked these questions of judges who had appointed a guardian ad litem to a case since January 1, 2016.

### Exhibit 4.3: Employee and volunteer guardians ad litem reported that many activities prepared them for their role.



NOTES: We asked respondents to indicate how important each of the activities listed was in preparing them to perform their guardian ad litem role. Other possible responses included not applicable. Responses for “not applicable” are not included in the figures above.

<sup>a</sup> Statewide pre-service training provided by the Guardian ad Litem Program is also referred to as “juvenile court training” or “juvenile protection training.”

SOURCE: Office of the Legislative Auditor, survey of guardians ad litem, 2017.

### The vast majority of guardians ad litem who responded to our survey said that the training provided by the Guardian ad Litem Program was of high quality.

Ninety percent of guardians ad litem that responded to our survey agreed or strongly agreed that the pre-service training provided by the GAL Program was of overall high quality. While the majority of guardians responded positively to questions about juvenile court training, volunteers were more likely to *strongly agree* that it was of high quality, with 69 percent of volunteers strongly agreeing, compared with 32 percent of employee guardians. Guardians also responded positively to questions about ongoing training opportunities. The vast majority of guardians who responded to our survey (86 percent) agreed that ongoing training provided by the GAL Program was of overall high quality.

Most judges that responded to our survey said that guardians were sufficiently prepared. We asked district court judges in our survey the extent to which they thought new guardians were prepared for their role when first assigned to cases. Eighty-one percent of judges who

responded to our survey and had recent experience with guardians ad litem indicated that new guardians were prepared to perform their roles when first assigned to cases.<sup>32</sup>

While guardians ad litem indicated that their training was of high quality, and judges felt guardians were prepared, some stakeholders provided us with input on areas where guardian ad litem training could be improved. For example, two judges and a social work professional said that guardian ad litem training on ICWA requirements could be improved. One county attorney we spoke with said training is very important to help guardians understand their role in juvenile court. As we discussed in Chapter 2, the distinction between a guardian ad litem's role and the roles of other court professionals can be confusing, and in some cases the activities they perform are similar. This attorney told us that some guardians with legal training have worked outside of their role and acted as attorneys for children instead of advocating for the children's best interests.

## Compliance with Training Requirements

Ensuring that guardians ad litem receive the required number of training hours is important to ensure that they are prepared to fulfill their role. This is especially true because guardians we interviewed reported that they received pre-service training in different ways. Some guardians attended the formal training offered by the GAL Program, others were trained entirely by their local district manager or coordinator. One guardian we interviewed reported she did not receive the required 40 hours of pre-service training.

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### **The Guardian ad Litem Board has not ensured guardians are in compliance with Board policy regarding training requirements.**

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Although the Board has established training requirements for guardians ad litem, the Program does not centrally track whether guardians complete the required number of hours. Training is currently tracked at the district level by individual district managers. One district manager, for example, told us he maintains a spreadsheet that he reviews twice during the fiscal year to track individual guardians' training hours.

Based on a review of the GAL Program's juvenile court training schedules, it was not clear that guardians received the required number of pre-service juvenile court training hours. We examined the training schedules for fall 2016 and summer 2017 and found that the GAL central office provided roughly two-thirds of the required 40 hours of training. Guardians who participated in the summer 2017 juvenile court training received a total of 24.25 hours of classroom training, not including scheduled breaks. Guardians trained at the fall 2016 juvenile court training received 28.5 hours of classroom training.

As we previously mentioned, district managers and coordinators provide additional training for guardians within their district as part of pre-service training. In addition, the program provides video- and web-based training to new guardians. It is possible that this would account for the remaining pre-service training hours; however, the central office does not track this training. This makes it more difficult for the program administrator and the Board to ensure that guardians received the required number of training hours.

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<sup>32</sup> We asked this question to judges who had appointed guardians ad litem to family court cases since January 1, 2016, and to judges who had appointed guardians ad litem to juvenile court cases since January 1, 2016.

It is also unclear whether all guardians completed the required number of continuing education hours.<sup>33</sup> We examined annual employee performance review data for Fiscal Year 2017. In these data, managers and coordinators indicated that 97 percent of employee guardians for whom supervisors completed the annual performance review process had completed the minimum required number of continuing education hours. However, in response to our survey, not all guardians indicated they met continuing education requirements. On average, guardians reported they received 16 hours of continuing education in Fiscal Year 2017; however, the number of continuing education hours guardians said they completed ranged from 0 to 60 hours. Twenty-one percent of employee guardians we surveyed who (1) reported the number of continuing education hours they completed and (2) had worked for the Program for at least one year, had not fulfilled the continuing education requirements for the prior year.<sup>34</sup> For volunteers who had been with the Program for at least one year and reported their continuing education hours, 39 percent did not meet the standards set by the Board.<sup>35</sup>

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## RECOMMENDATION

**The Guardian ad Litem Board should ensure all guardians ad litem comply with the Board's training policies.**

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Training is essential to prepare guardians ad litem to effectively advocate for the best interests of children. It is particularly important because guardians ad litem enter the GAL Program with varying academic and professional experiences. Because of their differing backgrounds, we think it is appropriate for guardians to receive a portion of their training in a more individualized manner through on-the-job training within their districts. However, it is important for the Board to ensure that guardians comply with Board policies related to training.

The program administrator told us that Program staff are reviewing a contract for new statewide training software that would store and track all guardian ad litem training and continuing education data. This software would allow the program administrator to review statewide compliance with the Board's training and continuing education policies. We recommend that the Program move forward with its plans to centrally track these data, and that the Board review this information periodically to ensure compliance with Board policies.

## Training for District Managers and Coordinators

District managers oversee the daily operations of the GAL Program within each of Minnesota's ten judicial districts. They have a variety of responsibilities within their districts, including personnel development and financial management. District managers and coordinators provide direct supervision to guardians ad litem. Because district

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<sup>33</sup> Per Board Policy, employees are required to complete at least 15 hours of continuing education, and volunteers are required to complete at least 12 hours of continuing education.

<sup>34</sup> We asked guardians how many hours of continuing education they completed in Fiscal Year 2017. Eighty-nine percent of employee guardians that responded to our survey reported the number of continuing education hours they completed in Fiscal Year 2017.

<sup>35</sup> Eighty-eight percent of volunteer guardians that responded to our survey reported the number of continuing education hours they completed in Fiscal Year 2017.

managers and coordinators directly oversee the provision of guardian ad litem services in their districts, it is important that they are adequately trained to perform their roles.

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**District managers and coordinators have pursued various training and continuing education opportunities, despite a lack of Board requirements.**

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The GAL Board does not require district managers or coordinators to complete any specific training upon hiring. Board policy also does not require district managers or coordinators to participate in continuing education. In contrast, CASA's Standards for Local CASA/GAL Programs require a minimum of 12 hours of continuing education annually for volunteer supervisors.

District managers reported receiving different types of training when they assumed their roles. Most district managers—seven out of ten—have held their role for at least 12 years. They were hired before the GAL Board took over governance of the Program, and their training experiences varied. The three district managers promoted into their positions since the Legislature created the Board in 2010 reported that they did not receive specialized training for their managerial roles, although all three had previously worked as guardians and coordinators.

Although not required, district managers and coordinators reported that they have pursued different types of continuing education, including courses on supervision and training events offered by the Children's Justice Initiative. The continuing education centered on topics related to guardian ad litem work—such as chemical dependency or child development—and topics related to management or supervision. Four of the five district managers we interviewed told us that additional training on management-related topics—such as on purchasing or employee training—would be helpful for managers.

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**RECOMMENDATION**

**The Guardian ad Litem Board should establish training and continuing education requirements for district managers and coordinators.**

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Current Board policy does not include training and continuing education requirements for the GAL Program's district managers and coordinators. The Board should require managers and coordinators to complete all required training for guardians ad litem, including juvenile court, family court, ICWA, and domestic violence trainings—if they have not already done so—to ensure they are trained and familiar with each content area. We also recommend that the Board establish continuing education requirements for district managers and coordinators. Requiring continuing education that covers areas directly related to management roles and responsibilities, in addition to topics related to guardian ad litem work, would enable management to stay up-to-date on current and effective supervisory practices.



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# Chapter 5: Program Oversight

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In Chapter 1, we explained that the administrative structure of the Guardian ad Litem (GAL) Program in Minnesota has undergone numerous changes. It began as a collection of unconnected programs run by Minnesota counties; transitioned to a locally administered, state-supervised program under the judicial branch; and finally moved to the supervision of an independent board of directors in 2010. In this chapter, we discuss the GAL Board's current composition and duties, as well as the actions the Board has taken to oversee the GAL Program. We also describe the complaint resolution process the Board established.

Overall, we found that the GAL Board established a number of policies to guide the Program's operations, but the Board did not perform several key duties necessary for it to effectively monitor the GAL Program's performance. As a result, the program had limited accountability to the public.

## Board Composition

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When creating policy-making, advisory, or licensing boards, the Legislature has often established qualifications for board members and designated an office or organization with the authority to appoint the board's members. This is true for the GAL Board.

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### State law splits appointment authority between two entities and places some requirements on Guardian ad Litem Board appointments.

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By law, the Minnesota Supreme Court and governor share appointment authority for the seven GAL Board members.<sup>1</sup> The Minnesota Supreme Court is responsible for appointing three Board members, two of whom must be attorneys. In addition, one of the Supreme Court's appointees must have served as a guardian ad litem.<sup>2</sup> The governor must appoint four Board members; state law does not require specific professional credentials or experience for these members.<sup>3</sup>

#### Board Membership Requirements

- Two attorneys
- One former guardian ad litem
- Three residents outside the Twin Cities metropolitan area
- No active judges
- No registered lobbyists

All GAL Board appointments must meet other criteria. Between the two appointing authorities, at least three appointments must be from outside of the four Twin Cities metropolitan judicial districts (the First, Second, Fourth, and Tenth districts).<sup>4</sup> Neither appointing authority may appoint an active judge or a registered lobbyist.<sup>5</sup> State law requires that Board members demonstrate an interest in maintaining a high quality, independent GAL Program, and that they be well acquainted with the GAL Program and

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<sup>1</sup> *Minnesota Statutes* 2017, 480.35, subd. 1.

<sup>2</sup> *Minnesota Statutes* 2017, 480.35, subd. 1(a)(1).

<sup>3</sup> *Minnesota Statutes* 2017, 480.35, subd. 1(a)(2).

<sup>4</sup> *Minnesota Statutes* 2017, 480.35, subd. 1(b). See Appendix A for a map of Minnesota's ten judicial districts.

<sup>5</sup> *Minnesota Statutes* 2017, 480.35, subd. 1(a)(2).

laws regarding guardian ad litem work.<sup>6</sup> Members are appointed for four-year terms, and state law does not impose term limits.<sup>7</sup>

During the course of our evaluation, the membership of the GAL Board complied with statutory requirements. As of October 2017, three members of the GAL Board were attorneys, one was a former district court judge, one was a licensed social worker, one was a chief of police, and one was a retired professor of social work. Two of the Board members formerly served as guardians ad litem, and four members lived outside the Twin Cities metropolitan judicial districts.

We examined membership requirements for more than 60 state boards established in Minnesota statutes, and learned that the GAL Board membership requirements are not unusual. State law designates specific qualifications for at least some of the members of 97 percent of the boards we studied. Some requirements are more prescriptive than those for the GAL Board. For example, state law stipulates the occupation of eight of the ten members of the Board of School Administrators.<sup>8</sup> Other requirements, such as those for the Board of Public Defense, are similar to the requirements of GAL Board membership. The Board of Public Defense members must include four attorneys and three members of the public; membership must also include at least three members from outside of the four Twin Cities metropolitan judicial districts.<sup>9</sup>

In contrast, few boards have multiple appointing authorities. Most board members are appointed solely by the governor's office or another entity. For example, members of the Board on Judicial Standards, which investigates allegations of misconduct by Minnesota judges, are all appointed by the governor.<sup>10</sup> We found that only five of the boards we reviewed had multiple appointing authorities.<sup>11</sup> The Board of Public Defense is the only other board in which the governor and Supreme Court share appointment authority.

Splitting appointment authority between two entities creates two lines of accountability between a governing board and elected officials. It is unclear whether this arrangement results in stronger, weaker, or the same level of accountability as an arrangement with only one appointing authority. As a result, we make no recommendation that the Legislature change the current arrangement.

## Board Member Training

The GAL Board is not simply an advisory body—it is ultimately responsible for overseeing the administration of the GAL Program. As such, it is important that all Board members have a clear understanding of their roles and responsibilities. In fact, the Board Policies Manual, which includes the Board's governance policies and bylaws, states: "The board will ensure

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<sup>6</sup> *Minnesota Statutes* 2017, 480.35, subd. 1(b).

<sup>7</sup> *Minnesota Statutes* 2017, 480.35, subd. 1(b); and 15.0575, subd. 2.

<sup>8</sup> *Minnesota Statutes* 2017, 122A.12, subd. 1.

<sup>9</sup> *Minnesota Statutes* 2017, 611.215, subs. 1(a) and (b).

<sup>10</sup> *Minnesota Statutes* 2017, 490A.01, subd. 2(b), and 490A.02.

<sup>11</sup> Besides the Guardian ad Litem Board, the following boards have multiple appointment authorities: Capitol Area Architectural and Planning Board, Gambling Control Board, Minnesota Comprehensive Health Association Board of Directors, Minnesota Zoological Board, and Board of Public Defense. *Minnesota Statutes* 2017, 15B.03, 349.151, 62E.10, 85A.01, and 611.215.

that the board as a whole and each board member has the knowledge, understanding, and skills needed to function effectively and to reach the board's intended outcome."<sup>12</sup>

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**The Guardian ad Litem Board has not actively prepared its members for their duties.**

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The GAL Board Policies Manual states that when new members join the Board, they will receive training on governance.<sup>13</sup> However, we interviewed all seven Board members, and none of them reported receiving training or formal orientation to familiarize themselves with the work of the Board or their responsibilities as members. Instead, four Board members reported that they received the Board Policies Manual and had an informal conversation with the Board chair and/or program administrator, one member simply received the manual, and one member said she received no orientation. The remaining member had been on the GAL Board since its inception. She said members did not seek out training when the Board first formed.

The Board Policies Manual also states that the Board should participate in retraining activities and continuing education related to governance, but Board members told us they had not participated in any related activities.<sup>14</sup> In response to our interview questions, five of the seven Board members said new members could benefit from more training or a more formal orientation when they receive their appointment. Another Board member said it took him several years to understand all of the legal terms used in guardian ad litem work; this indicates that more information at the outset would be helpful.

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**RECOMMENDATION**

**The Guardian ad Litem Board should follow its established policies related to Board member training.**

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The Board Policies Manual establishes important training requirements to ensure Board members are prepared to effectively fulfill their roles. However, the Board has not followed its own policies with regard to training. Without proper preparation, Board members may not understand their oversight responsibilities.

The Board has taken steps recently to address this issue. The GAL Board began discussing Board orientation during its October 2017 meeting. The program administrator told us that the Board contracted with Minnesota Management and Budget to begin updating the Board Policies Manual in February 2018 and to provide orientation and training to the full board at a later date. The Board should follow through with this plan and ensure it continues to provide orientation to new members. It should also plan for and participate in continuing education in the future. This would ensure the Board is in compliance with its own policies and better prepare members for their role.

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<sup>12</sup> State Guardian ad Litem Board Policies Manual, Governance Process Policy 2.8.

<sup>13</sup> State Guardian ad Litem Board Policies Manual, Governance Process Policy 2.8 B.

<sup>14</sup> State Guardian ad Litem Board Policies Manual, Governance Process Policy 2.1.3.

## Board Duties

In addition to establishing certain requirements for the composition of the GAL Board, the Legislature gave the GAL Board ultimate responsibility to oversee the GAL Program.

**State law requires the Guardian ad Litem Board to create and administer a statewide program to advocate for the best interests of children in both juvenile and family court cases.**

As shown in Exhibit 5.1, state law directs the GAL Board to perform certain duties and indicates that it may perform others. For example, the Board *shall* approve and recommend to the Legislature a budget for the GAL Program.<sup>15</sup> The Board also *may* propose statutory changes to the Legislature.<sup>16</sup>

### Exhibit 5.1: Minnesota statutes outline Guardian ad Litem Board duties.

The Board <i>Shall</i> :	The Board <i>May</i> :
<ul style="list-style-type: none"> <li>• Create and administer a statewide, independent Guardian ad Litem Program to advocate for the best interests of children.</li> <li>• Approve and recommend to the Legislature a budget.</li> <li>• Establish procedures for distributing funding.</li> <li>• Establish policies, standards, and procedures consistent with statutes and court rules.</li> <li>• Appoint a program administrator to serve at the pleasure of the Board.</li> </ul>	<ul style="list-style-type: none"> <li>• Adopt standards, policies, or procedures to ensure quality advocacy for the best interests of children.</li> <li>• Propose statutory and rule changes.</li> <li>• Contract with the State Court Administrator's Office for administrative support.</li> </ul>

SOURCE: Office of the Legislative Auditor, review of *Minnesota Statutes* 2017, 480.35, subds. 2, 3, and 4.

## Financial Management

Two of the GAL Board's mandatory duties center on their financial responsibilities. First, the Board must approve and recommend to the Legislature a budget for the Board and GAL Program.<sup>17</sup> Second, the Board is required to establish procedures for distributing funding.<sup>18</sup>

<sup>15</sup> *Minnesota Statutes* 2017, 480.35, subd. 2(b)(1).

<sup>16</sup> *Minnesota Statutes* 2017, 480.35, subd. 2(c)(2).

<sup>17</sup> *Minnesota Statutes* 2017, 480.35, subd. 2(b)(1).

<sup>18</sup> *Minnesota Statutes* 2017, 480.35, subd. 2(b)(2).

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**The Guardian ad Litem Board has provided limited financial oversight of the Guardian ad Litem Program.**

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While the Board approved legislative requests in fiscal years 2016 and 2017, it did not approve program budgets. On each Board meeting agenda during the past two fiscal years, the Program's budget was included as a discussion, rather than an action item. In fact, Board meeting minutes indicate that the former program administrator did not distribute a budget for Fiscal Year 2016 until nearly three months after the start of that fiscal year.

In addition, the Board did not approve a procedure for distributing funds during fiscal years 2016 or 2017. The program administrator told us the Program had been distributing funds to the ten judicial districts based on a procedure developed in 2008, when the GAL Program was under the jurisdiction of the court system. In October 2017, the Board approved a new procedure to distribute funding to the GAL Program in each of the ten judicial districts, which we described in Chapter 1. The program administrator told us the Board changed the funding procedure because the GAL Program no longer had sufficient funding to continue using the old procedure.

As we noted in Chapter 1, the GAL Program operated with a deficit in four of five fiscal years between 2013 and 2017. While the Board approved legislative requests for additional funding, there is little evidence that it scrutinized the Program's budget to determine whether the Program was allocating funds in the best way to achieve program-wide goals.

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**RECOMMENDATION**

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**The Guardian ad Litem Board should actively monitor the financial health of the Program.**

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Adopting a new funding procedure was an important step towards fulfilling the Board's financial oversight duties. However, the Board should ensure it more actively monitors the Program's budget on an ongoing basis. Also, similar to the prior funding allocation procedure, the new procedure distributes funding on a district-by-district basis. It is unclear whether district-based funding ensures the GAL Program's funding is used in the most efficient and effective way. One district manager suggested that if the Program erased district lines and used funds more collaboratively, maybe funds could be used more efficiently. For example, counties that are in different judicial districts but border one another could share guardians ad litem if needed. The Board should evaluate its current district-based funding structure to ensure the Program is fully considering statewide needs.

## Policies and Standards

As outlined in Exhibit 5.1, the Board *must* establish standards, administrative policies, and procedures that are consistent with statute, rules of the court, and laws that affect guardian ad litem work.<sup>19</sup> The Board *may* adopt standards and policies to ensure the GAL Program provides quality services.<sup>20</sup>

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<sup>19</sup> *Minnesota Statutes* 2017, 480.35, subd. 2(b)(3).

<sup>20</sup> *Minnesota Statutes* 2017, 480.35, subd. 2(c)(1).

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### **The Guardian ad Litem Board worked to establish administrative policies and review administrative functions of the Program.**

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The Board met 17 times in fiscal years 2016 and 2017 and took action to revise, update, and adopt policies or approve proposals in 14 of those meetings. These policies are important to the effective operation of the GAL Program. For example, the Board adopted confidentiality, non-discrimination and harassment, and code of ethics policies, among others. It revised the GAL Program's complaint resolution process and updated the Program's diversity and inclusion policy. The Board also reviewed and approved contracts for services, including legal representation and child development consultation.

At the same time, the policies the Board has adopted provide management and guardians with little direction as to the Board's expectations for several aspects of guardian services.<sup>21</sup> As we discussed in Chapter 2, federal and state law provide only broad direction as to the activities guardians ad litem must perform, and the GAL Board has done little to clarify those activities. We believe work standards are an important accountability tool for the Board, Program management, and the public, and we provide recommendations regarding guardian ad litem work standards in Chapter 2.

## **Program Performance Monitoring**

As the governing body of the Program, the Board has a responsibility to monitor the GAL Program's performance to ensure the Program is serving children in the most effective manner. The GAL Board Policies Manual indicates that the Board shares this view of its responsibilities.

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### **The Guardian ad Litem Board has not actively evaluated its own performance or the performance of the program administrator.**

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Board policy requires the Board to monitor and regularly discuss its own processes and performance, but five of the seven members indicated the Board has not formally monitored or evaluated Board performance.<sup>22</sup> We could confirm that the Board has evaluated its performance only once—in 2012—since its establishment in 2010. While Board policy does not define “regularly,” we believe that interpreting the policy even in its loosest terms would require the Board to review its performance more than once in seven years.

Board policy also requires the Board to evaluate the program administrator's performance on an annual basis.<sup>23</sup> However, we could confirm that the Board evaluated the former program administrator's performance only once during her six and a half-year tenure.<sup>24</sup> Both Board policies and state law entrust a great deal of responsibility to the program administrator. Board policy directs the program administrator to implement Board policies and states that monitoring the program administrator's performance is “synonymous with

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<sup>21</sup> When we use the term “guardian” throughout this report, we are referring to guardians ad litem.

<sup>22</sup> State Guardian ad Litem Board Policies Manual, Governance Process Policy 2.1.3.

<sup>23</sup> State Guardian ad Litem Board Policies Manual, Board-Management Delegation Policy 3.5.

<sup>24</sup> The GAL Program had one program administrator from January 2011 until July 2017. The former Board chair told us she evaluated the former program administrator twice, but only one review—done in 2012—was in the GAL Program records.

monitoring organizational performance....”<sup>25</sup> In addition, state law directs the program administrator to perform all duties necessary to ensure efficient and effective operation of the GAL Program.<sup>26</sup> Therefore, in order for the Board to adequately oversee the entire GAL Program, it must regularly assess the administrator’s performance.

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## RECOMMENDATION

**The Guardian ad Litem Board should regularly review its own performance and conduct annual performance reviews of the program administrator, as required by its own policies.**

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GAL Board policies require the Board to perform two activities—Board evaluations and program administrator evaluations—that are important tools for ensuring the Program is accountable for its performance. The Board evaluated the performance of the current program administrator in December 2017; we encourage the Board to continue to do so in the future, as required by its policies.<sup>27</sup> By failing to regularly evaluate its own performance and the performance of the program administrator, the Board has missed important opportunities to reflect on its performance and identify areas for improvement. These mechanisms may not only provide the Board with important insight into areas where changes need to be made, but they may also provide the Board with concrete information about areas where the Board or program administrator have made a positive impact.

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**While the Guardian ad Litem Board has engaged in strategic planning activities, it has not adopted a strategic plan, and it has identified few measurable outcomes as a result of these efforts.**

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The GAL Board Policies Manual states that the role of the Board is to “lead the [GAL Program] toward the desired performance and assure that it occurs.”<sup>28</sup> This includes establishing “Ends Policies” that set goals for the Program’s broad impact.<sup>29</sup> The manual requires the Board to review these goals annually and use them to monitor Program performance. The Board last established these goals in 2011, and goals established with timeframes were intended to be accomplished in 2011 or 2012. For example, one goal was to “develop a family court menu of services by October 1, 2011....” However, as of the end of Fiscal Year 2017, the Board had not revised these goals since they were established. Although the manual states the Board should use Ends Policies to monitor the program administrator’s performance and conduct financial planning, some Board members were unfamiliar with these policies.

The Board participated in a strategic planning process with GAL central office staff and district managers in August 2016, during which they identified four desired outcomes for the GAL Program. However, the Board never formally adopted a strategic plan or any of the outcomes it identified through the planning process. In addition, most of the outcomes were not measurable. Outcome measures included, for example, “better distribution of

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<sup>25</sup> State Guardian ad Litem Board Policies Manual, Board-Management Delegation Policy 3.3.

<sup>26</sup> *Minnesota Statutes* 2017, 480.35, subd. 3(1).

<sup>27</sup> The current program administrator has held this position since June 2017.

<sup>28</sup> State Guardian ad Litem Board Policies Manual, Governance Process Policy 2.2.

<sup>29</sup> State Guardian ad Litem Board Policies Manual, Governance Process Policy 2.2.1.

resources,” “reduced conflict,” and “positive outcomes for children.” It is unclear how the Board would determine whether the Program has achieved the outcomes it identified or use them to ensure the Program provides consistently high quality services throughout the state.

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## RECOMMENDATION

**The Guardian ad Litem Board should:**

- **Continue to engage in strategic planning activities.**
  - **Establish clear, measurable goals for program performance.**
  - **Ensure it regularly monitors the Program’s progress toward the goals it sets.**
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The GAL Board has made recent efforts to evaluate several aspects of the Program and update the Board’s Ends Policies. In October 2016 it agreed to fund a proposal from the National Center for State Courts (NCSC) to evaluate the organizational structure of the GAL Program. The Board decided to take this action following its strategic planning efforts in August 2016. NCSC provided the Board with a report including recommendations in May 2017. The Board has since created a subcommittee to research one of the eight recommendations made in the NCSC report, and Program staff have discussed two others. In addition, the Board initiated discussions to update the Ends Policies in August 2017, and the Board continued those discussions in subsequent Board meetings. The program administrator told us the Board has contracted with Minnesota Management and Budget to develop a number of tools to support good governance processes, including templates for monitoring the Program’s Ends Policies.

The Board has recently set some measureable goals regarding *financial* matters. We believe the Board should continue this process, monitor the Program’s progress towards its financial goals, and update the goals annually. In addition, we believe the Program must set concrete, measurable *performance* goals for the Program and track the Program’s progress.

The former Board chair and former program administrator told us that it is difficult to measure the impact of guardians’ work. For example, in a juvenile court case when there are multiple individuals, such as a guardian, county attorney, social worker, and parent attorney(s) all providing the court with information, it may be impossible for the Program to isolate the guardian’s individual impact.<sup>30</sup> We recognize these difficulties. But, in order for the Board to be accountable to the public, it must determine how it will ensure that the Program is providing high-quality services to the children it serves.

## Transparency

The Open Meeting Law requires that all meetings of *executive branch* boards be open to the public and provides a number of guidelines to ensure decision-making bodies are transparent in their actions.<sup>31</sup> By law, the GAL Board is established in the *judicial branch*, so it is not subject to the Open Meeting Law. However, we believe the law provides

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<sup>30</sup> We use “the court” throughout this report to refer to judicial officers, including judges and referees. Like judges, referees listen to matters brought before them in court. Unlike judges, referees can only issue recommended findings or orders that must be confirmed by a district court judge.

<sup>31</sup> *Minnesota Statutes* 2017, Chapter 13D.

guidelines that are important in promoting transparency within any public body. As such, we used the Open Meeting Law as a guideline for determining the transparency with which the GAL Board has conducted its business in recent years.

We determined that GAL Board practices have been consistent with the Open Meeting Law in some respects, but not in others. For example, the Open Meeting Law requires boards to notify the public of meeting times and locations and make meeting agendas and materials available to the public.<sup>32</sup> The GAL Board has generally made this information available to the public on its website. On the other hand, the Board generally did not follow procedures outlined in the Open Meeting Law when it closed to the public portions of 12 of the 17 meetings it held in fiscal years 2016 and 2017.<sup>33</sup> Again, the Board is not required to follow the Open Meeting Law, but doing so would increase the transparency of its actions.

While the Board's practices have not always aligned with procedures described in the Open Meeting Law, it has made other efforts to operate in a transparent manner. In each of the Board meetings held during fiscal years 2016 and 2017, the Board provided time for public comments at the beginning of the meeting. This provided members of the public an opportunity to bring concerns and suggestions to the Board. In addition, the Board has generally made its meeting minutes available to the public on its website.

## Complaint Resolution Process

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GAL Board policies indicate that the Board views the complaint resolution process as a tool for quality control and accountability. The complaint resolution policy states that the GAL Board is "committed to providing high quality guardian ad litem services." It also notes that "all complaints received will be addressed in a manner to ensure that the Guardian ad Litem or an employee of the Guardian ad Litem Program receives due process and the Guardian ad Litem program is accountable to the public."<sup>34</sup>

We believe it is important that the GAL Board operate a credible, comprehensive complaint process for two reasons. First, it provides the public with an avenue to bring complaints about guardian ad litem work to the attention of managers and the governing body. This is particularly important because the Minnesota Supreme Court has held that guardians are absolutely immune from civil liability for actions they perform within the scope of their role.<sup>35</sup> This means if a member of the public files a lawsuit against the guardian ad litem about work the guardian performed within his or her role as guardian, the court can dismiss it. If there are limited legal avenues available to members of the public to address what

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<sup>32</sup> *Minnesota Statutes* 2017, 13D.04, subd. 1; and 13D.01, subd. 6.

<sup>33</sup> The procedures in the Open Meeting Law include: (1) state on the record the specific reason permitting the meeting to be closed; (2) voting to close the session in cases where the governing body of a public employer will discuss labor negotiations; (3) taping sessions that are closed for certain reasons, such as labor negotiation; and (4) in cases where meetings are closed to discuss an individual's performance, indicating the name of the person whose performance will be discussed and providing a summary of the discussion in the following meeting. *Minnesota Statutes* 2017, 13D.01, subd. 3; 13D.03, subds. 1(b) and 2(a); and 13D.05, subd. 3(a).

<sup>34</sup> State Guardian ad Litem Board Policies Manual, Guardian ad Litem Program Requirements and Guidelines VIII, C.

<sup>35</sup> *Tindell v. Rogosheske*, 428 N.W.2d 386 (Minn. 1988). "Absolute immunity" means that the guardian is not only protected from the consequences of a civil lawsuit, but that the guardian is not required to defend himself or herself from the allegations of the lawsuit. A court may summarily dismiss a lawsuit against a guardian ad litem as long as the guardian was acting within the scope of his or her authority.

they perceive as poor guardian performance, there should be an administrative route.<sup>36</sup> Second, the complaint process provides the GAL Board with an important oversight tool. Data on complaints received throughout the state can provide the Board with important information about issues regarding guardian performance that may require their attention.

## Process Overview

The GAL Program has had a complaint resolution process in place to address stakeholder concerns since before the Board's creation. In 1997, the Supreme Court promulgated rules governing the GAL Program that included a complaint resolution process. While some aspects of the complaint process established in 1997 remain the same, others have changed.

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### **In 2015, the Guardian ad Litem Board added a formal appeal process to its complaint resolution policy.**

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In 2015, the Board adopted a formal complaint resolution policy that provides complainants with a three-phase process to address concerns, as shown in Exhibit 5.2. Under this policy, complainants must fill out a six-part complaint form and submit it to the GAL district manager in the judicial district in which their case was heard.<sup>37</sup> Complainants must submit complaints within 60 days of the guardian ad litem's action that is the subject of the complaint.<sup>38</sup> The manager must investigate the complaint and provide the complainant with a written response. If the complainant is not satisfied with the district manager's response, the complainant may ask the manager to reconsider the complaint. If the complainant is not satisfied with the district manager's second response, the complainant may file an appeal with the program administrator. A three-person panel consisting of a senior judge, a guardian ad litem not located in the district in which the complaint was submitted, and a Board member review the appeal and make a final administrative decision on its merit.

The three-phase process described above is used to resolve *formal* complaints, but stakeholders may also submit *informal* complaints. According to the GAL Board's policy in effect through September 2017, an informal complaint is submitted verbally and can be resolved with an explanation; it requires no investigation. For example, if a parent called the district manager to complain that a guardian refused to give the child a ride to her supervised parenting time, the district manager would explain that providing rides to children is against GAL Program policies. This would be considered an informal

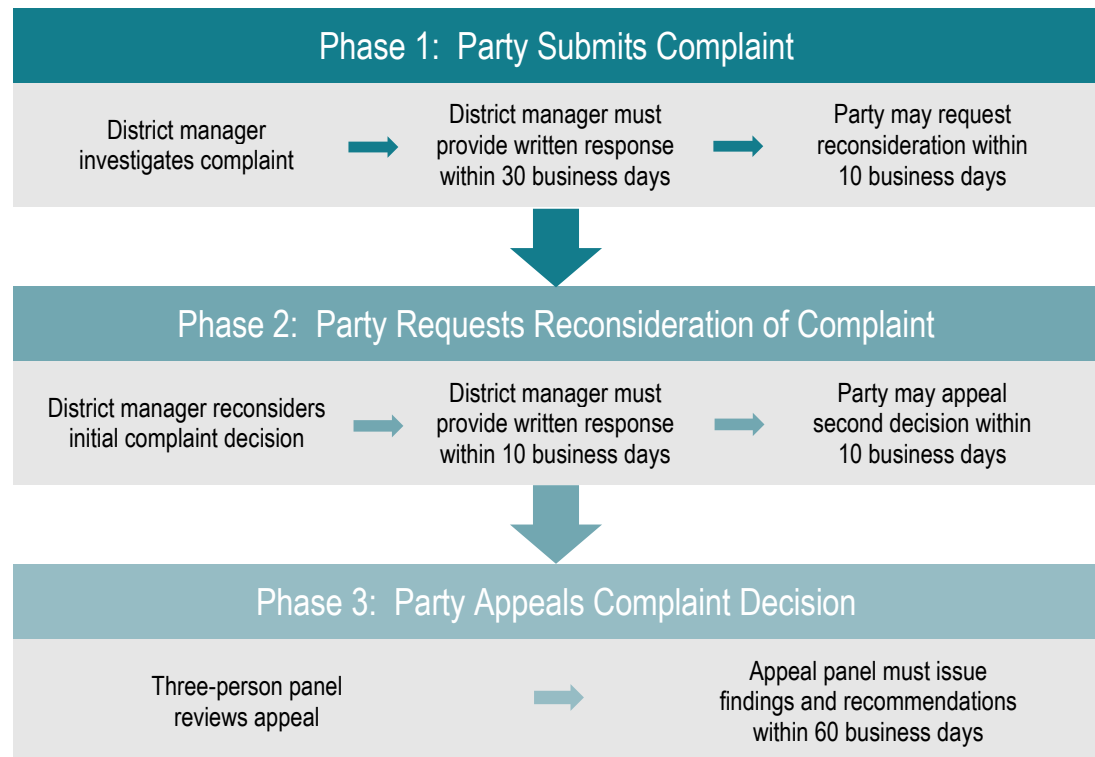
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<sup>36</sup> A party to the case may file a motion with the judge to remove or suspend a guardian ad litem for cause. Minnesota General Rules of Practice for the District Courts, *Title X. Rules of Guardian ad Litem Procedure in Juvenile and Family Court*, Rule 904.03 (2015).

<sup>37</sup> The complaint form includes five sections in which complainants are asked to indicate whether the guardian ad litem failed to perform their five main statutory duties and one section in which a complainant may indicate whether the guardian performed his or her role in an inappropriate way. The five main statutory duties, in summary, are: (1) conduct an independent investigation, (2) advocate for the child's best interests, (3) maintain confidentiality, (4) monitor the child's best interests, and (5) present written reports.

<sup>38</sup> Guardian ad Litem Policies Handbook, Complaint Investigation and Appeals Process. The policy states: "All written complaints must be submitted to the GAL manager within 60 days of the issuance of any Order which included consideration of the guardian ad litem's recommendation and report, or within 60 days of the alleged activity, action or correspondence of the guardian ad litem."

### Exhibit 5.2: The guardian ad litem complaint resolution process has three phases of review.



NOTE: The three-person appeal panel consists of a senior judge, a guardian ad litem not located in the district in which the complaint was submitted, and a Guardian ad Litem Board member.

SOURCE: Office of the Legislative Auditor, analysis of Guardian ad Litem Board Complaint Investigation and Appeals Process.

complaint. Board policy stated that if action was necessary on the part of the manager to resolve the complaint, then it must be written and follow the formal complaint process.<sup>39</sup>

The GAL Board has actively reviewed the complaint process since it was implemented. For example, the Board reviewed the complaint process's implementation in early 2017 through surveys of guardians, district managers, and the public. Based on feedback, the Board made changes to the complaint process in September 2017.<sup>40</sup> These changes included lengthening the time period in which a complainant may file a formal complaint.<sup>41</sup> The Board previously made changes to the process in February 2016.

<sup>39</sup> The Board eliminated the term “informal complaint” from the procedure in September 2017 and instead made a distinction between verbal complaints and formal, written complaints. E-mails are considered formal, written complaints if they follow a prescribed format.

<sup>40</sup> We based our review on the complaint process in place before the September 2017 changes.

<sup>41</sup> Prior to the change, complainants had 30 *business* days to file a complaint.

## Complaint Characteristics

To better understand the nature of complaints, we reviewed the GAL Program's complaint data from fiscal years 2015 through 2017. In addition, we reviewed a sample of written complaints and district managers' responses to those complaints.<sup>42</sup>

### Guardian ad Litem district managers recorded relatively few formal complaints in fiscal years 2015 through 2017.

Statewide, district managers recorded 76 formal complaints in fiscal years 2015 through 2017, an average of 25 complaints each year. The Program recorded 25 formal complaints in Fiscal Year 2017, representing just 0.003 percent of the more than 8,000 cases to which guardians were appointed that year. Seventy percent of formal complaints in fiscal years 2015 through 2017 pertained to family court cases.



of formal complaints  
pertained to family  
court cases.

#### Most Common Complaints

- Incomplete investigation
- Bias
- Not enough contact with children
- Made false statements in report

According to GAL Program data, complainants often alleged more than one issue or shortcoming in their complaints. Most often (17 percent of complaints), complainants alleged that guardians had not performed a thorough investigation. Complainants also stated that guardians showed bias (16 percent), did not contact the children frequently enough (12 percent), or made false statements (9 percent), among other issues.

While reviewing written complaints, we found that complainants often submitted lengthy documents identifying a dozen or more issues with the guardian ad litem's work. For example, one complainant alleged more than 20 shortcomings with the guardian ad litem's performance. The complainant listed a number of ways in which she felt the guardian's work was not thorough, such as not interviewing the children's caregiver, not reviewing relevant police reports, and not contacting the children's school. Another complainant detailed language the guardian ad litem had used and actions the guardian had taken that the complainant felt showed bias towards the other parent. Exhibit 5.3 provides a more detailed example of a complaint submitted to the GAL Program.

<sup>42</sup> We reviewed a total of 14 of the most recent formal complaints filed with the GAL Program in five judicial districts, ensuring we reviewed at least one family court and one juvenile court complaint, when possible. Managers did not provide a formal response to all complaints, so we reviewed ten complaint responses from four managers.

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### Exhibit 5.3: Parents and others involved in cases to which guardians ad litem are appointed submit complaints related to a variety of issues.

**Case history:** A judge appointed a guardian ad litem to a family court case regarding custody of two children, ages nine and ten years old. The mother and father shared custody of the children; the father asked the court for sole custody of the children. He alleged that the mother had untreated chemical health issues and that the mother had physically assaulted one of the children.

**Guardian ad litem action:** The guardian ad litem investigated the children's situation and submitted a report to the court in which she recommended that: (1) the father receive temporary sole custody, (2) the mother receive supervised visitation with the children, and (3) the mother abstain from using alcohol or drugs before visits with the children.

**Complaint:** Two weeks after the guardian submitted her report to the court, the mother filed a complaint to the district manager containing numerous allegations. The complainant did not believe the guardian had conducted a thorough investigation. For example, the complainant said that the guardian did not observe the complainant with the children or review information the complainant provided to the guardian ad litem. The complainant stated that the guardian showed bias against her, for instance, by not including test results that showed the complainant had not used illegal drugs in the recent past. The complainant also stated that the guardian included false information in her court reports and did not submit a report on time.

**Manager response:** The manager stated that to investigate the complaint, he reviewed the complaint and the documents filed with and issued by the court, and he interviewed the guardian ad litem. The manager found all allegations to be without merit, except the complainant's assertion that the guardian did not submit her report to the court on time. With regard to the guardian not reviewing information provided by the complainant, the manager stated that the complainant has the right to submit evidence to the Court, and the guardian cannot act as an advocate for a parent. In response to the allegation that the guardian did not present information about the complainant's drug tests to the court, the manager stated that the guardian *had* presented information about test results in one report and provided the date that report was submitted. The manager also said the guardian has the sole authority to provide the court with information the guardian believes is relevant to the case.

NOTE: The example is based on cases and complaints we reviewed with identifying details changed to protect individuals' privacy.

SOURCE: Office of the Legislative Auditor, review of Guardian ad Litem Program complaints and complaint responses.

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### **District managers determined that three-quarters of formal complaints submitted in fiscal years 2015 through 2017 were without merit.**

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District managers determined that 75 percent of formal complaints were without merit, 13 percent were partially meritorious, and 8 percent were meritorious. For 4 percent of the complaints, either the district manager did not make a determination on the merit of the complaint or the investigation was ongoing. As we discuss later in this chapter, it was unclear what criteria managers used to determine the merits of complaints.

In cases where district managers found that complaints had merit, managers indicated they took different actions. For example, in one case, the manager indicated that the guardian ad litem received coaching to ensure she performed independent investigations. In another, the manager determined the guardian was not advocating for the child's best interests and assigned a different guardian to the case.

District managers did not systematically track the number of complainants that requested a second review in the complaint data they reported. Therefore, we could analyze only the characteristics of the complaints addressed in the first phase of the review process.

## **Appeals Characteristics**

If a complainant is unsatisfied with the district manager's response to his or her complaint, the complainant can file an appeal with the program administrator. Board policy dictates the composition of the three-person panel that reviews appeals, but policy does not indicate how those members should be chosen. The former program administrator told us that she selected the guardians who served on the panels, the Board member volunteered, and she was unsure of how the judges were selected. The current program administrator told us the Board chair selected the judges.

We reviewed appeals documentation, including appellants' original complaints, district managers' responses, and the appeal panel's written decision for appeals filed in fiscal years 2016 and 2017.

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### **Stakeholders appealed only four complaint decisions between August 2015—when the Board adopted the current appeals process—and July 2017.**

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Of the 49 formal complaints the GAL Program recorded in fiscal years 2016 and 2017, complainants appealed only 4 complaint decisions. This amounts to about 8 percent of all complaints received during that time period.

We reviewed the appeals, and they shared several characteristics. All four appeals originated in Hennepin or Ramsey counties and all alleged the guardian's report was inaccurate and the investigation was insufficient, along with other allegations. Three of the four appeals were regarding family court cases. Appellants in all four cases were parents who were party to the case.<sup>43</sup>

Board policy lays out broad guidelines for the appeal panel investigations. Appeal panel members must request "all of the pertinent information," including interviews or written

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<sup>43</sup> Because one parent submitted two of the four appeals, there were only three appellants.

statements from the guardian ad litem, complainant, district manager, and program administrator. Panel members may request additional information and may interview the guardian and complainant. If the panel meets with either the complainant or the guardian, it must meet with both.

We reviewed each panel's written responses to each appeal. In all cases, the panel reviewed the original complaint, documents submitted by the complainant, the district manager's responses, and relevant court orders. In three cases, the panel members reviewed the guardian ad litem reports, and in two cases members reviewed a court hearing transcript. The panel members did not speak with the complainant or guardian for any of the four cases. The appeals panel member from the Board told us it was clear through reviewing the documentation that the complaints did not have merit, and the panel members did not think it was necessary to speak with the complainants and guardians ad litem. The panels determined that three appeals were without merit. The panel found that the fourth appeal was partially meritorious because the guardian ad litem report was not submitted on time. The panel found all other issues detailed in the fourth appeal to be without merit.

## Use of the Complaint Resolution Process

It is unclear how to interpret the low number of formal complaints and appeals received by the GAL Program. On the one hand, it could indicate that the vast majority of stakeholders who come into contact with guardians ad litem are largely satisfied with the services the Program provides. On the other hand, it could mean that stakeholders are unaware that the complaint process exists, find the process difficult to access or use, or are reluctant to use it for different reasons. More than 40 members of the public contacted our office through e-mail and phone calls to share concerns about the Program, but we could determine that only 12 had filed formal complaints. One parent told us that, although she called the district manager several times to voice concerns about the performance of the guardian assigned to her case, the manager never told her about the complaint process. This indicates that at least some people who are dissatisfied with guardian ad litem services are unaware of, unable, or unwilling to use the formal complaint process.

### Barriers to Access

Although the GAL Board has dedicated considerable attention to the review and revision of the complaint resolution process, we identified some barriers to greater use. As one manager told us, people who are involved in a case to which a guardian is appointed are often in crisis—they may, for example, have lost custody of their children or be in recovery for chemical dependency. In order for the process to provide true accountability to the public, it must be easy to use.

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### **The complaint resolution process is not easily accessible to the public.**

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First, information about the complaint process is not readily available. When guardians ad litem are appointed to a case, they are expected to provide families with a brochure that briefly explains the guardian's role. The brochure does not clearly explain the purpose or procedures of the complaint process; it simply directs families to consult the GAL Board website for information about a variety of topics, including the complaint resolution process.

The complaint resolution process is posted on the GAL Board website, but some complainants may not have easy access to the Internet. If complainants can access the website, they may need to look through several web pages to determine how and with whom to file their complaint. The GAL Program website does not display a central phone number or e-mail address for complaint submission; complainants must determine who the GAL manager is in their district and look up their contact information. One parent told us it was very difficult to figure out how to make a complaint because the brochure did not provide directions and the GAL Board website was not user-friendly. Given the lack of readily available information, it is possible that some families do not know about the complaint process or find it difficult to use.

A second barrier is the requirement that complainants submit complaints in a specific format. Complainants must not only have access to the Internet, but they must also have access to software that allows them to download, fill out, save, and send the complaint form electronically or have access to a printer to print out the form. The complaint policy states it will accept e-mail complaints, but only if the e-mail addresses each of the six sections detailed in the form. While this may help district managers pinpoint the specific issues complainants have, it may also discourage people from using the process.

A third barrier is that the complaint policy and form are available only in English. Board policy, the GAL Program website, and the complaint form do not indicate whether the Program can or will provide assistance to complainants who have limited English proficiency. The GAL Program's Limited English Proficiency plan indicates the Program will make reasonable efforts to assist people who need it, but that plan is not referenced in the complaint policy.

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## **RECOMMENDATION**

### **The Guardian ad Litem Board should make the complaint process more accessible.**

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The GAL Board should explore ways to better inform the public about the complaint resolution process and provide the public with easy access to it. One step would be to provide more information in the brochure guardians provide to families at their first meeting. The brochure should contain a brief statement that the complaint process exists; state the parameters of the complaint process (for example, that the complaint process is used to determine whether guardians followed applicable laws, rules, and program policies while performing their duties); and include the district manager's name and phone number. Business cards for guardians ad litem could also include the district manager's name and contact information.

In addition, the policy should direct district managers to assist complainants with filing a formal complaint when necessary. In reviewing complaint data, some district managers indicated that they investigated a situation or took action on a complaint, even if it was informal. However, for a complainant to appeal a district manager's decision, the complaint must go through the formal, written process. One district manager told us he has offered to have complaints transcribed if complainants have difficulty completing the form. This type of assistance could facilitate complainants' use of the process. In addition, the complaint policy should contain information about options available for people with limited English language skills.

## Barriers to Understanding

For a complaint process to improve program accountability, it not only must be accessible, it also must be easy to understand. If aspects of the process are unclear, it may affect the public's trust in the process and their willingness to use it.

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### **Some aspects of the current formal complaint resolution process are not transparent.**

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Most significantly, the complaint resolution process does not clearly identify what criteria district managers must use to determine whether a complaint has merit. The complaint form directs the complainant to specify which statutory duties the guardian ad litem failed to perform or performed improperly. When a complainant alleges a guardian did not perform his or her statutory duties, the complainant can assume the manager will evaluate the guardian's actions against the duties described in law. However, the complaint form also directs the complainant to note any improper performance or conduct of the guardian ad litem; it is unclear what criteria district managers are expected to use to determine what constitutes "improper conduct or performance."

One of the most common complaints the GAL Program received in recent years is that guardians did not perform a thorough investigation. Yet, as we noted earlier in this chapter, the GAL Board has developed few standards for guardians' work. While complainants can describe what they perceived as "improper performance," it is not clear how managers are expected to determine the merit of these types of complaints.

In a survey of all ten district managers, we asked them what criteria they use to determine the merit of a complaint. In response, managers noted a variety of criteria. For example, six managers stated they looked for a violation of rules; three looked for a violation of Program policy; and six considered other factors, such as whether the guardian violated a court order.

In addition, the process does not describe specific actions the district manager must take to investigate the complaint, other than request a response from the guardian ad litem. In our survey of district managers, when asked to describe step-by-step how they investigate complaints, all managers said they consulted documents filed with the court, but other activities varied. For example, five of the ten managers responded that they contacted attorneys or others with knowledge about the case, and three managers said they reviewed the guardians' case files. In the sample of complaint response letters that we reviewed, it was not always clear what information district managers consulted when performing their investigations. In seven of the ten response letters we reviewed, district managers indicated they consulted court documents; and in five response letters, managers indicated they conducted interviews with guardians. In three letters, the manager indicated she consulted the guardians' files.

Several parents who contacted us voiced concern about the thoroughness of investigations into their complaints. One said the district manager did not take her complaint seriously. Another parent told us he included many pages of information to support his complaint, and from the manager's response, he did not think the manager had considered any of it in her complaint determination.

Not only is there a lack of clarity in the GAL Program's communication with the public about the complaint resolution process, but some guardians ad litem indicated they do not fully understand the complaint resolution process. We surveyed all guardians ad litem in Minnesota at the end of Fiscal Year 2017, and less than half of survey respondents (44 percent) agreed that the standards for determining the merit of a complaint were clear.<sup>44</sup> In addition, only about half (51 percent) agreed that the current process for investigating complaints was transparent.<sup>45</sup>

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## RECOMMENDATION

### **The Guardian ad Litem Board should clarify certain aspects of the complaint process.**

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To increase the transparency of the complaint process, the Board should clarify and clearly communicate the criteria district managers should use to determine the merit of a complaint. Without common criteria for determining the merit of complaints, managers may not make decisions in a uniform manner and complainants may not understand what constitutes a meritorious complaint.

The Board should also determine the steps a complainant can expect the district manager to take when investigating the complaint. Given the variety of complaints the GAL Program receives, it may be difficult to direct managers to perform the same, specific duties in every case. However, clarifying the Board's expectations may help a complainant better understand how the complaint will be addressed and ensure managers thoroughly and consistently investigate all complaints.

### **Adherence to Program Policy**

While reviewing district managers' complaint responses, we found a handful of instances in which managers did not consistently follow certain aspects of the complaint resolution process. However, it is not clear that these inconsistencies negatively affected the outcome of the complaint investigation; in some cases, they may have actually increased complainants' access to the process. For example, Board policy requires that complainants submit formal, written complaints on a specific form, but two managers accepted other forms of written complaints. As another example, one of the complaints we reviewed fell outside of the time limit imposed by Board policy, yet the district manager still investigated it.

## **Complaint Resolution Oversight**

As we previously noted, the Board has spent time and effort creating and revising the complaint process. At the same time, the Board has not actively monitored the volume and characteristics of the complaints reported through this process.

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<sup>44</sup> We surveyed all 503 guardians ad litem on record at the end of Fiscal Year 2017 and received 359 responses, for a response rate of 71 percent. Thirty-eight percent of guardians who responded to our survey disagreed that the standards were clear, and 17 percent responded that the question was not applicable.

<sup>45</sup> Thirty-two percent of respondents disagreed that the process was transparent, and 16 percent responded that the question was not applicable.

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**The Guardian ad Litem Board did not require district managers to report complaint data to the central office, inhibiting the Board's ability to monitor stakeholder complaints throughout the state.**

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Through the end of Fiscal Year 2017, the GAL Board did not require district managers to regularly report complaints to central office staff. When we requested complaint data from the Program, central office staff collected it from each district manager. In reviewing the data, we determined that four of the ten district managers did not record complaints on the template they were required to use, and therefore did not track all of the required information.

During fiscal years 2016 and 2017, Board minutes indicated the Board received one briefing in January 2017 on the volume of complaints received by the Program. However, the briefing did not include characteristics of the complaints, such as the issues identified, time taken to respond to complainants, or geographic distribution. This may be because the complaint data district managers recorded were incomplete. For example, we were unable to determine whether all managers followed timelines established in the complaint policy because dates were missing for nearly 30 percent of the complaint entries.

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**RECOMMENDATION****The Board should ensure that district managers regularly report complaint data to the central office and should use those data to monitor potential issues within the Program.**

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The Board amended its complaint data collection policy in September 2017 so that district managers must now report all formal complaints to the central office. However, when it changed the policy, it removed the requirement that district managers track complaints using a specific template that collects a variety of information on complaints. We believe the Program should restore that requirement. By tracking the characteristics of complaints—such as the timeliness of district managers' responses and the nature of complaints—the Board will be better able to determine whether complainants receive timely responses. It will also allow the Board to identify trends in the types of complaints and geographic concentration of complaints.

When the Board made changes to the complaint process in 2017, it also removed the requirement that district managers track informal complaints. We believe the Program should also reinstate this requirement. In our review of complaint data, we noted that there was an unclear distinction between informal and formal complaints. Informal complaints often alleged the same types of issues as formal complaints, such as bias or incomplete investigations. In some cases, the district manager indicated that he or she took action to address the informal complaint. Actions included coaching and removing the guardian from the case—the same types of action managers took on formal complaints.

In addition, the former program administrator told us complaints from judges, or other non-parents are handled outside the formal complaint process. Among judges who responded to our survey and had recently appointed a guardian to a juvenile or family court case, more than two-thirds indicated they had been unsatisfied with work performed by a guardian at

some point since January 2016.<sup>46</sup> Of those who identified issues, only one had used the formal complaint process, but about 35 percent had contacted a guardian's supervisor.

As such, we think it is important that the Program track both formal (written) and informal (verbal) complaints in order to understand the true breadth and nature of complaints the GAL Program receives. By simply tracking formal complaints, the program administrator and Board have an incomplete picture of issues that have been brought to the district managers' attention. This inhibits the Board's ability to monitor any issues that may be occurring across the Program or within one geographic area.

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<sup>46</sup> We surveyed all 284 district court judges and received 219 responses, for a response rate of 77 percent. We asked this question to judges who had appointed guardians ad litem to family or juvenile court cases since January 1, 2016.

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# List of Recommendations

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- With input from the Guardian ad Litem Board and the state's judiciary, the Legislature should clarify the role of guardians ad litem in family court cases. (p. 20)
- The Guardian ad Litem Board should:
  - Clarify for which judicial proceedings guardian ad litem reports are required.
  - Ensure guardian ad litem reports are written.
  - Ensure guardian ad litem reports are submitted on time. (p. 27)
- The Guardian ad Litem Board should adopt clear standards for guardian ad litem work. (p. 35)
- The Guardian ad Litem Board should require managers to periodically evaluate how well guardians collect and summarize the evidence used in their investigations. (p. 37)
- The Guardian ad Litem Board should develop and implement guidelines outlining appropriate caseloads for guardians ad litem. (p. 49)
- The Guardian ad Litem Board should develop a clear plan for assigning guardians ad litem to all cases for which they are required and submit it to the Legislature. (p. 50)
- The Legislature should:
  - Examine the plan submitted by the Guardian ad Litem Board.
  - Review statutory requirements related to guardian ad litem appointments and activities and determine whether they continue to reflect the needs and priorities of the state.
  - Determine the level of funding necessary for the Guardian ad Litem Program to fulfill requirements in law. (p. 50)
- The Guardian ad Litem Board should track the Program's progress towards its goals for a diverse, culturally competent workforce. (p. 56)
- The Guardian ad Litem Board should ensure all guardians ad litem comply with the Board's training policies. (p. 64)
- The Guardian ad Litem Board should establish training and continuing education requirements for district managers and coordinators. (p. 65)
- The Guardian ad Litem Board should follow its established policies related to Board member training. (p. 69)
- The Guardian ad Litem Board should actively monitor the financial health of the Program. (p. 71)

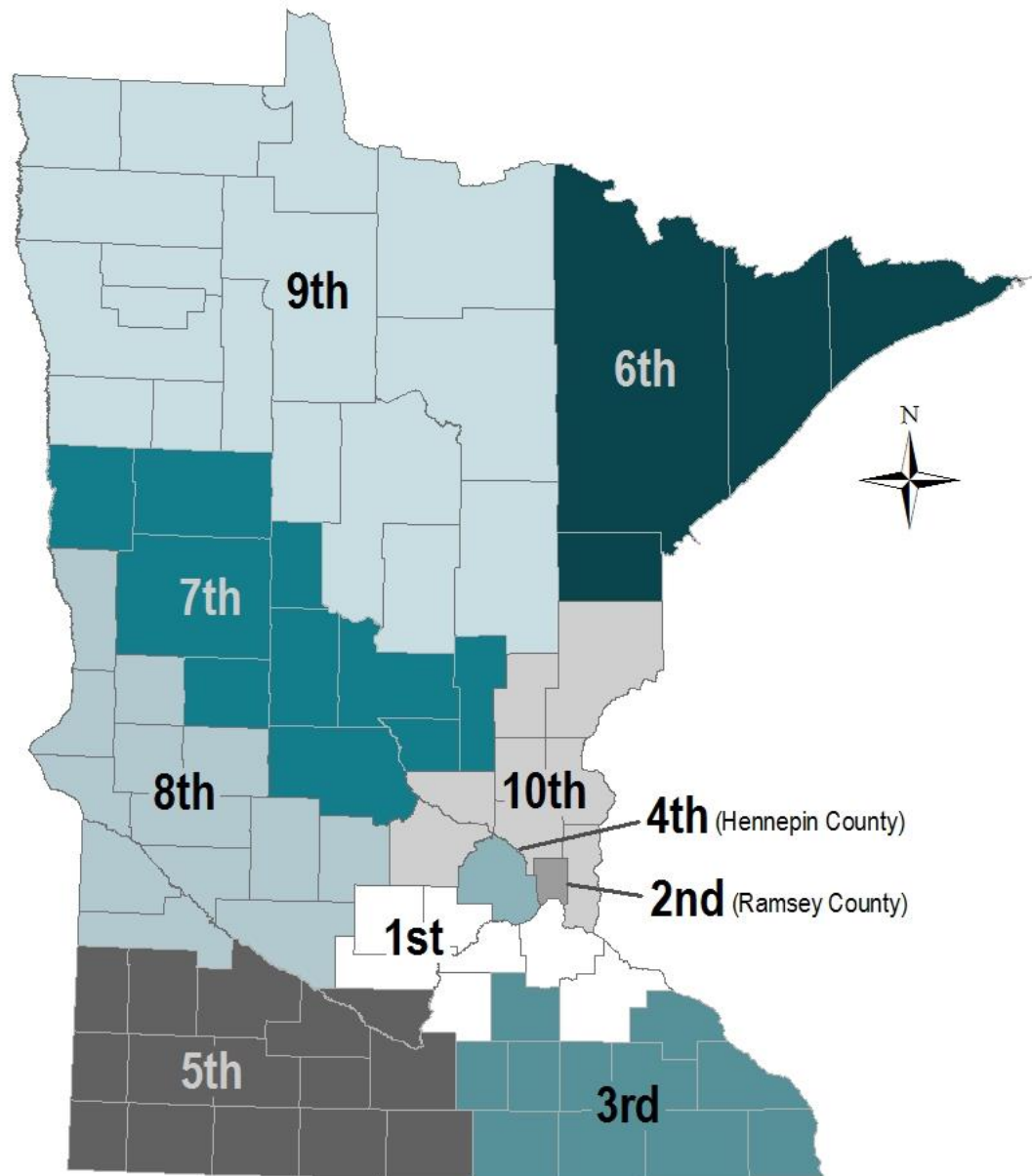
- The Guardian ad Litem Board should regularly review its own performance and conduct annual performance reviews of the program administrator, as required by its own policies. (p. 73)
- The Guardian ad Litem Board should:
  - Continue to engage in strategic planning activities.
  - Establish clear, measurable goals for program performance.
  - Ensure it regularly monitors the Program’s progress toward the goals it sets. (p. 74)
- The Guardian ad Litem Board should make the complaint process more accessible. (p. 82)
- The Guardian ad Litem Board should clarify certain aspects of the complaint process. (p. 84)
- The Board should ensure that district managers regularly report complaint data to the central office and should use those data to monitor potential issues within the Program. (p. 85)

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# Minnesota Judicial Districts

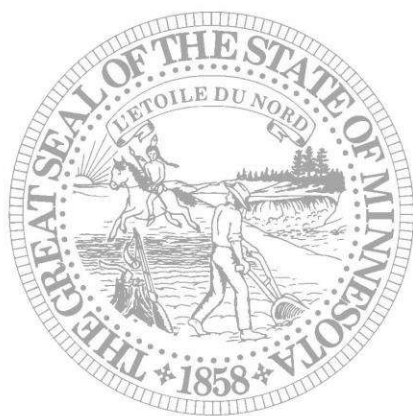
## APPENDIX A

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SOURCE: Office of the Legislative Auditor.

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# Site Visit and File Review Methodology

## APPENDIX B

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To better understand Guardian ad Litem (GAL) Program operations and practices at the district level, we conducted site visits in a selection of Minnesota’s judicial districts. During our site visits, we reviewed guardian ad litem work for a selection of court cases, among other activities. We provide additional information below about how we selected both the locations for our site visits and the cases to include in our review of guardian work.<sup>1</sup>

### Site Visit Methodology

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We conducted site visits during August, September, and October 2017. As part of these visits, we (1) interviewed a selection of GAL Program district managers and coordinators, guardians ad litem, county social workers, county attorneys, district court judges, and public defenders; (2) observed judicial proceedings for cases to which guardians were appointed in two judicial districts; and (3) reviewed guardian reports and personal files for a sample of court cases, as we discuss in greater detail below.<sup>2</sup>

We visited five of the ten judicial districts in Minnesota. We used several criteria to determine our site visit locations, including geography and guardian employment status. Specifically, we sought locations that included:

- At least one largely urban, one largely suburban, and one largely rural judicial district, and at least one judicial district located in the northern and one in the southern region of the state.
- At least one judicial district that had only employee guardians ad litem and at least one judicial district that had both employee and volunteer guardians.
- At least one judicial district where district court judges heard both family *and* juvenile court cases at any given time, and at least one judicial district where district court judges primarily heard either family *or* juvenile court cases at any given time.
- At least one judicial district with at least one American Indian tribal nation within its boundaries, and at least one judicial district with no tribal nations within its boundaries.
- At least one judicial district each with a low, medium, and high percentage of the GAL Program’s active cases as of the end of Fiscal Year 2017.

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<sup>1</sup> When we use the term “guardian” throughout this report, we are referring to guardians ad litem.

<sup>2</sup> “Judicial proceedings” refer to actions carried out by a court of law, such as a hearing or trial.

- At least one judicial district with a small share of total complaints, one judicial district with a medium share of total complaints, and one judicial district with a large share of total complaints received by the GAL Program through the formal complaint resolution process.

Using these criteria, we chose to visit the Fourth, Fifth, Sixth, Ninth, and Tenth judicial districts.<sup>3</sup>

## File Review Methodology

We conducted a case file review during August, September, and October 2017 at each of our five site visit locations. We reviewed a randomly selected sample of cases to which guardians ad litem were assigned. In selecting cases, we sought to obtain a sample: (1) proportionate to the share of cases heard in the Twin Cities versus the rest of Minnesota; (2) with a sufficient sample size in all judicial districts to facilitate analysis; and (3) representing both juvenile and family court filings, with a sufficient sample size in both juvenile and family court to facilitate analysis.<sup>4</sup>

We received from the GAL Program data on cases active in the Program's case management system as of the end of Fiscal Year 2017. To qualify for our review, cases must have been filed in a court located in one of the five judicial districts we visited, been heard in juvenile or family court, and had an assigned guardian ad litem. We excluded cases related to issues of delinquency, juvenile petty offenses, and adoption.

Our file review consisted of two phases. In the first phase, we sought to better understand how guardians investigated cases, and what information they provided to the court through their reports. To do so, we reviewed guardian ad litem reports and examined the documentation and evidence that guardians used to support their investigations.<sup>5</sup>

Because a central purpose of the first phase of our review was to understand what information guardians provided to the court through their reports, for cases to qualify for this phase of review, a guardian must have filed at least one report with the court for that case.<sup>6</sup> We randomly selected a sample of 127 cases.<sup>7</sup> Included in our review were reports filed with the

<sup>3</sup> See Appendix A for a map of Minnesota's judicial districts.

<sup>4</sup> For the purposes of our file review, we considered the Twin Cities to comprise the Second and Fourth judicial districts (Ramsey and Hennepin counties, respectively). According to preliminary GAL Program data for fiscal years 2016 to 2017, approximately 37 percent of cases to which guardians were assigned were heard in the Second and Fourth judicial districts; the remaining 63 percent of cases were heard in the other eight judicial districts. Based on preliminary GAL Program data, 91 percent of cases to which guardians were assigned in fiscal years 2016 to 2017 were juvenile court cases. So that we had a sample that was sufficiently large for meaningful data analysis, we oversampled family court cases. Family court cases accounted for 25 percent of our total sample, while juvenile court cases accounted for 75 percent of our sample.

<sup>5</sup> We reviewed documentation and evidence guardians ad litem included in both their personal files and in the GAL Program's case management system. We did not consult the entire court file in performing our review.

<sup>6</sup> The preliminary data we received from the GAL Program did not indicate whether a guardian had submitted a report to the court for a case. As such, we randomly selected a sample and manually eliminated—using data from Minnesota Government Access—all cases for which a guardian was assigned but had never submitted a report. We eliminated a total of 39 cases for which a guardian had never submitted a report. Minnesota Government Access allows government agencies to view electronic court documents.

<sup>7</sup> While we selected 127 cases, we were only able to review 124. The guardian ad litem files for three cases in our sample had been destroyed.

court from the start of the case or the beginning of Fiscal Year 2016—whichever came later—until the time of our review. In total, we reviewed 379 guardian reports.

While we established certain parameters around our sample, as described above, the cases included in the first phase of our file review varied in several ways. For example, the court had appointed guardians ad litem to some cases for a longer period of time than others. As such, guardians had a longer period of time to complete required activities in some cases than others.<sup>8</sup> As another example, the number and status of parents varied across cases. In our review, we classified parents as any individual listed as a mother or father on guardian ad litem reports. We excluded parents from our review of whether guardians completed required or discretionary activities related to parents—such as interviewing the parent or observing the child with the parent—only if the guardian indicated in his or her report that the parent was deceased, unknown, legally barred from contacting his or her child, or the court had terminated his or her parental rights.

For the second phase of our review, we sought to better understand how frequently guardians attended judicial proceedings for a case. We also examined how frequently guardians submitted reports to the court for a case and whether guardians submitted those reports in accordance with rules regarding the timeliness of report submission.<sup>9</sup>

Because a central goal of the second phase of our review was to understand the frequency with which guardians submit reports—unlike the first phase of our review—we were interested in both cases for which guardians ad litem were assigned and *had not* submitted a report, and cases for which guardians were assigned and *had* submitted a report. As such, the sample for the second phase of our review included both the 127 randomly selected cases included in the first phase of our review and the 39 randomly selected cases excluded from the first phase of our review. We selected a total of 166 cases for the second phase of our review.<sup>10</sup>

Both samples included cases subject to the Indian Child Welfare Act and cases of differing case type.<sup>11</sup> Samples for both the first and second phases of our review were not large enough to be representative, and the results cannot be projected to the entire universe of guardian ad litem cases.

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<sup>8</sup> Some guardians were appointed to cases and submitted reports to the court prior to our review period. In those cases, we excluded the case from our analysis as to whether the guardian had completed required activities unless we found evidence that the guardian *had* completed those activities.

<sup>9</sup> Per court rules, guardians must submit written reports to the court five business days before juvenile court hearings and written recommendations to the court ten days before family court hearings.

<sup>10</sup> While we selected 166 cases, we were only able to review 160. Data were not available in Minnesota Government Access for six cases in our sample.

<sup>11</sup> Indian Child Welfare Act of 1978, Public Law 95-608, codified as 25 *U.S. Code*, secs. 1901-1963 (2012). The Indian Child Welfare Act is a federal law that outlines requirements agencies must follow when removing American Indian children from their families and establishes minimum procedures to meet the best interests of American Indian children. The courts categorize cases by type. Examples of case types include: child in need of protection or services, dissolution with child, custody, legal separation, domestic abuse, and termination of parental rights.



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Hon. Terrence Conkel  
Joan Kirk  
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## **State Guardian Ad Litem Board**

March 13, 2018

Mr. James Nobles  
Office of the Legislative Auditor  
658 Cedar Street  
St. Paul, Minnesota 55155

Thank you for the opportunity to review and comment on the program evaluation of the State of Minnesota Guardian *ad litem* Board. We are appreciative of the objective and thoughtful feedback.

In 2010, the Legislature established the Guardian *ad litem* Board to administer the statewide Guardian *ad litem* Program in Minnesota. Since the creation, child protection case filings have drastically increased. **Between FY13-FY17, child protection case filings have increased 55 percent statewide.** The Guardian *ad litem* Program has not been able to keep up with the increase of cases. Now managers and coordinators, who are charged with supervising and training, are carrying caseloads. Caseload sizes are high, resulting in Guardians *ad litem* being overworked and highly stressed. They are, at times, having to make decisions between visiting children or writing reports and often have as many as 60 children assigned to them at a time. Our central management staff is only 4.5 FTE's, which does not allow for the adequate statewide support and supervision that would be ideal for a program that employs and supports approximately 517 staff and volunteer Guardians *ad litem*.

As the report accurately points out, the Guardian *ad litem* Program has not been able to assign a Guardian *ad litem* for all mandatory cases. Federal and state law require Guardians *ad litem* to be appointed to cases in which abuse or neglect has occurred. This has resulted in a lack of advocacy for children affected by abuse and neglect in our state. The Guardian *ad litem* Board is unable to meet these children's needs given the drastic shortage of resources. Our vulnerable children deserve better.

As you are aware, the Guardian *ad litem* Board is currently in the process of addressing many of your recommendations. We acknowledge that board development could be improved and program standards and goals should be developed further. We have begun taking steps to prepare for a long-range board planning process. We have also taken immediate steps, over the past several months, to address the following:

- Assessed the program budget. Reallocated funding and implemented financial controls to most effectively utilize currently available fiscal resources.
- Procured a learning management system to allow for state-wide tracking of requirements and to provide online learning modules for our mandatory trainings. The system will also provide supervisory training modules that will allow us to provide for a supervisory training track.
- Contracted with a Minnesota Management and Budget Consultants to assist in Policy Governance development, strategic planning and the development of board orientation.
- Established procedures for the state-wide collection of complaint data.
- Developed a Guardian *ad litem* Board stakeholder subcommittee to determine the best advocacy model for children involved in family court cases.
- Developed a case count committee to further analyze standardized caseload levels.

Resource limitations are an issue that will impact our ability and timing to implement some of the report recommendations. Many of the performance measure recommendations will be resolved with enhancements to our case management system. The Guardian *ad litem* Board developed an improved independent case management system after the creation of the Guardian *ad litem* Board. We have many items that we want to pursue that would assist in monitoring work and providing quality assurance; however, at this time many of them are cost prohibitive.

The Guardian *ad litem* Board is committed to addressing the problems identified in your report and to finding solutions to improve the effectiveness of our program to enhance advocacy for Minnesota's children. We look forward to working with the Legislature on the recommendations in the report.

Thank you again for the opportunity to comment on the Report.

Sincerely,



Kristen Trebil-Halbersma

Guardian *ad Litem* Program Administrator

3-13-18



Crysta Parkin

Guardian *ad Litem* Board Chair

## **Forthcoming OLA Evaluations**

*Board of Animal Health's Oversight of Deer and Elk Farms*  
*Early Childhood Programs*

## **Recent OLA Evaluations**

### Agriculture

*Agricultural Utilization Research Institute (AURI)*, May 2016  
*Agricultural Commodity Councils*, March 2014  
*"Green Acres" and Agricultural Land Preservation Programs*, February 2008  
*Pesticide Regulation*, March 2006

### Criminal Justice and the Judicial System

*Guardian ad Litem Program*, March 2018  
*Mental Health Services in County Jails*, March 2016  
*Health Services in State Correctional Facilities*, February 2014  
*Law Enforcement's Use of State Databases*, February 2013  
*Public Defender System*, February 2010  
*MINNCOR Industries*, February 2009  
*Substance Abuse Treatment*, February 2006

### Economic Development

*Minnesota Investment Fund*, February 2018  
*Minnesota Research Tax Credit*, February 2017  
*Iron Range Resources and Rehabilitation Board (IRRRB)*, March 2016  
*JOBZ Program*, February 2008

### Education, K-12 and Preschool

*Minnesota State High School League*, April 2017  
*Standardized Student Testing*, March 2017  
*Perpich Center for Arts Education*, January 2017  
*Minnesota Teacher Licensure*, March 2016  
*Special Education*, February 2013  
*K-12 Online Learning*, September 2011  
*Alternative Education Programs*, February 2010

### Education, Postsecondary

*Preventive Maintenance for University of Minnesota Buildings*, June 2012  
*MnSCU System Office*, February 2010  
*MnSCU Occupational Programs*, March 2009

### Energy

*Renewable Energy Development Fund*, October 2010  
*Biofuel Policies and Programs*, April 2009  
*Energy Conservation Improvement Program*, January 2005

### Environment and Natural Resources

*Clean Water Fund Outcomes*, March 2017  
*Department of Natural Resources: Deer Population Management*, May 2016  
*Recycling and Waste Reduction*, February 2015  
*DNR Forest Management*, August 2014

### Environment and Natural Resources (continued)

*Conservation Easements*, February 2013  
*Sustainable Forest Incentive Program*, November 2013  
*Environmental Review and Permitting*, March 2011

### Government Operations

*Mineral Taxation*, April 2015  
*Minnesota Board of Nursing: Complaint Resolution Process*, March 2015  
*Councils on Asian-Pacific Minnesotans, Black Minnesotans, Chicano/Latino People, and Indian Affairs*, March 2014  
*Helping Communities Recover from Natural Disasters*, March 2012  
*Fiscal Notes*, February 2012

### Health

*Office of Health Facility Complaints*, March 2018  
*Minnesota Department of Health Oversight of HMO Complaint Resolution*, February 2016  
*Minnesota Health Insurance Exchange (MNsure)*, February 2015  
*Financial Management of Health Care Programs*, February 2008  
*Nursing Home Inspections*, February 2005

### Human Services

*Home- and Community-Based Services: Financial Oversight*, February 2017  
*Managed Care Organizations' Administrative Expenses*, March 2015  
*Medical Assistance Payment Rates for Dental Services*, March 2013  
*State-Operated Human Services*, February 2013  
*Child Protection Screening*, February 2012  
*Civil Commitment of Sex Offenders*, March 2011

### Housing and Local Government

*Consolidation of Local Governments*, April 2012

### Jobs, Training, and Labor

*State Protections for Meatpacking Workers*, 2015  
*State Employee Union Fair Share Fee Calculations*, July 2013  
*Workforce Programs*, February 2010  
*E-Verify*, June 2009  
*Oversight of Workers' Compensation*, February 2009

### Miscellaneous

*Voter Registration*, March 2018  
*Minnesota Film and TV Board*, April 2015  
*The Legacy Amendment*, November 2011  
*Public Libraries*, March 2010  
*Economic Impact of Immigrants*, May 2006  
*Liquor Regulation*, March 2006

### Transportation

*MnDOT Highway Project Selection*, March 2016  
*MnDOT Selection of Pavement Surface for Road Preservation*, March 2014  
*MnDOT Noise Barriers*, October 2013  
*Governance of Transit in the Twin Cities Region*, January 2011



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