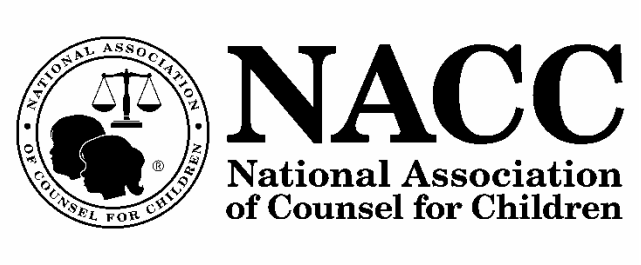

Evaluation of the Guardian Ad Litem System in Nebraska

Conducted by the National Association of Counsel for Children

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Executive Summary

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

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

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

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

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

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

Methodology

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

Key Findings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendations

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

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

Short Term Reforms

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

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

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

Acknowledgments

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We apologize if we have inadvertently omitted specific mention of other individuals. We are incredibly grateful for the time and efforts contributed by everyone who made this report possible.

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Introduction: The Charge by Nebraska's Legislature

In 2008 the Nebraska Legislature called for a study of Nebraska's guardian ad litem system.[1] Recent studies through the auspices of the Nebraska Supreme Court (Court Improvement Project and the Supreme Court Commission on Children in the Courts)[2] documented that despite some improvements over the past decade, GALs prepare in advance of court hearings only about half the time. The numbers of times that GALs meet with their clients was also identified as a concern. In addition, these studies found that GALs do not typically perform independent investigation activities and their reports are often considered to be a "rubber stamp" for the reports prepared by Department of Health and Human Services. The most recent study by the Nebraska Supreme Court Commission on Children in the Courts (2007) was instrumental in passing a court rule requiring training for attorneys who wish to be appointed as GALs.

The Nebraska Legislature expressly stated that the assessment "shall highlight promising approaches and innovative practices within the state and offer recommendations to improve weak areas." Independent assessments of juvenile legal defense and GAL systems in other states have empowered state and local stakeholders to identify and discuss the ways in which attorneys are provided to children, addressed the systemic barriers that impede effective representation of these youth, and resulted in significant policy changes at the state and local levels and in the executive, judicial and legislative branches. The funds appropriated by the legislature would support such an effort in Nebraska.

The University of Nebraska Public Policy Center was asked to administer the appropriated funds and to conduct a national search to find a consultant that would be qualified to provide a methodologically sound and objective assessment of Nebraska's guardian ad litem system. After a competitive bidding process, the National Association for the Counsel of Children (NACC) was selected to conduct the statewide assessment of guardian ad litem practice in Nebraska. Information about the NACC and the evaluation team is found at pages 207-09.

The evaluation of the GAL system in Nebraska was designed to answer the following questions:

1. How well do the current structure and funding mechanisms for guardian ad litem representation operate; how do these mechanisms compare to national standards and best practices; and if necessary how could these structures and funding mechanisms be improved?

2. How do caseloads for guardians ad litem compare to national standards and best practices for

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[1] LB 961 (2008), *available at* http://www.legislature.ne.gov/FloorDocs/100/PDF/Slip/LB961.pdf.

[2] *Nebraska State Court Improvement Project: Child Abuse and Neglect Cases* (October 1996) and *Nebraska Court Improvement Project: 2005 Reassessment of Court and Legal System for Child Abuse and Neglect and Foster Care* (January *2006).*

caseload sizes; what are promising approaches and innovative practices; and if necessary what strategies should be used to improve caseload sizes?

3. How does the timing of appointment of guardians ad litem compare to states similar to Nebraska and national standards and best practices for timing of appointment; what are promising approaches and innovative practices; and if necessary what strategies should be implemented to improve the timing of appointment?

4. What are the practices of guardians ad litem supervision in Nebraska, and how do these supervision practices compare to national standards and best practices; and if necessary what improvements should be made with respect to supervision of guardians ad litem?

5. How are resources allocated for the guardians as litem in Nebraska; how does the allocation of resources compare to national standards and best practices; what are promising approaches and innovative practices; and what improvements could be made in the allocation of resources for guardians ad litem in Nebraska?

6. To what extent are juvenile court facilities appropriate and adequate for abuse and neglect cases; how do facilities compare to national standards and best practices; what are promising approaches and innovative practices; and if necessary what improvements should be made in facilities for abuse and neglect cases?

7. What is the compensation for Nebraska guardians ad litem; how does compensation vary across jurisdictions; how does compensation compare to national standards and best practices; and if necessary what improvements should be made in compensation for guardians ad litem?

8. How are guardians ad litem trained; how does this training *vary* across jurisdictions and compare to national standards and best practices; and if necessary how could the process for training be improved?

9. What are the processes in place to provide guardians ad litem access to investigators, experts, social workers, and support staff; how do these processes compare to national standards and best practices; and if necessary how should these processes be improved?

10. What are the processes in place to provide guardians ad litem access to educational officers, teachers, educational staff, and truancy officers; how do these processes compare to national standards and best practices; what are promising approaches and innovative practices; and if necessary how should these processes be improved?

11. What is the nature of the relationship between guardians ad litem, juvenile legal counsel, and the judicial system with identified educational staff regarding a juvenile's educational status and truancy;

how does this relationship *vary* across jurisdictions and compare to national standards and best practices; what are promising approaches and innovative practices; and if necessary what procedures should be implemented to improve this relationship to ensure school performance and reduce truancy?

12. What is the time to permanency and time in court, especially when a guardian ad litem is appointed; how does the time to permanency and time in court compare to national standards and best practices; what are promising approaches and innovative practices; and if necessary what processes should be implemented to reduce this time?

13. What are the current procedures for coordination of representation for those juveniles that may have been appointed an attorney in a juvenile delinquency matter and a guardian ad litem because of abuse or neglect: how do these procedures compare to national standards and best practices; and if necessary what processes should be implemented to improve these procedures?

14. What is the nature of the relationship between the juvenile and guardian ad litem; how often do they meet; does the same guardian ad litem represent the juvenile throughout the process; are the juvenile and guardian ad litem together in court; how do youth perceive their relationship with their guardian ad litem; how do these practices compare to national standards and best practices; and if necessary what processes should be implemented to improve these practices?

15. To what extent do children/youth participate in court proceedings; under what circumstances are they present; how do they participate in hearings during their time in court; how do these practices compare to national standards and best practices; and if necessary what processes should be implemented to improve these practices?

In addition, the evaluators asked each of the stakeholder groups what they would change in the current GALs system in Nebraska.

Methodology

The project team used a mixed method approach in its evaluation of the GAL system in Nebraska: a process audit, analysis of quantitative data, surveys and follow up interviews with identified groups of key stakeholders, interviews with key informants, and focus groups with young people. Table 1 provides the research methods implemented with respect to each evaluation question.

Table 1. Research Questions and Methodologies

Research Question	Process Audit	Quantitative Data	Surveys and Follow Up Structured Interviews	Interviews with Key Informants	Focus Groups with Young People
#1 Structure and Funding Mechanisms for the GAL system	X		X	X	
#2 GAL Caseloads	X		X	X	
#3 Timing of GAL Appointment	X	X	X	X	X
#4 GAL Supervision	X		X		
#5 Resources allocated to GALSs	X		X	X	
#6 Court facilities appropriate and adequate for abuse/neglect cases			X	X	X
#7 Compensation for GALs	X		X	X	
#8 Training for GALs	X		X	X	
#9 GAL access to investigators, experts, social workers, support staff	X		X	X	
#10 GAL access to educational officers, teachers, educational staff, truancy officers			X	X	
#11 Relationship between GALs, juvenile legal, and judicial system with educational staff re: juvenile's educational status and truancy	X		X	X	X
#12 Time to permanency and time to court		X	X		

Research Question	Process Audit	Quantitative Data	Surveys and Follow Up Structured Interviews	Interviews with Key Informants	Focus Groups with Young People
#13 Procedures for representation of juveniles that may have been appointed in a juvenile delinquency matter and a GAL because of abuse/neglect	X		X	X	
#14 Relationship between the juvenile and GAL	X		X	X	X
#15 Child/youth participation in court proceedings	X		X	X	X

The following summarizes the four methods of data collection: the process audit, quantitative data collection, surveys and follow up interviews with adult stakeholder groups, and focus groups with young people with child abuse and neglect dependency cases. The process audit was conducted on a statewide basis. The quantitative data collection, surveys and follow up interviews with adult stakeholder groups and focus with young people currently or formerly in foster care focused on five counties. In response to a suggestion from the Public Policy Center (PPC) at the University of Nebraska-Lincoln, our selection of the five counties included both urban and rural counties. These five counties also reflect diversity in juvenile dockets and approaches to the provision of GAL services. The selected counties are referred to as County A, County B, County C, County D, and County E consistently throughout this report.

1. The Process Audit

The process audit was comprised of two components: (1) a description of how the GAL system is designed to work in Nebraska based on a review of legal sources; and (2) interviews to further delineate how the GAL system is designed to work and how it is currently working.

How the GAL System is Designed to Work: The Youth Law Center (YLC), as a subcontractor to the NACC, conducted a review of statutes, regulations, policies and procedures, and court rules. The review was comprised of (1) identification of all relevant sources of information regarding Nebraska's GAL system; (2) a review of all relevant sources; and (3) a summary of findings in the form of a flow chart accompanied by a description and legal references regarding the stages of abuse/neglect dependency cases in Nebraska.

Background Interviews: In early 2009, the NACC conducted background information gathering with a number of key stakeholders to inform the development of the interview protocol. To further enrich this

information, Ms. Corene Kendrick, an attorney from YLC with extensive interview experience, conducted telephone interviews with stakeholders in each of the five selected counties and with key informants about the operation of the dependency system statewide (n=29). The interviews followed a protocol with core questions and customized questions specific to each stakeholder group: judges, GALs, and court administrators, including:

- Background of the project
- The individual's experience with child abuse/neglect dependency cases
- Number of child abuse/neglect dependency in the county/handled by the GAL
- The court process for child abuse/neglect dependency cases and time frame for each stage
- Process for appointing GALs
- Timing of GAL appointments
- Provision of court documents to GALs
- GAL preparation for hearings
- GAL responsibilities
- GAL performance prior to and at court hearings
- Removals of GALs
- Payment of GALs
- Child participation in court hearings
- Role of CASAs in child abuse/neglect dependency cases
- Coordination of child abuse/neglect dependency cases and delinquency cases\
- Truancy and education issues

The qualitative data from the interviews was subjected to a content analysis and compared to the information gathered through the review of statutes, regulations, policies and procedures, and court rules. Protocols utilized in the background interviews are at Attachment A.

Interviews with Key Informants

Interviews were conducted with four individuals identified through the evaluation process as key informants. These individuals were child and family advocates, legal advocates, and foster care advocates**.** In addition, less formal interviews were conducted with key attorneys with knowledge of the juvenile court process for dependency/child abuse and neglect cases; a trainer involved in the GAL training; individuals associated with organizations that play key roles in serving children, youth and families involved with the state's child welfare system;

2. Quantitative Data

Quantitative data were sought to answer two questions of research interest.

Time to Appointment of the GAL. First, NACC requested data on the timing of GAL appointments from the state's court data management system. Unfortunately, data on timing of appointments of GALs were not entered into the database for any counties. Second, NACC

requested data of the Douglas County Juvenile Court on the appointments of GALs for the period of July 1, 2005 through June 30, 2006, the same time frame that was used for the initial request to the state's data management system. Computerized data were provided which yielded significant information.

Permanency Outcomes for Children in Foster Care. The following data were requested of the Department of Health and Human Services (DHHS) for the five selected counties.

- Number of children who exited foster care
- Discharge destinations for all exiting children
- Average length of time in care for exiting children
- Average length of time in care for all children exiting to adoption

In order to gain a sense of any trends in these data elements, data were requested for reporting periods for each FY -- FY2003 to FY 2008. The Nebraska Department of Health and Human Services provided the requested data from the federal Adoption and Foster Care Analysis and Reporting System (AFCARS). These data were analyzed to gain a better understanding of permanency outcomes and time frames in the five selected counties.

3. Surveys and Follow Up Interviews

Nine stakeholder groups were identified for the purpose of surveys and/or interviews. Surveys and follow up interviews were conducted with GALS, County Attorneys, Parents, Foster Parents, DHHS Caseworkers, CASAs, and Foster Care Review Board Members.[3] Judges and court administrators/clerk magistrates were interviewed to achieve two purposes in a single contact: to gain information as part of the process audit and to learn from the judges their assessments of the current GAL system. The interviews incorporated questions that would have been included in surveys.

Because the population of court administrators and clerk magistrates was limited to 5 individuals, it was determined that a survey would be neither practical nor likely to yield data that can reasonably be quantified. Interviews with the court administrators and clerk magistrates included questions previously intended to be posed through the surveys and follow up interviews.[4]

It was determined that the same attorneys are appointed to represent children and youth in child abuse/neglect dependency cases and their parents. It was determined that attempts to conduct a second, separate survey and interview with these attorneys about parent representation would likely negatively impact these attorneys' completion of surveys as GALs (the primary focus of this evaluation). Efforts were made, however, to conduct interviews with 2 parents' attorneys associated with the Public

[3] The Nebraska Legislature created the Foster Care Review Board (FCRB) to serve a type of inspector general to the Department of Health and Human Services. The FCRB tracks all foster care cases and reviews each child's case. In most parts of the state, all foster care cases are reviewed twice a year by the Foster Care Review Board in that locality. In more populous counties, the review may be less often than every six months. In 2008, more than 4300 reviews were done.

[4] The court administrator for County E declined to be interviewed. The evaluators gathered information regarding the GAL system from the perspective of court administration from a GAL and judges in that county.

Defenders' Office in the only county of the selected counties that provide parent representation in this manner. No parent attorney agreed to be interviewed.

Surveys

The NACC developed the survey and interview protocols based on the 15 areas of research inquiry outlined in the Request for Proposals from the University of Nebraska – Lincoln, standards for conducting social science surveys (Aleck & Settle, 1985; Newman & McNeil, 1998) and qualitative research (Patton, 2002; Schwandt, 2001) and feedback from the Advisory Committees and from the Nebraska Department of Health and Human Services. x

For each stakeholder group that was to receive a survey, the NACC posted the survey on its website (a separate URL for each survey) with email notice sent to individuals and mailed surveys to individuals without an email address. To maximize the response rate to the surveys, the research team implemented a process following Dillman (2007). Customized outreach to the GALs was designed consisting of:

Prenotice: An announcement postcard via email (or hard copy if the individual lacked an email address) that the individual would receive a survey
The Survey: A cover letter and survey via email or hard copy
Follow Up: Email postcard and survey or, for individuals without an email address, a follow up phone call
Incentives: As suggested by Dillman, the researchers provided an incentive to GALs and county attorneys for completing the survey: a free 6-month trial membership in the National Association of Counsel for Children (a $45 value).

Specifically, Table 2 provides the outreach methods used for each stakeholder group surveyed.

Table 2. Outreach Methods Employed to Maximize Response Rate

Stakeholder Group	Outreach Methods
GALs	Prenotice of survey by email; survey web address provided by email; follow up by email; follow up with hard copy of survey and letter from Senator Ashford to non-respondents; follow up by phone call by PPC to non-respondents.
County Attorneys	Survey web address provided by email
Parents' Attorneys	Survey web address provided by email and follow up calls by project staff
CASAs	Coordination with each county's CASA program which sent the web based address for the survey to CASA volunteers and staff

Stakeholder Group	Outreach Methods
DHHS Caseworkers	Coordination with DHHS which sent a letter from Director Reckling urging caseworkers to complete the survey and providing the web address for the survey.
Foster Parents	Coordination with the Nebraska Foster and Adoptive Parent Association which sent the web address for the survey to foster parents
Parents	Coordination with the Nebraska Family Support Network and the Family Advocacy Movement which sent the web address for the survey to parents in the five counties
Foster Care Review Board Members	Coordination with the Nebraska Foster Care Review Board which sent the web address to members of local review boards in the five counties

Table 3 provides the number of individuals to whom surveys were provided, the number of surveys received, and the response rate for each stakeholder group.

Table 3. Response Rate by Stakeholder Group

Stakeholder Group	Number of Surveys Provided/Population with Which Outreach was Conducted	Number of Surveys Received	Response Rate
GALs	292	71	24%
County Attorneys	35	4	11%
Parents' Attorneys	5	0	0
CASAs	141	89	63%
DHHS Caseworkers	443	70	16%
Foster Parents	130	6	5%
Parents	21	4	19%
Foster Care Review Board Members	156	19	12%

Follow Up Interviews from Surveys

Follow up interviews were conducted with individuals who, upon completing the survey, agreed to be interviewed. These interviews were conducted by Ms. Corene Kendrick of the Youth Law Center and Ms. Maureen Farrell-Stevenson, Ms. Amanda Donnelly and Ms. Anne Kellogg of the NACC. Table 4 provides the number of individuals interviewed as a follow up to the survey.

Table 4. Number of Individuals Interviewed Post-Survey

Stakeholder Group	Number of Follow Up Interviews
GALs	11
Judges	13
County Attorneys	0
CASAs	10
DHHS Caseworkers	3
Foster Parents	0
Parents	0
Foster Care Review Board Members	5

4. Focus Groups with Young People

NACC conducted three focus groups with young people. The focus group participants were youth currently in foster care and youth formerly in foster care. Efforts were made to recruit focus group participants who were young people who had open child welfare cases but lived at home; these efforts, however, were not successful.[5]

The focus groups were conducted by Ms. Corene Kendrick who was assisted by Ms. Anne Kellogg of the NACC as note taker. Advocates employed by the Nebraska Children and Families Foundation facilitated the focus groups to ensure the youth were comfortable in the setting. Young people were provided a $20 Wal-Mart gift card in recognition of their time and expertise at the end of the focus group.

The focus group was conducted using the following materials, which were approved by DHHS:

- Facilitation Guide to ensure uniform implementation of the focus groups and adherence to informed consent/informed assent and confidentiality guidelines
- Informed Consent/Informed Assent Forms
- Questions and Prompts for the Focus Groups
- *Something About Me*: two forms (one for youth in/formerly in foster care; one for youth with child welfare cases but who did not enter foster care): These youth-friendly forms were designed to collect background information on the young people who participated in the focus groups.
- Reporting Format

[5] Potential participants were identified through coordination with the Nebraska Children and Families Foundation and the Department of Health and Human Services.

Table 5 provides information on the young people who participated in each focus group.

Table 5. Focus Group Participants

Locations	Youth Participants in Foster Care	Youth Participants Formerly in Foster Care	Total Number of Youth Participating
County A	4	5	9
County B	1	3	3
County C	4	0	4

At the conclusion of the focus group, Ms. Kendrick, the facilitator, distributed self-addressed stamped envelopes with writing paper and her business card and provided the following information.

> "Here are an envelope and writing paper for you to keep or mail to me if you have anything else you want to say about being part of this group or being part of the legal process. You do not need to send me anything. If you decide to write something to send to me, you do not need to put your name on the envelope or the paper unless you want me to respond to your letter. Please just put your letter in the envelope, seal it and put it in the mail. I have also included my business card which has a free 1-800 number on it that you can use if you want to talk with me."

In response to this request, no young people provided additional information.

Demographic Information

Demographic information regarding the study participants by method is presented on pages 210-23.

Additional Information on Methodology

Additional information on the evaluation methodology can be found at:

- Attachment C. GAL Survey and Interview Protocol
- Attachment D. Judge and Court Administrator Interview Protocol; Parent Attorney and County Attorney Survey and Interview Protocol
- Attachment E. CASA and DHHS Caseworker Survey and Interview Protocol
- Attachment F. Parent, Foster Parent and Foster Care Review Board Survey and Interview Protocol
- Attachment G. Letter to GALs from Senator Ashford
- Attachment H. PPC Phone Script for GAL Outreach
- Attachment I. Letter from Mr. Todd Reckling to DHHS Caseworkers
- Attachment J. Focus Group with Young People Packet

Findings

The evaluation findings are organized based on the 15 areas of inquiry specified by the State Legislature. An additional area of inquiry was added as the evaluators asked stakeholders about the changes they would recommend, if any, to improve the GAL system in Nebraska.

Findings from the Process Audit: The Nebraska Guardian ad Litem System

What is a GAL?

Under the federal Child Abuse Prevention and Treatment Act (CAPTA),[6] states are mandated to provide advocates for children in dependency proceedings in exchange for federal money for juvenile courts and foster care systems.[7] Pursuant to the federal requirements, Nebraska law requires that a Guardian ad Litem (GAL) be appointed to represent all children who are removed from their home by the Nebraska Department of Health and Human Services (DHHS), or for whom the state files an abuse or neglect dependency case under subsection 3(a) of Section 43-247[8] of the Nebraska Revised Statutes.[9] Under state law, the GAL must serve a "dual role" in representing abused and neglected children in dependency proceedings: the GAL is expected to represent the child's best interests before the court,[10] yet also "shall defend the legal and social interests" of the child[11] and "act as counsel for the juvenile."[12] Under state law, only an attorney licensed by the Supreme Court of Nebraska may be appointed to serve as a GAL.[13] In addition, Nebraska Court Rules call for an initial six hours of specialized training provided by the Administrative Office of the Court before an attorney is eligible for appointment as a GAL, and an additional three hours of specialized training per year to maintain eligibility.[14]

Under state law, the GAL should act as an attorney on behalf of the child: a GAL has the right to file motions, present evidence and witnesses, cross-examine witness, file petitions on behalf of the child to terminate the parent's parental rights, and to move the court to order treatment and services for the child.[15] State law also imposes requirements on the part of the GAL: a GAL must attend all hearings, meet with the child within two weeks of appointment and every six months thereafter, submit a written report at every disposition and review hearing, and make recommendations to the court.[16]

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[6] Child Abuse Prevention and Treatment Act, 42 U.S.C. §§ 5101-5107.
[7] 42 U.S.C. § 5106a (b)(2)(A)(xiii)(II).
[8] This subsection, which applies to any abused or neglected dependent child, is the source of the shorthand "3(a)" used by stakeholders to describe dependency cases in Nebraska. This report refers to the "3(a)" system as the dependency system.
[9] R.S.S. Neb. § 43-272.01.
[10] R.S.S. Neb. § 43-272.01(2)(a).
[11] R.S.S. Neb. § 43-272.01(2)(b).
[12] R.S.S. Neb. § 43-272(3).
[13] R.S.S. Neb. § 43-272(3).
[14] Neb. Ct. R. 4-140.
[15] R.S.S. Neb. § 43-272.01(2).
[16] *Id.*

As the Nebraska Supreme Court Guidelines recognize, the legal and best interests of juveniles in the dependency and abuse/neglect proceedings initiated under the Nebraska Juvenile Code require effective representation by their court-appointed guardians ad litem. As stated by attorneys for children, "Courts play a critical, often life-changing role in the lives of children who enter the child welfare system – determining if children will enter foster care, how often they will be moved from placement to placement once they enter care, whether and when they will see siblings and other family members, and if and when they will exit the system"(Krinsky & Rodriquez, 2006). Given the overwhelming needs of the children in abuse/neglect proceedings, and the major life decisions that will be made by courts and caseworkers, children must have a strong GAL who is familiar with their needs and able to represent them in court proceedings.

Current Structure and Funding of the Nebraska GAL System

The system of appointing and funding GALs in Nebraska is done at the county level. Counties pay an hourly rate for abuse and neglect cases that generally is on par with the rate paid to court-appointed attorneys for adult criminal or juvenile criminal matters. A 2006 study by the Nebraska Supreme Court's Minority Justice Committee found that counties were paying between $45 and $85 an hour to GALs for their work representing children (Neeley, 2006). In our interviews with stakeholders, we learned that several Nebraska counties are now paying up to $100 an hour to GALs for their work in and out of court; the lowest hourly rate we heard was $65 an hour, with an average rate around $70 to $75 an hour. Counties varied as to whether these hourly rates applied to attorneys' time spent traveling to meet with children, or if the GALs were compensated only for mileage. Most counties surveyed also reported that GALs could have the costs of experts reimbursed, but usually only upon prior approval from the court. The judges (or their designee bailiff or clerk magistrate) appoint GALs from a list of approved attorneys. (Findings on the appointment of GALs are reported in more detail later in this report at page 44).

However, a notable exception to the hourly pay structure in other counties examined is Douglas County, the county with the largest population of children in foster care in the State.[17] Several individuals reported that the process in Douglas County is unique. Douglas County has contracts with three law firms to represent dependent children and pays each firm a flat rate each month to handle a certain number of cases.[18] Each Douglas County juvenile court judge maintains a list of attorneys that he or she appoints as GAL when the three contracted firms are at their contracted case limits. Lancaster County, until earlier this year, had a similar system in place with about ten different law firms, but the County Board of Commissioners voted to end the practice of contracting with law firms on a flat per-case rate and move to a system of all appointments being done by the court and GALs being reimbursed according to an hourly rate.

[17] As of December 31, 2007, Douglas County had 1,223 children adjudicated as a 3(a) abuse/neglect status, out of the 3,152 statewide. Nebraska Foster Care Review Board, 2007 Annual Report and Recommendations.
[18] A case is an entire group of siblings, not one child. Very often one "case" is comprised of as many as five or seven siblilngs.

According to publicly available information, the three contracted firms in Douglas County are paid varying flat amounts per case for representing children in abuse/neglect proceedings. One firm is paid a flat rate of $3,750/month to handle up to 25 cases. A second firm is paid $28,440/month to handle up to 360 cases. A third firm is paid approximately $48,000/month to handle up to 500 cases.

Previous Evaluations of the Nebraska GAL System

There have been several prior assessments and evaluations of the legal system for abused and neglected children in Nebraska. Under the federally-appropriated Court Improvement Project, two assessments were conducted in 1996 and 2005 (Nebraska Court Improvement Project, 1996; Nebraska Court Improvement Project 2006). Among the key findings of the 1996 assessment was the determination that the quality of guardian ad litem and parent representation needed considerable improvement; this led to initiatives and programs targeted at improving local or regional problems, but none addressed at the statewide legal system.[19]

The Nebraska Juvenile Code has been amended numerous times since its enactment in 1981. From 1999 through 2003, Mark Ells, an Assistant Research Professor at the University of Nebraska-Lincoln's Center on Children, Families, and the Law, worked on drafting a proposed revision of the entire state juvenile code. Among other recommendations was a new statutory requirement that abused and neglected children attend all hearings (Ellis, 2004).

In 2003, Governor Mike Johanns created the Governor's Children's Task Force to assess the state's child welfare system and to identify areas for improvement. The Task Force's report, *A Roadmap to Safety for Nebraska's Children*, included recommendations regarding the dependency system and GAL representation. The Task Force recommended that the state Attorney General's office be responsible for handling the prosecution of all abuse and neglect and termination of parental rights cases in counties that do not have a separate juvenile court.[20] The Task Force also recommended that GALs be trained, accredited, and required to certify to the court that they had visited the children they represent. The Task Force also called for Supreme Court rules that imposed caseload limitations and a requirement that GALs visit their clients at least once a month or not be paid if they had not made monthly visits.[21]

A small study in 2003 in Douglas County compared abuse/neglect cases that had Court Appointed Special Advocates (CASAs)[22] with abuse/neglect cases that did not (Weisz & Thai, 2003). The evaluation found that having a CASA assigned to a case expanded the breadth and depth of information provided to the court, that CASA reports were more helpful to judges than those of caseworkers and

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[19] Projects implemented since the 1996 CIP assessment included: developing, implementing, and evaluating family group conferencing; providing the initial funding for the Douglas County CASA program; establishing court-agency collaborative groups in Douglas, Lancaster, and Sarpy counties; developing, publishing, and disseminating guides to the juvenile court system in English and Spanish for parents, relatives, and foster parents; and trainings for judges and attorneys.

[20] *A Roadmap to Safety for Nebraska's Children* (Dec. 2003), p. 14.

[21] *A Roadmap to Safety for Nebraska's Children* (Dec. 2003), p. 14.

[22] CASA volunteers work across the country to provide abused and neglected children with a person who will have a close relationship with a dependent child and who will provide detailed information to the court, with a hope of better outcomes for these children.

GALs, and that CASAs are more likely to visit the child in the home. The study also found that GALs were less likely to visit children prior to court hearings when there was a CASA assigned to a case.

The 2005 Court Improvement Project study found that GALs were providing written reports and meeting with their clients more frequently than they did in the 1996 assessment, and that judicial oversight of the dependency system had improved since 1996 (Nebraska Court Improvement Project, 2006, p. 4).[23] However, the 2005 assessment also found continued substantial deficiencies in the GAL system: GALs prepared for hearings only half of the time; GALs did not perform independent investigation activities and their reports were "rubber stamps" for the HHS reports; and hearings were too brief to cover all issues. Additionally, the assessment found that many critical issues were covered in only half of all hearings, including: alternatives to out-of-home care; placement/visitation with siblings; placement with relatives; identification of non-custodial parents; identification of ICWA status; the availability of services for the parent; the child's educational status; caseworker visits; and in-depth examinations of the child's permanency plan (Nebraska Court Improvement Project, 2006, p. 6). The report applauded the action plan of the Supreme Court Commission on Children in the Courts to develop and adopt standards for attorneys and guardians ad litem and to make training available and accessible statewide to improve the quality of legal representation of children and parents in the dependency system (Nebraska Court Improvement Project, 2006, page 8).

The above-mentioned Nebraska Supreme Court Commission on Children in the Courts was created in 2005 by then-Supreme Court Chief Justice John Hendry to study the appropriate steps for the judicial system to undertake to insure that the court system is as responsive as possible for children who interact with, or are directly affected by the courts. The first priority of the committee was to research the effectiveness of the legal representation of children within the system, including developing standards and training protocols for lawyers who represent children in abuse and neglect cases and in cases involving juvenile delinquency. The Commission's Subcommittee on Guardian ad Litems released in 2006 new proposed Rules of Court for GAL representation,[24] and proposed changes to the Nebraska Rules of Professional Conduct. The report also called for a uniform fee structure and funding level across the state for GAL representation.

The Subcommittee's proposals ultimately led to the enactment of the court rule requiring initial and ongoing training for attorneys in order to be appointed as a GAL, as well as the Supreme Court Guidelines for GAL representation.[25] However, the Guidelines create a loophole on this training provision, as they provide that "if the judge determines that an attorney with the training required herein is unavailable within the county, he or she may appoint an attorney without such training."[26] Moreover, the Guidelines do not have the force of court rules, and therefore are only advisory. Regarding the duties of the GAL, the Guidelines are limited in scope, giving some attention to the need

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[23] *CIP 2005 Reassessment*, p. 4, *supra* page 14.

[24] Neb. Sup. Ct. Commission on Children in the Courts, *Proposed Rules of Practice for Guardians ad Litem for Juveniles*, 2006, *available at*:
http://ccfl.unl.edu/projects_outreach/outreach/judicial_commission/docs/galproprulesofprac.pdf.

[25] Neb. Ct. R. § 4-401. Guidelines are available at http://www.throughtheeyes.org/files/gal_guidelines.pdf.

[26] Neb. Ct. R. § 4-401.

to meet with the child, inquire of knowledgeable persons, make recommendations to the court, and participate in hearings. Beyond that, GALs merely have the duty "to provide quality representation and advocacy." The Guidelines do not spell out what that means.

As an outgrowth of the Commission, in 2006 the first Children's Summit: Improving the Court System for Abuse/Neglect and Foster Care Children was held, with more than 200 stakeholders in attendance. The goal of the meeting was to implement best court practices based on the National Council of Juvenile and Family Court Judges *Resource Guidelines* (1995). The attendees of the summit voted for the new name of the project to implement best practices to be: Through the Eyes of the Child. Through this initiative, more than 30 local teams develop an action plan to implement the best practices in local court practice. The local teams consist of a lead judge, team coordinator, and stakeholders that may include former foster youth, attorneys, social workers, mediators, mental health workers, foster parents, Court Appointed Special Advocates (CASA), Foster Care Review Board (FCRB) members, and/or tribal representatives. The second Children's Summit was held in 2009.

Also in 2006, the Supreme Court's Minority Justice Committee released a report on fee structures for indigent representation (including the funding of GALs). This study also found that stakeholders from across the state felt that the funding of GAL services was uneven and there should be a uniform baseline amount for the funding of indigent services across the state.

In February 2009, the National Council of Juvenile and Family Court Judges (NCJFCJ) conducted an assessment of the Separate Juvenile Court of Lancaster County (NCJFCJ, 2009). The study expressed concern that GALs appeared to be less involved in dependency proceedings than the county attorneys and parents' attorneys, and that the GALs most often agreed with DHHS case plans. The evaluators were "concerned about the level of advocacy by the Guardians ad Litem if there is a consistent rubberstamping the recommended case plan by the agency and not inquiring about how the case plan meets the safety, permanency, and well-being of the children they represent." The NCJFCJ team recommended that the court hold GALs to the Supreme Court standards for GAL representation and "take active steps to ensure that the parties have access to competent representation." The assessment team also expressed concern with the funding system by which the county paid contracted attorneys and firms a flat fee per case, regardless of the complexity of the case or the amount of time needed by the GAL to properly represent the child. As a result of this study, the Lancaster County Separate Juvenile Court asked the County Board of Commissioners to end the practice of the flat-fee contract system and move to a system of pure judicial appointments and payment of an hourly rate. Lancaster County stakeholders interviewed for this assessment – including those who worked at contracted firms – universally expressed support of the move to an hourly system, as they believed that it would allow GALs to spend more time on their cases and meeting with their clients, but agreed that it was still to early to see any improvements.

Most recently, in October 2009, the national children's advocacy organization First Star, based in Washington, D.C., released a report ranking the states' quality of legal representation for abused and neglected children. Nebraska received a score of 76 out of 100, or a grade of C (First Star, 2009). Problems identified in the evaluation included the vagueness of Nebraska statute as to the role of the

GAL in dependency proceedings (i.e. should the GAL represent the child's case goals in a client-directed manner?) and the loophole in the Supreme Court's GAL Guidelines on training. This grade was a slight improvement from the First Edition of this report card, when Nebraska received a score of 73 and the identified problems were again the role of counsel, and also problems with the child's right to continuity of counsel (appointment of counsel not guaranteed throughout appellate process and all subsequent reviews) and the lack of statutory right for the child to be present at her court hearings. The First Edition called for the Nebraska Legislature to require that: (1) all counsel be independent and client-directed; (2) a child be present in all child protective, foster care, or dependency hearings; and (3) the appointment of the same legal counsel last throughout the appellate process and all subsequent reviews.

Other studies touching on the Nebraska GAL system that are presently underway include: (1) a study by the University of Nebraska's Center on Children, Families, and the Courts of youth participation in Lancaster County 3(a) proceedings; (2) the creation of a documentary featuring current and former foster youth speaking of their experiences with GALs, and (3) a study by the Supreme Court's Commission on Children in the Courts on the causes of continuances in juvenile court.

How an Abuse or Neglect Case Gets to Dependency Court in Nebraska

Investigation and/or Removal

The dependency process begins when someone reports suspected child abuse or neglect to the Department of Health and Human Services (DHHS), or when law enforcement makes an emergency removal of a child from a home without a court order. These two approaches start differently but converge at the first contact with the juvenile court. (See flow chart at Attachment J.)

The standard used for law enforcement emergency removal is when the child is "seriously endangered in his or her surroundings and immediate removal appears to be necessary for the juvenile's protection."[27] Typically, these law enforcement removals occur in situations where law enforcement responds to a call about a crime in progress (usually at a home) or when police conduct a search and seizure, and there are children in the home. Upon removing the child, law enforcement must deliver the child directly to DHHS, which makes a temporary placement of the child in the least restrictive environment.[28] Law enforcement also must make a full written report to the County Attorney's Office within 24 hours of removal, so that the county attorney can file a request with the court for an order of temporary custody.[29] If the court does not sign the temporary custody order within 48 hours of law enforcement's removal of the child, the child must return to the parent or legal guardian.[30]

On the other hand, if this process begins due to an abuse or neglect report to DHHS, the agency proceeds with its investigation, and should do so in a "timely" manner.[31] If the allegation is

[27] R.R.S. Neb. § 43-248(3).
[28] R.R.S. Neb. § 43-350(4).
[29] *Id*, R.R.S. Neb. § 43-274(1).
[30] Neb. Admin. C. Tit. 390:7-003.02
[31] Neb. Admin. C. Tit. 390:4-008.01.

substantiated and the caseworker believes that the child's safety requires court protection, the caseworker submits an affidavit to the County Attorney's Office, so that the county attorney can file a request with the court for an order of temporary custody as well as a petition against the parents.[32] Only the county attorney can initiate proceedings in juvenile court.[33] The DHHS worker can recommend in the affidavit that the child be removed from the home, or that the child remain in the home for supportive services. However, DHHS is not authorized to [should not] remove a child prior to the signing of the temporary custody order, unless law enforcement has made the determination to remove the child; the child is a state ward and is in a harmful or dangerous situation; or a voluntary placement agreement is completed.[34] The Nebraska Health and Human Services Manual for caseworkers allow the Department to deviate from the usual investigatory protocols when the child is in imminent danger.[35]

The judge signs the temporary custody order *ex parte*, (outside the presence of the relevant parties and their attorneys), and under state law, if the child has been or will be removed from the home, the GAL must be appointed at this time.[36] The judge may not order the child removed or to remain removed from the home unless the court determines that reasonable efforts have been made to preserve the family and to prevent or eliminate the need to remove the child from his or her home,[37] or there are aggravated circumstances that remove the requirement to demonstrate reasonable efforts.

State law calls for the court or caseworker in charge of the child to develop a case plan for the child and his or her family "immediately following" the child's removal from the home.[38] The case plan provides the safety, well-being and permanency goals for the child and states what the parents and the agency must do so the child remains in foster care no longer than is absolutely necessary. State law does not define "immediately," and through our interviews we learned that in at least one county, it can take up to 90 to 120 days to have the case plan developed and implemented, especially if the child's parents dispute the charges or the plan and refuse to engage in services voluntarily. A different Nebraska statute calls for a case plan to not be prepared until after an adjudication hearing, which can be up to 90 days after the filing of the petition.[39] It is unclear which statute controls DHHS activity in developing the child's case plan, but it was reported to us by multiple stakeholders, that at least in some disputed cases, the case plans may not be created until three months after the child's removal, resulting in delays in provision of services to the family and delays in the child's possible reunification with his parent or caregiver or possible adoption.[40]

State law requires that the GAL meet with his or her client(s) within two weeks of the initial appointment and also speak with the child's caseworker and foster parent or caretaker. The statute,

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[32] R.R.S. Neb. § 43-274(1)
[33] *In re Valentin V.*, 674 N.W.2d 793 (Neb. Ct. App. 2004)
[34] Neb. Admin. C. Tit. 390:4-007.02.
[35] Neb. Admin. C. Title 390:4-006.
[36] R.R.S. Neb. §43.272.01.
[37] R.R.S. Neb. § 43.283.01(2); *State v. Kathleen M. (In re Andrew M.)*, 643 N.W.2d 401 (Neb. Ct. App. 2002)
[38] R.R.S. Neb. §§ 43-1311, 43-1312(1).
[39] R.R.S. Neb. § 43-285(2).
[40] It appears that § 43-1311 provides that children should still have a service plan implemented quickly, even if the parents' plan is delayed.

however, makes it optional that the GAL consult with other individuals who "may have information or knowledge about the circumstances which brought the juvenile court action," including biological parents, physicians, psychologists, teachers, and clergy members.[41]

Filing of the Petition, Pre-Hearing Conference, and Temporary Custody Hearing

After the court signs the temporary custody order, the petition is formally filed with the court by the county attorney's office.[42] If the child is not removed from the home, the GAL must be appointed no later than this point in the process.[43] Although petitions in juvenile delinquency and status offense cases must be filed within 48 hours of a youth being removed to state custody,[44] there is no similar timeline requirement for abuse and neglect 3(a) petitions. However, stakeholders reported that in almost all cases, the petition is filed at the same time or no later than a day after the request for the temporary custody order.

Once the petition is filed, the case is set for an initial temporary custody hearing to determine if the child needs to remain out of home. The parent or parents are also appointed an attorney, if they cannot afford one, prior to this hearing. If there are two parents in the case, each parent is appointed a separate attorney.

Conferences and Hearings

Prehearing Conferences

Immediately prior to the temporary custody hearing, the parties have the option of meeting informally with a mediator or facilitator before appearing in court for the temporary custody hearing.[45] This meeting is known by a multitude of different names from county to county, including Pre-Hearing Conference, Facilitated Conference, Pre-Trial Conference, or Team Meeting. The purpose of this optional and voluntary mediation is to "gain the cooperation of the parties, to offer services and/or treatment, and to develop a problem-solving atmosphere in the best interest of the child involved in the juvenile court system."[46] These meetings also are an opportunity to explain the process to the parent, allow time for parents or relatives to identify possible kinship placements for children, identify putative and/or non-custodial fathers, to establish paternity, and to identify whether a child is covered by the Indian Child Welfare Act (ICWA). Most of the time, for the convenience of the parties, these pre-hearing conferences are held in the courthouse in a private conference room prior to the temporary custody hearing, but on occasion they are held in a different physical location a day or two before the temporary custody hearing. In addition, two judges interviewed from different counties indicated that they prefer to schedule the conference to occur after the initial temporary custody hearing, usually within 10 days to two weeks, because they feel that it is a more useful and meaningful facilitation when the parents'

[41] R.R.S. Neb. § 43-272.01(2)(d).
[42] Neb. R.R.S. § 43-274(1).
[43] Neb. R.R.S. §43-272.01(1).
[44] Neb. R.R.S. § 43-275.
[45] R.R.S. Neb. § 43-247.01.
[46] Id.

attorneys and GALs have had a chance to receive and review documents and meet with their client prior to the meeting.

Required participants at pre-hearing conferences include the parent, guardian, or custodian of the child; the attorney(s) for the parent(s); the GAL; the county attorney; and the DHHS caseworker.[47] Others who may attend the conference, but who are not required to be present, include the child, if age appropriate; extended family members and family friends; the CASA; service providers; and foster parents. In at least one county surveyed, the court requests a CASA at the same time a GAL is appointed and it is mandatory for the CASA to attend the pre-hearing conference.

Not all counties use the pre-hearing conferences, according to the stakeholders with whom we spoke, and the degree of formality and cooperation in the meetings varies widely in practice. A few GALs referred to the pre-hearing conferences as "hug fests" or "hand holding" events. Some GALs questioned the efficacy or the need for them. Several stakeholders who were supportive of these conferences in concept pointed out although the statute gives courts the option of using them, it states that "all discussions taking place during such facilitated conferences, including plea negotiations, shall be considered confidential and privileged communications." Some GALs who also work as parents' attorneys express a concern that parents may be making damaging admissions at these conferences, and they advise their clients to sit in the room but not speak or participate, which reduces the efficacy of the meeting. On the other hand, others who also work as parents' attorneys expressed mixed emotions about these conferences, stating that they give parents an opportunity to have a say in where their child is placed and in the evolving child welfare case, and increase parents' buy-in in the process and case planning. These attorneys stated these conferences could theoretically increase the likelihood of success and reunification.

As part of the evaluation, judges were asked about their views of using pre-hearing conferences. All but one judge said that pre-hearing conferences were beneficial. Several judges commented that pre-hearing conferences jump start the process and help parents to get services more quickly. One judge stated that pre-hearing conferences had sped up the process in his/her county by 60 to 90 days in every case and that there had been a 50% increase in parental admissions at the time of the first appearance. This judge observed that pre-hearing conferences treat parents a partners and as resources for problem solving, not the problem. One judge, however, commented that pre-hearing conferences are a "waste of time" and a "triumph of form over substance." This judge raised a number of concerns about pre-hearing conferences, including that DHHS cannot get services in place quickly enough because the Department insists on waiting 60 days to do an assessment and, as a result, "there's not much to discuss at a pre-hearing conference. "It just means that there's more time between adjudication and disposition while we wait for DHHS to catch up with us." Another judge made a similar statement, saying that "things move faster than what DHHS wants and they are struggling to keep up with the plans and get services in place for the child and the family." Two judges raised issues about GALs resisting pre-hearing conferences because they are more work and the contract attorneys

[47] "Pre-Hearing Conference Protocol," drafted and approved by the *Through the Eyes of the Child Initiative* Protocol Development Committee, available at www.throughtheeyes.org/resources/prehearing_protocol.php.

are not going to be paid any more for their time. One judge stated, "They [GALs and parents' attorneys] started grumbling that we were making them do too much work."

Despite some reservations about the efficacy of pre-hearing conferences, the outcome of these meetings appear to allow the parties to develop an interim plan for the child's placement, and identify services that the child and family need. This plan is presented to the court minutes later at the temporary custody hearing, except of course in the courts that schedule the conference for after the hearing. A few stakeholders who work as GALs and parents' attorneys expressed concern that the pre-hearing conferences circumvented the opportunity to have a fulsome temporary custody hearing with due process, the ability to cross examine, or to have the judge decide disputes instead of a mediator.

Despite some hesitation and resistance on the part of some judges, GALs, and parents' attorneys, most stakeholders thought that pre-hearing conferences, when done correctly and with useful information about the children and their families, resulted in better outcomes for children and their families. A recent evaluation by the Through the Eyes of the Child Initiative found that the surveyed counties[48] that had implemented pre-hearing conferences had reduced the time from removal of the child to adjudication, disposition, and permanency. The study compared cases that utilized pre-hearing conferencing with the cases that did not, and found that cases with the mediated conferences reached adjudication about a month faster, and reduced the time between adjudication and disposition by a week.[49] This finding comports with studies in other states of similar conferences. However, multiple stakeholders noted that while the court process has become more efficient and timely, in some counties there is a lag by DHHS in getting the needed services in place for the family, and so the time from filing of the petition to service delivery is no different, in their opinions.

Temporary Custody Hearings

The temporary custody hearing is not a final adjudication on the merits of the actual petition; rather, it is an interim hearing to determine whether removal of the child remains necessary (or in the cases of children not removed from the home, whether ongoing legal custody by DHHS is necessary).[50] Statute requires that the county attorney must prove the allegations of the petition by a preponderance of the evidence,[51] and any temporary custody orders resulting from this interim hearing are appealable as a final order.[52] This initial interim hearing is called different names from county to county in Nebraska. It may be called a Temporary Custody Hearing, Detention Hearing, First Hearing, or Pre-Adjudication Hearing.

There is no statutory requirement regarding the timeframe by which the temporary custody hearing must occur. Stakeholders variously reported that they are held within 10 days or 14 days, and a

[48] The counties that were evaluated included Adams, Clay, Dawson, Filmore, Madison, Nuckolls, Scottsbluff, Seward, and Webster.
[49] "Pre-Hearing Conferences and their impact on case progression," Through the Eyes of the Child Initiative, available at www.throughtheeyes.org/prehearingconfstudy.php.
[50] R.R.S. Neb. § 43-254.
[51] *In re Interest of Corey P. et al*, 697 N.W.2d 647 (Neb. 2005).
[52] *In re Interest of R.G.*, 470 N.W.2d 780 (Neb. 1991).

pamphlet for birth parents that the evaluators reviewed stated that the hearing is held within "a few days" of removal. Four of the five counties surveyed reported moving to a system whereby temporary custody hearings are heard once a week on a specific day and time (e.g. Tuesdays at 10:00 am). As a result, depending upon the day of the week a child was removed from his home and/or when the paperwork was filed with the court, the hearing may be conducted in as short a period of time as three days or as long as ten days after the removal.

Most of the stakeholders interviewed by the evaluators stated that doing all temporary custody hearings one day a week is preferable to holding them as children came in to the child welfare system. The perceived benefits were: it is easier for anyone in contact with the family (including law enforcement) to tell parents, relatives, and/or children's caregivers when the hearing is going to be; parents are more likely to appear for the initial hearing with this notice; and there are fewer continuances. Because judges are assigned to two or three rural counties in one week, the once-a-week hearing schedule evolved long ago as an acknowledgment of the reality of the judge's schedule. An additional perceived benefit of once-a-week temporary custody hearings is that the breathing space of a little more additional time can provide the GAL a chance to meet with the child and speak with caseworkers to obtain more information about the child and his or her needs prior to the hearing.

One caveat raised by some stakeholders about the once-a-week temporary custody hearing schedule is that in counties where there may be multiple new cases in a week, it can be difficult for GALs and the court to spend meaningful time on any individual hearing; in counties with multiple juvenile court judges, GALs must be careful not to be scheduled in such a way that they run from one courtroom to the other. One stakeholder noted that although their juvenile court proceedings are scheduled at a designated time, the hearings occur at the same time as general adult criminal court proceedings in the county, and as a result, children are exposed to prisoners walking down the courthouse hallway in chains, handcuffs, and prison jumpsuits.

At the temporary custody hearing, the court advises the parties of their rights, and explains the purpose of the proceeding and the process. The allegations in the petition and the affidavit are reviewed, and caseworkers and any other witnesses are called to testify and it is expected, based on best practice, that the GAL and the parents' attorney cross examine these witnesses. "Relaxed" rules of evidence may be used at this hearing.[53] The parents also may testify, at the discretion of the parents' attorney(s). The county attorney bears the burden of proof.[54] The court also must determine whether reasonable efforts have been made by DHHS to preserve the family prior to the child's removal or to eliminate the need to remove the child, unless there are extraordinary circumstances that remove the need to make reasonable efforts.[55] If the court finds that the county attorney has not met his burden, or that reasonable efforts were not made, the petition is dismissed, and if the child has been removed

[53] *In re Interest of R.G.*, 470 N.W.2d 780 (Neb. 1991)
[54] *In re Interest of Stephanie H.*, 639 N.W.2d 668 (Neb. App. 2002).
[55] R.R.S. Neb. § 43-283.01(2); *In re Interest of DeWayne G. Jr. & Devon G.*, 638 N.W.2d 510 (Neb. 2002); *State v. Kathleen M. (In re Andrew M.)*, 643 N.W.2d 401 (Neb. Ct. App. 2002)

from the home, the child is returned to the custody of her parents. If the court finds that the county attorney has met her burden, and that reasonable efforts were made to preserve the family, the hearing progresses to a discussion of the service plan (if any) for the child and family which includes plans for parent-child visiting. The next hearing, the adjudication hearing, is scheduled.

The applicable statutory requirements of GALs at this stage are to attend the hearing,[56] "defend the legal and social interests" of the child,[57] and make recommendations to the court regarding the temporary and permanent placement of the child.[58] State law also requires that the GAL meet with the child within two weeks of appointment.[59] The GAL Guidelines promulgated by the Nebraska Supreme Court call for a GAL to meet with the child "prior to any hearing at which substantive issues affecting the juvenile's legal or best interests are anticipated to be addressed by the court," which would seem to include temporary custody hearings. These guidelines, however, are advisory, and surveyed stakeholders agreed that most GALs do not meet with the child prior to the temporary custody hearing, but usually do thereafter. (The findings on the meeting between GALs and their child clients are discussed later in this report).

The general practice in the surveyed counties is that in almost all cases, children do not attend the initial temporary custody hearing. Several judges we interviewed reported that their practice is that if the parent admits the charges at the temporary custody hearing, a disposition hearing is scheduled and there is no adjudication hearing: in effect, the temporary custody hearing ends up becoming the adjudication hearing.

Adjudication Hearing

The adjudication hearing must be held within 90 days of the filing of the petition, unless there is a showing of good cause.[60] At this trial stage, the court determines whether the allegations in the petition concerning the child are proven by a preponderance of the evidence.[61] At the adjudication hearing, after an advisement of rights and an explanation of the proceeding,[62] the court hears testimony from caseworkers, and can hear testimony from the child(ren), the parent(s) or guardian(s), other witnesses, and experts (if any).[63] "Relaxed" rules of evidence may be used at this hearing.[64] The child's parent or guardian has the right to not testify if the testimony might tend to prove his or her guilt of any

[56] R.R.S. Neb. § 43-272.01(2)(a)
[57] R.R.S. Neb. § 43-272.01(2)(b).
[58] R.R.S. Neb. § 43-272.01(2)(f).
[59] RRS Neb § 43-272.01(2)(d)(i).
[60] R.R.S. Neb. § 43-279.01(3). This statute regarding the timeframe has been found tobe not mandatory. *In re Interest of Brandy M.*, 550 N.W.2d 17 (Neb. 1996).
[61] R.R.S. Neb. § 43-278. If the child is found to be an Indian child, the standard of proof must be in compliance with the Indian Child Welfare Act.
[62] R.R.S. Neb. § 43-279.01(1).
[63] A child may testify in chambers at an adjudication or termination hearing if the state or the GAL (a) gives notice of the request to the parents or their attorney prior to the hearing and (b) show that the presence of the parents during the child's testimony would be harmful to the child. *State v. Cheryl S. (In re Interest of Danielle D.).*, 595 N.W.2d 544 (Neb. 1999).
[64] *In re Interest of R.G.*, 470 N.W.2d 780 (Neb. 1991)

crime.[65] The parent or guardian may make an admission of the petition, answer no contest, or deny all or any part of the allegations in the petition.[66] In the case of a denial, the court hears evidence presented by all parties.[67] If the court finds the allegations have not been proven by a preponderance of the evidence, the petition is dismissed and the child is returned to the home.[68] If the judge finds the allegations have been proven, the petition is sustained and the court orders DHHS to develop a case plan for the child and family that includes information on the care, placement, services, and permanency to be provided to the child.[69] This plan is presented at the dispositional hearing, which must be held within 30 days of the adjudication hearing.[70]

The GAL has the power under the law to present evidence and witnesses, and cross-examine witnesses at the Adjudication Hearing.[71] The Supreme Court guidelines also suggest that the GAL advocate for the youth to be present, as the GAL should for all hearings, and take necessary steps to ensure the child's attendance.[72]

Disposition Hearing

The disposition hearing is held no more than 30 days after the adjudication hearing.[73] Several stakeholders, including judges and GALs, in different counties reported a local practice that if the parents admit the charges prior to the scheduled adjudication hearing, usually at the temporary custody hearing, then no adjudication hearing is held and instead a disposition hearing is scheduled.

At this hearing, the court reviews the DHHS case plan, and either orders it implemented or modifies it.[74] The GAL, like any party to the matter, has the right to object to the plan. If the court sustains the objection, the judge may modify the plan, order an alternative plan to be developed, or implement another plan.[75]

As with the other hearings, the court should advise the parties of their rights and explain the purpose of the hearing. There should again be a review as to whether DHHS has made or continues to make reasonable efforts to keep the child in her parent's home, and whether it would be contrary to the child's health, safety, or welfare to be returned home (even if DHHS continues to have legal custody and supervision of the child).[76] If the child is to remain out-of-home, the court makes a written determination of the facts on which the decision is based, and advises the parent(s) that if they do not cooperate with the case plan, and/or correct the conditions which led to the child's placement in foster

[65] R.R.S. Neb. § 43-279.01(1)(c).
[66] R.R.S. Neb. § 43-279.01(2).
[67] R.R.S. Neb. § 43-279.01(3).
[68] R.R.S. Neb. § 43-279.01(4).
[69] R.R.S. Neb. § 43-285(2).
[70] R.R.S. Neb. § 43-285(3).
[71] R.R.S. Neb. § 43-272.01(2)(e).
[72] GAL Guidelines, V.D.4.
[73] R.R.S. Neb. § 43-285(3).
[74] R.R.S. Neb. § 43-285(2).
[75] R.R.S. Neb. § 43-285(2).
[76] R.R.S. Neb. § 43-283.01(2).

care, they risk the termination of their parental rights. A review hearing is scheduled for no more than six months after the disposition hearing to determine the status of the child and his parent(s). However, if the court determines that certain aggravated circumstances are involved with the child's placement in foster care, the permanency hearing is scheduled within 30 days and can include termination of parental rights.[77]

Review Hearing(s)

The initial review hearing is to occur within six months of the dispositional hearing, and then every six months thereafter.[78] At review hearings, the court reviews: the status of the case, including the progress made by the parent(s) in complying with the case plan, whether DHHS has provided the services that the court ordered at the dispositional hearing, and the case plan and any changes needed to the case plan; the court acts to ensure the child is spending as little time as possible in foster care.[79] One instance in which a review hearing can be held sooner if the citizen Foster Care Review Board requests a hearing in writing, specifying the reasons for the review.[80]

For the child to remain out of home and in foster care, the court must make a written determination that returning the child to her home would be contrary to her welfare and that reasonable efforts to reunify the family have been made by DHHS.[81]

The GAL must submit to the court a written report and recommendation prior to the review hearing.[82] Under the Supreme Court guidelines, the GAL is expected to meet with the child prior to the hearing to solicit his position on the issues to be reviewed; review all documentation and reports related to the child, including but not limited to DHHS reports, therapist/health provider reports, and educational information; present evidence, make objections to the case plan or evidence proffered by other parties; and advocate for the child's presence at the hearing.[83]

Actual practice at review hearings will be discussed at pages 120-24.

Movement Between Foster Homes

Any time a child is to be moved from one foster care placement to another, DHHS is required to file a report and a notice of placement change with the juvenile court and send notice to all parties at

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[77] R.R.S. Neb. § 43-283.01(5). Aggravating circumstances include, but are not limited to: abandonment of the child, torture, chronic abuse, or sexual abuse; or the parent has "(i) committed first or second degree murder to another child of the parent; (ii) committed voluntary manslaughter to another child of the parent; (iii) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (iv) committed a felony assault which results in serious bodily injury to the juvenile or another minor child of the parent;" or the parental rights of the parent to a sibling of the juvenile have been terminated involuntarily."

[78] R.R.S. Neb. § 43-278.

[79] *Id.*

[80] R.R.S. Neb. § 43-1313.

[81] R.R.S. Neb. § 43-1315.

[82] R.R.S. Neb. § 43-272.01(2)(g).

[83] Supreme Court Guidelines, III.C.5, V.B.1, V.C.1-2, V.D.4.

least seven days before the placement change.[84] The court may order a hearing on the placement change, though surveyed stakeholders reported that hearings seldom happen. Often, GALs and the court only learn about placement changes after the fact. Of note is the statutory provision that states that a hearing is not required when the foster parents request that the child be removed from their home.[85]

Permanency Hearing

The permanency hearing is to be held within 12 months of the dispositional hearing.[86] The permanency hearing is similar to the review hearing in all aspects, but with a focus on the child's permanent living situation. At the permanency hearing, the court decides whether the parent(s) and child are receiving and participating in DHHS services and sets a permanency goal for the child.[87] After the court advises the parties about their rights and explains the proceeding, the court reviews the progress towards permanency for the child – whether it be reunification, adoption, or independent living.[88]

As described in greater detail under Area of Inquiry #12 (see page 85), a growing percentage of children in the five Nebraska counties selected for this evaluation are exiting to independent living without the benefit of permanent families in each of the five counties surveyed. Despite consistent research that documents the poor outcomes for youth who age out of foster care to live independently (Courtney, et al., 2007; Pecora, et al., 2006), the data indicate significant increases in the number of Nebraska youth exiting to independent living between FY 2003 and FY 2008 (see Table 6). These time periods were chosen in order to examine differences over a five year period, based on the most recent data (FY 2008).

Table 6. Number and Percentage of Youth Exiting Foster Care to Independent Living (IL) in the Five Surveyed Counties: FY 2003 and FY 2008

	FY 2003		FY 2008	
County	**Number exiting to IL**	**% Exiting to IL**	**Number exiting to IL**	**Percentage exiting to IL**
County A	103	11%	100	10%
County B	26	7%	69	12%
County C	1	0.2%	2	6%
County D	2	3%	4	7%

[84] R.R.S. Neb. § 43-285(3).
[85] R.R.S. Neb. § 43-285(3).
[86] R.R.S. Neb. § 43-1312(3).
[87] *Id.*.
[88] *Id.*

	FY 2003		FY 2008	
County	**Number exiting to IL**	**% Exiting to IL**	**Number exiting to IL**	**Percentage exiting to IL**
County E	6	5%	12	8%

At the permanency hearing, the court also reviews the needed services and the timeframes to achieve permanency for the child. DHHS is expected to have a concurrent plan for reunification. While preparing to reunify the child with her family, the Department must also prepare for adoption or guardianship; priority, however, is required to be given to reunifying the family (assuming there are not aggravated circumstances per R.R.S. Neb. §43-283.01(4)).

Termination of Parental Rights Practice

The County Attorney or the GAL may move the court for termination of parental rights so that a child may be freed for adoption. An order terminating a parent's parental rights must be supported by clear and convincing evidence.[89] Although strict rules of evidence do not apply at an adjudication or dispositional hearing, a proceeding to terminate parental rights must employ fundamentally fair procedures satisfying the requirements of due process.[90] While GALs have the right (and ability) to institute TPR proceedings, the vast majority of stakeholders surveyed indicated that GALs rarely or never initiated TPRs. Reasons cited by stakeholders for the failure to do this included: the time, cost, and energy involved in initiating TPRs and resulting trials; a feeling that it should be up to HHS and the county attorney to decide when to terminate parental rights; and a culture in the community that parents' rights should not be terminated so long as they are making an effort to improve, regardless of the federal law requirements that a TPR petition be filed if a child has been in foster care for 15 of the most recent 22 months.[91] The issue of who files a petition to terminate parental rights is discussed in greater detail under Area of Inquiry #12.

Findings Specific to Each Area of Inquiry

1. How well do the current structure and funding mechanisms for guardian ad litem representation operate?
5. How are resources allocated for the guardian ad litems in Nebraska?

The following information was gathered through the process audit and through interviews with court administrators in the selected counties.

[89] Neb. R.S.S. § 43-279.01(3); *State v. J.R.*, 479 N.W.2d 126 (Neb. 1992).
[90] *In re Interest of Tabitha J.*, 5 Neb. App. 609, 561 N.W.2d 252 (1997).
[91] Pub. L. 105-89 § 103(a)(3)(E).

Appointment of the GAL

In interviews, court administrators and other stakeholders described the process used in appointing GALs and providing GALs with court documents in each of their counties. Table 7 summarizes this information.

Table 7. County Processes for Appointing GALs and Providing Court Documents

County	GAL Appointment Process	Provision of Court Documents
County A	The courts use the contracted GAL firms. If the firms have reached their limit of cases, the court administrator refers to a list of attorneys. Interested attorneys call one of the judges and their bailiffs refer the attorneys to her; each judge keeps an independent list of attorneys and require attorneys to have a good knowledge of the dependency system; judges wish to observe new attorneys for a couple of weeks in court and have them shadow current GALs; there is a new court rule requiring basic and advanced GAL training before being appointed.	Once counsel for attorney is known, the order is typed and the files are put in each attorney's mailbox at the court. Attorneys pick up their own documents.
County B	At present, the general process is that the court administrator emails the temporary custody order to the 10 contract attorneys; they respond as to whether they have party or time conflicts; the court administrator determines who is up next for appointment based on who is not conflicted out; if the 10 contract attorneys are filled up or there is a conflict, she contacts non-contract attorneys. The county is moving away from this process as the contracts for GAL services expire. When the contracts expire, the county will use a pure system of rotating among the list of GALs and/or having the judge select the GAL in certain cases where special skills are needed.	GALs receive the court documents before they are appointed, all provided electronically. The Department sends reports to parties. Judges ask for the submission of these reports 3 to 5 business days before the hearing.
County C	The juvenile clerk maintains a list of attorneys who have asked to be included and have received the required training for GALs;	Usually a few days before the hearing. The clerk mails the documents or puts them in their mailboxes at the

County	GAL Appointment Process	Provision of Court Documents
	she calls or emails the attorneys on the list to see who is available.	courthouse. Sometimes, the clerk faxes or emails documents.
County D	The juvenile court clerk maintains list of attorneys who have asked to be included and who have received the required training for GALs; the court clerk contacts the GAL by phone on the day the judge signs the removal order; the court magistrate provides all documents for the first hearing.	GALs receive court documents on the same day that they are appointed. DHHS send its reports directly to the GAL.
County E	The clerk magistrate maintains list of attorneys who have asked to be included, and who have received the required training for GALs; the clerk contacts the GAL on the list whose "turn" it is to be appointed, if no response, continue down the list. On occasion, the judge will appoint a specific GAL to the case depending upon the facts of the case.	GALs sent court documents when they are appointed.

Judges were asked if there is an adequate number of GALs in their counties with the necessary skills and knowledge. Of the judges who responded to this question, five gave an unqualified "yes." One said, "I am blessed in [this county] with an exceptionally good bar, attorneys with 10 to 20 years experience levels." Another said, "yes – I just can't appoint them all." Four judges said that there was a sufficient number but whether they do the job adequately and with the requisite passion was another question. One said that not all those doing GAL work had "an interest or an ability to represent kids." Two judges said that there were an adequate number of skilled and knowledgeable attorneys but their counties could use more. Another said that the county is "in pretty good shape." One judge said that there were not adequate numbers of GALs, especially given that one case may include a sibling group of eight.

Judges also were asked about their thought process in appointing attorneys. The judges discussed the qualities that they look for in attorneys who are on private attorney lists or who are used when the contract GAL firm is unable to take a case. Among the comments that judges made were:

> "Most important, someone who will vigorously perform their lawyering role on behalf of OUR children."

"I just want someone who is going to find out as much as possible about the child and family and do what the statute requires them to do."

"I look for someone reliable and who will do their own independent research, who will meet with the child, not necessarily someone who agrees with me but someone who has good sense and critical thinking in assessing the needs of children and will report to the court. I give a lot of thought to who I'm going to appoint, especially in the knotty cases."

"I don't want an attorney who fights everything in court for the sake of fighting it because that's what attorneys do. I want someone who can work with the others in the courtroom."

The judges also identified a range of attributes that they look for in GALs (see Table 8).

Table 8. Judges' Reports: Desired Attributes of GALs

Capacity	Knowledge	Skills
➢ Interested in the work ➢ Maturity ➢ Practicality ➢ Time to work on the case ➢ Work ethic to focus on the child ➢ Not afraid to challenge the county attorney and DHHS ➢ Ability to not over-react or under-react ➢ Has life experience	➢ Knowledge of the law ➢ Understanding of child development ➢ Knowledge of child abuse/neglect	➢ Ability to relate to children ➢ Courtroom skills ➢ Trial skills ➢ Willingness to file motions, introduce evidence, and make objections ➢ Demonstrated record of performance either from personal experience or legal skills ➢ Ability to move around the courtroom and be flexible ➢ Ability to make a good record in trial in case there is an appeal

Several judges stated that they specifically chose highly experienced attorneys when the case is "hairy," "difficult," and "involve extreme child abuse." One judge indicated that he/she has a bilingual attorney for Spanish speaking children and parents; two expressed a strong desire to have such an attorney available to him/her. Another stated that he/she will appoint attorneys with special skills when there is sexual abuse and the case is complicated, although he/she noted that he/she "tries to spread the hard cases around."

The process audit and interviews indicated that resources for guardian ad litems are allocated by each county according to its regular budgeting process. In interviews, several judges expressed concerns about the costs to the counties of the GAL program.

A Statewide Entity to Oversee GAL Services?

In interviews, judges were asked about their thoughts on a statewide entity that would be responsible for certification, training, payment and oversight of GALs. Only two judges said that they would certainly support this concept. These judges said:

> "I am a big fan of the idea. . . . You get dedicated attorneys who care about the issues, relatively manageable caseloads and a steady salary instead of worrying about billable hours."

> "Would be great; court costs are crippling the county."

Some judges said that they would need to know more:

> "I am an intrigued by the idea but would want to know more about how it works in other states and the pros and cons of different structures and models."

> "There is merit in it but you need a mix because you will exclude good practitioners who don't want to be full time GALs. A certification program would pose ethical issues because Nebraska does not allow lawyers to represent themselves as specialists."

Two judges said that the idea has some appeal because the counties could shift the tax responsibility to the state.

Six judges were opposed to the idea. Among their comments:

> "It would be a disaster because it takes everything out of the judges' hands and rural counties will be inflicted with the big county ways and the big counties will be inflicted with rural county ways."

> "I am not hip on that because I think you are trying to automate a system that is a practice of law."

> "[It would be] another incompetent state agency . . . it's better to have a judicial appointment system."

> "More bureaucratic thing."

> "Fat chance would be my first response. The state isn't going to take on that obligation."

Finally, three judges said that they had no definite opinion. One judge, for example, said, "I don't know if it would in and of itself make a difference or improve practice."

One key informant also expressed objections to a statewide entity, stating "all you are doing is inserting one more layer of bureaucracy between the GAL and the court appointment process." This individual said that judges should decide who is the GAL, stating that judges need the flexibility to dismiss and avoid appointing "lazy or bad GALs."

National Best Practice Standards

In the 35 years since Congress first required states to ensure that a "guardian ad litem" is assigned to each child who comes before a state dependency court (in exchange for federal funding for child abuse programs)[92], the states have developed a number of different approaches to structuring and funding GAL work. As the practice of child welfare law has become more sophisticated and complex over this period, states have dedicated greater attention and resources to the question of how to organize and deliver advocacy services to children who are alleged to be abused and neglected. Significantly greater attention has been paid to this area since 2001, when the American Bar Association designated the practice of child welfare law as a formal legal specialty and designated the National Association of Counsel for Children as the certifying body.

Child Welfare Law Offices

Across the country, there are essentially two different options for the provision of GAL services—the child welfare law office (or "CWLO") and the panel. Because of its ability to marshal economies of scale; ensure appropriate training and supervision; develop units of expertise in sub-specialties; offer interdisciplinary services; and provide programmatic accountability to the court, other stakeholders, and the public, the CWLO is generally considered the superior model. In those jurisdictions where a CWLO is not feasible for various reasons, a panel system can be effective, so long as critical features are in place.

A CWLO is "an entity organized and operated for the purpose of delivering legal services to children and youth. A CWLO must have substantial involvement/concentration in the practice of child welfare law (abuse, neglect, and dependency). A CWLO must employ a minimum of three full-time staff attorneys with substantial involvement in child welfare law" (National Association of Counsel for Children [NACC],2006).

Two extraordinarily successful examples of CWLOs are the Legal Aid Society's Juvenile Rights Practice (in New York City) (known as "JRP") and the Children's Law Center of Los Angeles (known as "CLC-LA"). Each agency is a 501(c)(3) non-profit organization and has a contract with the court system to be the primary source of court appointed attorneys for children in dependency matters. Unless there is a conflict of interest[93], the court will appoint the CWLO for every child; the CWLO in turn has its own system of individual case assignment to its staff attorneys. Staff attorneys are provided a salary and

[92] Child Abuse Prevention and Treatment Act, P.L. 93-247, § 4(B)(2)(G) (1974).

[93] In legal ethics, it is axiomatic that if one member of a law firm has a conflict of interest with respect to a particular client, then no member of the firm may work on the case. As a non-profit legal services organization, a CWLO is deemed to be one law firm and must maintain a client database and system for checking potential conflicts. Two typical, if uncommon, reasons for a CWLO to be unable to accept an appointment are prior representation conflicts and sibling conflicts. In a prior representation conflict, the CWLO represents a minor who is now herself a mother and is currently charged with maltreating her own child; the CWLO is barred from representing the infant. In a sibling conflict, the siblings differ on material factual issues in the case and/or have positions that make it impossible for the same GAL to advocate for both goals simultaneously. It should be noted that CLC-LA is responsible for the administration, training, and oversight of a panel of attorneys who accept conflict appointments in Los Angeles Dependency Court, but these attorneys are not on the CLC-LA staff.

other standard employment benefits. They participate in organized, regularized training programs before being assigned their first cases and ongoing, advanced trainings are offered (and sometimes required) as a matter of course. Formal supervision is provided to new attorneys, and ad hoc supervision is available to all attorneys regardless of experience level. Judges who are concerned about an attorney's performance can and do provide feedback to supervisors. Both organizations champion a model of interdisciplinary advocacy, employing social workers and education specialists in addition to lawyers. As with other CWLOs around the nation, JRP and CLC-LA also provide appellate advocacy for their clients and are regularly engaged in legislative advocacy at the local, state and federal levels, seeking to improve outcomes for their clients at the systemic level.

The Panel System

For those jurisdictions where CWLOs are not practical, a panel system can nevertheless provide excellent representation to children, so long as certain critical features are present. The best panel systems offer substantially similar structure, resources, and support to the attorneys who accept court appointments as are available to staff attorneys at CWLOs. Critically, the top panel systems are organized on a statewide basis or, in larger states, regionally. The most notable panel programs are those in Colorado, Connecticut, Massachusetts, and New York State.

Colorado's Statewide Panel System

Historically attorneys were appointed on an ad-hoc basis in each judicial circuit, in 2001 Colorado established a statewide entity to manage the delivery of legal services to children, the Office of the Child's Representative. The legislative intent was to create an independent agency within the judicial branch to improve and monitor GAL attorney services to children. No judge may appoint an attorney to represent a child in a dependency action in Colorado unless the attorney is certified by the OCR.[94] Each year, the Legislature appropriates funds to the OCR out of the general state fund. The statute that created OCR vests ultimate authority in a nine-member board; the board sets policy for the agency and hires the director. Across Colorado, approximately 200 attorneys are certified by OCR.[95] The OCR's current contract process includes a series of steps. The OCR first distributes an objective evaluation form to gather feedback on all OCR attorneys; the surveys are sent to all CASA agencies, court facilitators, court administrators, and judicial officers in all 22 judicial districts within the state. The survey results allow the OCR to review the competency and quality of attorney services as well as the validity of any concerns. The office then requires all attorneys, regardless of whether they have existing contracts or are new applicants, to complete an application. Every application is considered, as contracts are not automatically renewed. Prior to the commencement of the contract period, OCR Director and attorney staff visit each of the 22 judicial districts to assess attorney services in each

[94] Technically, nothing bars the court from appointing an attorney of its own choosing; however, state law does not provide a mechanism for a non-OCR certified attorney to get paid for this work. The only exception is if in a given judicial circuit there are not enough OCR certified lawyers to handle the intake of cases; nevertheless, a non-OCR certified attorney must still receive *pro hac vice* approval by OCR to be paid for an individual case.

[95] In addition to its panel system, OCR also sponsors and supports a CWLO in Colorado Springs, the El Paso County Office of the Guardian ad Litem. The director of this CWLO reports directly to the executive director of the OCR.

judicial district. This assessment includes meeting with the attorneys who are under contract with OCR, interviewing new applicants and meeting with court personnel, judicial officers, and CASA directors. In some instances, OCR meets with county attorneys and department of social services directors, as well as other community agencies involved in the protection of children. (OCR staff also use these meetings to discuss training needs in each judicial district.)

The OCR manages its statewide panel with an administrative staff of approximately eight FTEs. The annual budget for its administrative program is less than $800,000, which includes about $700,000 for personnel costs, $50,000 for operating expenses, and $40,000 for leased space. OCR's CWLO in Colorado Springs costs another $1.5 million to operate, which includes the salary for approximately 18 FTEs, operating costs, and leased space.

Connecticut's Statewide Panel System

As in Colorado, Connecticut for many years relied on a patchwork system of legal advocacy for children, until 2005 when the state established a Commission on Child Protection, designed to be an independent agency to improve and monitor attorney services for both children and parents in the dependency court. Many view the creation of the Commission to be the direct result of litigation brought by an association of Juvenile Court attorneys who sued the state over low compensation rates. (Jerome Frank Legal Services Organization, 2007). The Commission appoints the Chief Child Protection Attorney, who serves as the executive in charge of the agency's mission. While the Commission was initially housed within the state public defender agency for administrative purposes, since 2007 it has operated completely independent of any other state office, though its human resources, payroll, and IT functionality are conjoined with the public defender. The Connecticut General Assembly appropriates funds directly to the Commission for its administrative costs as well as to pay its contract attorneys for their legal work. The Commission contracts with over 250 attorneys, mostly solo practitioners, around the state.[96] The Commission has a multilayered process for ensuring that attorneys avoid any conflicts of interest and to assist attorneys with obtaining vacation and sickness coverage for their cases. In order to qualify for a contract with the Commission, attorneys must complete an application process that includes a background and reference check and a personal interview; current contractors are also evaluated and assessed on a regular basis. According to the Commission's 2009 annual report, in the most recent year only 36 of 51 applicants were awarded contracts, and 12 existing contract attorneys were not renewed. New contractors must complete a three day "pre-service" training course, and six additional, approved seminars during the first year of the contract; they are also required to work with a paid mentor attorney who assists them in the transition to child welfare practice. Renewing contractors must attend four approved seminars during the year. These "in-service" trainings are a blend of non-legal topics and updates on child welfare law and procedure.

The Commission's administrative expenses are slightly less than those of the OCR in Colorado. The FY 2008 budget (the most recent available) included administrative and operating costs of just over $750,000, which includes a staff of nine FTEs. (CCPA, 2009).

[96] The Commission also contracts with a small number of private firms and non-profit legal services agencies to provide legal services that are more in keeping with the CWLO model.

The Massachusetts Hybrid – CWLOs Plus Panel

Massachusetts has a hybrid between the CWLO system and the panel system, all administered by the Child and Family Law division of the state agency responsible for all indigent representation, the Committee for Public Counsel Services. CAFL runs seven small CWLOs throughout the state, each of which has fewer than 10 staff attorneys. The overwhelming majority of children in dependency cases are represented by approximately 900 panel attorneys, who are also certified by CAFL. In order to join the CAFL panel, attorneys must first apply for admittance to the CAFL training course, which is a five-day program covering substantive child welfare law as well as trial skills. Only those lawyers who successfully complete the training course are certified, and then only on a temporary basis pending a probationary period. In the probationary period, CAFL attorneys are assigned a paid mentor, who is an experienced member of the panel (Massachusetts Committee for Public Counsel Service, Peformance Standards, n.d.). (For more information about the mentoring program, see "Training and Supervision" below.) The Massachusetts bar does not have a continuing legal education requirement, but CAFL imposes a rule of eight hours of relevant CLE for the panel attorneys each year – and only courses designated by CAFL count towards this requirement. CPCS is allocated funds by the State Legislature through the normal state budgeting process, a portion of which is designated for CAFL administrative, CWLO, and contract attorney costs.

New York State's Regional System

New York State law vests authority for legal services to children in dependency cases with the statewide Office of Court Administration ("OCA"). OCA is allocated funds through the regular budgeting process in the State Legislature, out of which it fulfills its statutory duty to ensure that all children before the dependency courts have a lawyer, known in New York statute as a "law guardian."[97] As noted above, in New York City, OCA contracts with JRP to cover some 90 percent of the cases. In the rest of the state (and to provide for conflict attorneys in New York City), OCA administers regional panels (divided by the state's four Appellate Divisions of State Supreme Court). For example, the Fourth Department of the Appellate Division appoints a Law Guardian Director to administer a panel of attorneys representing children in the counties served in that Department.[98] Though the New York system is administered by the courts – unlike the panels in Colorado, Connecticut, and Massachusetts – attorneys are nevertheless protected from the loyalty and independence problems more common in systems in which presiding judges control the appointments list. This is because the system is governed at the appellate level and by the day-to-day administration of an appointed official, the Law Guardian Director.

[97] While the New York statute still refers to lawyers who represent children as "law guardians," it should be noted that in 2007, the New York State Bar Association, finding that this term is "outdated and confusing," recommended that it be eliminated in favor of "attorney for the child." (NYSBA 2007.) The Chief Judge of the state agreed and issued a new court rule that adopted this new terminology and also clarified its role. *See* 22 N.Y.C.R.R. § 7.2.
[98] *See* 22 N.Y.C.R.R. § 1032.1 *et seq.*

The County-Based System

Some jurisdictions have developed effective systems for delivering legal services to children on a county basis, though it should be noted that due to geopolitical considerations – in particular financial pressures and issues related to attorney independence – county-run systems are more likely to be inadequate. For example, Georgia law vests the responsibility for providing lawyers to children in dependency court with each of its 159 counties. (In Georgia the terminology used is "child advocate attorney" instead of GAL.) In 2002, a group of local and national lawyers sued Fulton and DeKalb Counties (which together constitute metropolitan Atlanta) on behalf of a class of 3,000 foster children, alleging the counties were providing ineffective assistance of counsel in the juvenile court.[99] At the start of the lawsuit, there were only a handful of child advocate attorneys for the children; each had a caseload of approximately 500 children. Additionally, the attorneys were hired and supervised directly by the juvenile court judges, and they took on courtroom manager roles in addition to their other responsibilities, which undermined their independence and their ability to be zealous advocates. In 2005, each county entered into a separate consent decree with the plaintiffs, in which they agreed to increase their staffing, reduce their caseloads, implement mandatory practice standards, and create a CWLO independent of the court to administer and manage the practice.

The DeKalb County Child Advocacy Center operates as an independent unit of the county government; its director reports to the county CEO. Notably, DeKalb County exited the *Kenny A.* consent decree in the minimum time period required, having been in full compliance with the court's orders for 18 months. In Fulton, to comply with *Kenny A.*, the county government established an independent Child Advocate Board ("CAB"), consisting of some county commissioners as well as members of the community appointed by the commissioners. The CAB has the oversight responsibility for the Child Advocate Office (including the hiring of the CAO director), which is an independent entity within county government. The consent decree remains open, however, because Fulton County has yet to demonstrate the sustained compliance with all of its provisions as required in the settlement agreement and court order.

California law requires the appointment of an attorney to represent the child's best interests in all dependency cases and vests responsibility for this program jointly in the state Judicial Council and the county trial courts. Historically, the funding for children's attorneys was a county responsibility, but a 1997 law shifted it to a state charge. The Administrative Office of the Courts ("AOC") oversees the distribution of the money to each of 58 county trial courts. When the AOC took over the funding for dependency courts, it inherited the unique service delivery models of each county. In 2004, AOC launched a pilot project to improve the quality of legal services it was purchasing and to do so in a cost-effective manner. This program, known as Dependency Representation, Administration, Funding, and Training ("DRAFT"), is a partnership between the AOC and the local courts selected to participate. In the DRAFT counties, responsibility for contract administration is shifted from the local court to AOC. As in the non-DRAFT counties, funding is still provided by the AOC and the county court still gets to pick who

[99] *Kenny A. v. Perdue*, 356 F.Supp.2d 1353 (N.D. Ga. 2005). It should be noted that the Project Director for this report, Erik S. Pitchal, is co-counsel for the plaintiff class in *Kenny A.*

gets the contracts; however, the participating county courts agree to permit competitive bidding for attorney contracts and to the imposition of certain performance and training standards, including caseload and compensation standards.

Three years after DRAFT was launched, an independent study found that the counties participating in the project significantly increased their performance on key child welfare outcome measures – as compared to the counties not participating in the program – including reunification, reentry, guardianships, and placement with kin (Judicial Council of California, 2008). Qualitative findings included improvement in the DRAFT counties in the areas of attorney contact with child clients; increased attorney preparedness; and reduced continuances. In 2007, the Judicial Council doubled the size of the DRAFT program which now functions in 20 of California's 58 counties.

One particularly noteworthy county-run system is in San Francisco, which is administered by the Bar Association of San Francisco (BASF) in conjunction with the San Francisco County Superior Court. The system, known as the Dependency Representation Program (DRP), is administered by the BASF's Lawyer Referral and Information Service (LRIS). Approximately 70 attorneys participate in the DRP (most of whom represent both parents and children, though not in the same case). In order to join the LRIS the attorney must certify that her principal law office is in San Francisco; two-thirds of her practice is in San Francisco; and she does not belong to a similar panel in another jurisdiction. To be admitted to DRP panel attorneys must submit a written application demonstrating that they have completed the required training and have the requisite experience representing clients in dependency matters. All applicants must demonstrate that they have completed six specified trainings, which may be satisfied by viewing CD's. Applicants who wish to represent children may satisfy the experience requirement in one of two ways: 1) by demonstrating that they have represented a child in ten California dependency hearings, three of which must have been contested, in the last two years; or 2) by participating in a mentorship program in which the applicant observes a specified list of hearings and procedures, and performs a list of specified tasks, including a settlement conference, offer of proof, cross examination of a witness, final argument, and others. The Qualification Subcommittee of LRIS, comprised of volunteer attorneys, reviews all panel applications. If the subcommittee approves the application, it is forwarded to the juvenile court which has final approval over the applications.

Once approved, new panel members in San Francisco serve a probationary period of six months, during which the applicant must participate in four additional trainings. At the completion of the six months, the applicant's name is sent to the entire dependency panel for peer evaluation. The court reviews these peer evaluations and determines whether to extend the probationary period or approve or deny the attorney's membership on the panel. In order to remain active on the panel, attorneys must complete ten hours of continuing legal education in juvenile law or related issued each calendar year. They must also renew their panel membership every three years by completing a new application establishing that they continue to meet the training and experience requirements required of new

applicants. These requirements are intended to ensure that panel members stay current on evolving dependency law and maintain an active dependency practice.[100]

Child Welfare Law Certification

Beyond the various ways that individual jurisdictions structure their dependency representation systems, it is important to note the national framework for child advocacy. In recognition of the growing importance and increasing complexity of child welfare law, in 2004 the American Bar Association accredited the NACC to award specialty certification credentials in this field. In the last five years, the NACC has arranged to certify Child Welfare Law Specialists in 13 states as well as the District of Columbia. Lawyers certified in child welfare law must be knowledgeable in the state and federal laws applicable to child protection and foster care. A specialist must understand relevant principles from child development and psychology regarding individual and family dynamics and appropriate treatment modalities for child abuse and neglect. Specialists must be capable of recognizing the professional responsibility and ethical issues that arise out of the children's status. Lawyers certified as specialists in child welfare law should be proficient in the skills of interviewing and counseling child clients.

In order to be certified, attorneys must meet the following standards:

- **Good Standing:** The applicant shall furnish evidence of good standing in the state of admission, or if admitted in more than one state, in the state of principal practice
- **Substantial Involvement:** The applicant must make a satisfactory showing of substantial involvement relevant to child welfare law with at least thirty percent of his or her time involved in child welfare law during the three years preceding the filing of the application
- **Educational Experience:** The applicant must demonstrate substantial participation in continuing legal education relevant to child welfare law (36 hours) in the three-year period immediately preceding application
- **Peer Review:** The applicant shall submit with the application the names of no less that five (4 attorneys and 1 judge) and no more than 8 (6 attorneys and 2 judges) references. These references shall be substantially involved in juvenile law (child welfare), and familiar with the applicant's work. References satisfactory to the NACC must be received from at least one judge who can attest to the applicant's competence in child welfare law
- **Writing Sample:** The applicant shall submit a copy of a trial court memorandum, appellate brief, article, or a writing sample demonstrating legal analysis in the field of child welfare law. This should be a substantial writing sample, stating facts and arguing law, submitted or drafted no more than three years before the date of application

[100] In addition to the requirements for admission and renewal of panel status, attorneys who practice on the dependency panel must follow detailed practice guidelines issued by the San Francisco Unified Court. These guidelines are outlined in Standing Order 225, which can be downloaded from the internet at http://www.sfbar.org/forms/lawyerreferrals/drp/standing_order_225_guidelines_for_attorneys_practicing_dependency_law.pdf. The court has also issued a detailed Policies and Procedures Manual that covers court appointment, court appearances, and billing.

- **Examination:** The applicant must pass the NACC Child Welfare Law written competency examination. The examination may be taken only after the applicant has satisfied all other certification standards.

In the 14 jurisdictions in which the NACC currently certifies Child Welfare Law Specialists, a total of 234 attorneys have earned the credential.

Accountability in the Child Representation System

Children are less able than adults to ensure that they are receiving quality legal services. If nothing else, adults who have complaints about their attorneys may contact the relevant bar authorities; it can be fairly expected that children – even teenagers – would not know about this option or use it. Moreover, children are unsophisticated consumers of legal services; they cannot be expected to recognize poor service when they experience it, even if they know that they have an attorney. Thus, it is critical that any system of appointing lawyers to children also develop clear mechanisms for other responsible adults to provide oversight.

It is necessary, but not sufficient, for the judges who appoint lawyers in individual cases to exercise oversight over them. While the judge may have the best, bird's-eye view of the lawyer's performance, the more oversight responsibility that is given to the judge the less independence the attorney has to exercise her own professional judgment and the more invasive of the attorney-client relationship the oversight becomes. In the extreme, what can occur is that the court revokes an attorney's appointment in a specific case and removes her from the appointments list because of *substantive* disagreements over the position the attorney is taking in the case.[101] Over time, such judicial actions have a chilling effect on the children's bar overall (Guggenheim, 2005.) Courts must resist the temptation to direct the child's lawyer's *substantive* performance (ABA, 1996.) It is thus far preferable for the appointing court to focus on policing children's attorneys' compliance with *process* standards, such as meeting with the client. The simple act of inquiring of the lawyer – at every court hearing – whether she has met with her client in accord with local practice standards can have a great, positive impact.

In addition to this more modest form of judicial oversight, a system of child representation must have other, more robust options for ensuring that attorneys who advocate for children are in compliance with performance standards and for permitting clients (or adults interested in their welfare) to lodge good faith complaints (NACC, 2001). CWLOs should have a well-publicized mechanism for taking and considering complaints. Because CWLOs tend to be well-known in the courthouses where they practice, and because they have supervisory and managerial lines of authority, it is more likely that a complaint about a CWLO staff attorney can be brought to the right person's attention in a more timely way than for attorneys who are on a panel. Indeed, jurisdictions that use a panel system must make even greater efforts both to develop a means to investigate complaints and to ensure that consumers are aware of the availability of a complaint process. Well organized and centrally administered panels –

[101] See, for example, the case of *In re Jennifer G.*, 487 N.Y.S.2d 864 (1985).

such as those in jurisdictions with an independent state-wide entity responsible for the child representation system – are far more likely to successfully develop a complaint response mechanism than decentralized, judge-supervised panels.

2. What are the caseloads for guardian ad litems?

GALs were asked in the survey the number of cases of individual children that they handle at any one time as a GAL. As Table 9 shows, GALs vary with close to half (46%) reporting 5 or fewer cases at any one time and slightly more than one-third carrying more than 15 cases at any one time.

Table 9. Number of Cases of Individual Children that GALs Reported Handling at Any One Time as a GAL (n=71)

Number of Cases	Number of GALs Reporting this Number of Cases
0	2
1-2	11
3-5	20
6-10	7
11-19	6
15-19	5
20-29	5
30-35	4
41-49	3
50-70	3
80-100	4
"Not many"	1

When asked about the percentage of their overall caseload spent on GAL cases of individual children, 31% reported that the percentage had gone up in the past three years; 36% reported that the percentage had stayed about the same over this time period; and 33 % reported that the percentage had declined over the past three years. When asked about the number of appointments as a GAL for individual children over the time period June 1, 2008 through May 31, 2009, GALs reported that they were appointed in more foster care cases than in-home cases.

In the surveys, GALs were asked to respond to several statements about their GAL caseloads. Table 10 summarizes the results of their responses to these statements. As Table 10 shows, 83% of the responding GALs either strongly agreed or agreed with the statement that "I have a reasonable caseload given my overall workload." The majority (74%) did not express concerns about their caseloads being too high.

Table 10. GAL Responses to Questions about Their Caseloads (n=71)

	Strongly agree	Agree	Disagree	Strongly disagree	No Response
"I have a reasonable caseload given my overall workload."	18%	65%	11%	3%	3%
"I have had concerns that my GAL caseload is too high."	3%	11%	44%	30%	4%
	YES	**NO**	**Not Applicable**		
"When I have had concerns that my GAL caseload is too high, I have brought these concerns to my supervisor or to the court."	20%	14%	66%		

In follow up interviews, GALs reported that their GAL caseloads were adequate and that the courts appropriately "spread" referrals so that no one GAL carries too high a caseload. Most GALs did not specify their caseload sizes. One GAL, however, reported that s/he has 8 or 9 clients (not cases) at any one time, and another GAL said that s/he carried about 4 cases at any time. A GAL who works for a firm that holds a contract for GAL services stated his/her caseload is too high. In his/her view, 60 to 80 cases represent the "ideal caseload." Another GAL who worked for a firm that held contracts for GAL services reported s/he and his/her partner have no more than 120 dependency, abuse and neglect cases at any one time.

In interviews with CASAs, different opinions about GAL caseloads were expressed as a result of different experiences with GALs. One CASA said that the GAL makes team meetings and court hearings and gives an adequate amount of time to the case. Another said that GAL caseloads range from "adequate to too many cases." Two other CASAs said that caseloads are too high.

In interviews, judges were asked about the reasonableness of GAL caseloads. Four judges said that they did not know. Seven judges thought that the caseloads were reasonable. Some judges said that GALs simply do not prioritize their GAL work. One judge said, "GALs just prioritize their other work higher than the GAL work. The GAL work has been the easiest place for attorneys to slack off." Another said that GAL caseloads are reasonable but the problem is that children are not calling the attorney demanding services like the parents are, or the criminal defendants or paying clients. One judge said that the caseloads of lawyers with GAL contract firms are "ridiculous." This judge said that these firms are "trying to do it on the cheap" and the GALs' caseloads are so huge that they can't go to visit the kids." By contrast, this judge found that private attorneys manage their caseloads and will say no to new appointments if they have too many cases. Similarly, another judge commented that the contract attorneys' caseloads are too high but stated that no contract attorney will admit to the judge that they are too high. This judge said that private attorneys can turn down a case if their caseload is too high and ask not to receive another appointment for a few weeks or a month.

Two of the three caseworkers who were interviewed did not comment on GAL caseloads. One caseworker observed that "most GALs are really busy." This caseworker stated that he/she has 13 cases and works with 8 different GALs.

One key informant commented that the caseloads at the larger contract firms are "overwhelming". This individual described a situation in which an attorney at a contract firm was unable to attend an education hearing on a disciplinary matter for her client and sent her sister, a part time substitute teacher and not an attorney to cover the hearing. The key informant noted, "that's a huge breach of confidentiality and also improperly designated representation duties to a non-attorney." This individual further commented that the contracts "handcuff the judges and result in abysmal representation for children."

National Best Practice Standards

Legal services attorneys in many fields of law and across many jurisdictions have long noted the deleterious impact on their ability to zealously advocate for clients – and the resulting shortcomings of justice – that results from overwhelming caseloads. Crushing caseloads have been a particularly troubling feature of child welfare law, even as the specialty has grown and matured in recent years. A 2006 survey for the NACC showed that 18 percent of respondents had more than 200 cases, and an additional 25 percent had between 100 and 199 cases (Davidson & Pitchal, 2006.)

Speaking generally of all lawyers, including attorneys accepting court appointments on behalf of indigent clients, the American Bar Association has concluded:

> All lawyers, including public defenders and other lawyers who, under court appointment or government contract, represent indigent persons charged with criminal offenses, must provide competent and diligent representation. If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients. If the clients are being assigned through a court appointment system, the lawyer should request that the court not make any new appointments. Once the lawyer is representing a client, the lawyer must move to withdraw from representation if she cannot provide competent and diligent representation.

(American Bar Association [ABA], 2006). The ABA has long recognized that controlling caseloads in dependency court is especially important, calling on judges to do so. "Courts should take steps to assure that lawyers appointed to represent children, or lawyers otherwise providing such representation, do not have such a large open number of cases that they are unable to abide by" the ABA's rigorous standards for these attorneys' performance (ABA, 1996).

The general consensus in the child welfare field is that, at most, an attorney representing children in dependency matters should have no more than 100 child clients (NACC, 2001.) The concept of a maximum number of clients is distinct from the concept of "cases" in that a case may involve multiple siblings and thus substantially more work than a family with only one child. The NACC issued this 100 client caseload recommendation in 2001, basing it on a rough calculation that the average

attorney has 2,000 work hours available, and the average dependency client would require about 20 hours of attention, in the course of a year. It also assumes that the attorney devotes her entire practice to the representation of children in dependency cases.

If anything, since 2001 (and the advent of child welfare law specialization), it has become clear that dependency cases are more complex than ever, demanding that attorneys be familiar with a range of substantive topics inside and outside the courtroom. As the diversity of causes leading to dependency court involvement increases, the caseload becomes more difficult overall, and attorneys must spend more time with each individual client. The 100 client caseload maximum is just that – an absolute maximum that one attorney should be expected to competently handle, before ABA Ethics Opinion 06-441 becomes applicable.

The 100 client caseload maximum was a key consideration in the decision by the Federal District Court in Atlanta, in the *Kenny A.* proceedings referred to earlier, finding that foster children have the right to a lawyer in dependency actions – and that the right to a lawyer means the right to an effective lawyer who is not burdened by excessive caseloads.

Various jurisdictions have attempted to implement a caseload standard, with different mechanisms for enforcement; two notable exemplars are Fulton County, Georgia and Massachusetts. Following the court's ruling in *Kenny A.*, Fulton County entered into a consent decree with the plaintiffs in which it agreed to commission a workload study to assist in the determination of an appropriate caseload figure. The study's authors concluded that in addition to caseloads, there were significant barriers to effective representation due to inefficiencies within the child advocacy office as well as problems in the juvenile court. Thus, the authors recommended that under then-existing conditions, the maximum client caseload should be 80 per attorney. If internal office reforms were successful, the authors would endorse a caseload of 100, and if both internal and external reforms were in place, a caseload of 120 would be suitable (Carl Vinson Institute, 2007).

In Massachusetts, the Child and Family Law program within the state indigent representation agency, the Committee for Public Counsel Services, enforces a strict caseload limit of 75 open cases at any given time. Because all billing for the panel attorneys is centralized within CAFL's administrative offices, CAFL is able to enforce this caseload through the power of the paycheck. In addition to the caseload maximum, attorneys are paid for a maximum of 1,800 hours per year(Massachusetts CPCS, 2007). In combination with strict performance standards, this hourly maximum is designed to ensure that attorneys maintain a reasonable caseload.

In Colorado, when the OCR was initially created, its staff saw a connection between caseloads and the compensation structure then in place across the state. GALs were paid a flat fee per case and adhered to a caseload cap of 100. After performing extensive research, the OCR concluded that in order to fulfill its legislative mandate of improving the quality of GAL services, it needed to reduce caseloads. The only way to achieve that was to alter the compensation structure by moving to an hourly payment system. As a result, there has been a natural decline in caseloads for GALs as they no longer have a

financial incentive to take on more cases than they can adequately handle. The average caseload for GALs in Colorado is now approximately 34.

It should be noted that some CWLOs (including CLC-LA and JRP) struggle to maintain manageable caseloads for their staff. These struggles occur when their contracts fix their revenue but not their overall caseload. For example, some CWLOs are obligated by contract to accept a certain percentage of appointments in their jurisdiction, which can vary depending on factors out of the organization's control. However, New York State recently enacted a court rule limiting the caseloads for all children's attorneys, including those employed by CWLOs.[102] As a result, contracts between CWLOs and the court system have been adjusted on the revenue side in order for the CWLOs to be in compliance with the new rule.

In Massachusetts, where there is a hybrid system of CWLOs and a panel – all administered by the same entity – the CWLO caseloads are quite manageable. The administrators of the CWLOs determine what the maximum caseload of their staff attorneys will be, and any excess cases simply go to the panel attorneys.

3. What is the timing of appointment of guardians in Nebraska?

The evaluation sought to understand the timing of appointments of GALs through four methods. First, the evaluators requested data from management information systems for the state, including data from Douglas County's court management information system. Second, clerk magistrates were interviewed about appointment practice as part of the process audit. Third, GALs, county attorneys, CASAs, and DHHS caseworkers were asked about the timing of appointments of GALs on their respective surveys. Fourth, in interviews that were conducted as follow up to the survey, GALs and judges were asked about the timing of appointment.

Quantitative Data on Timing of GAL Appointment: Timing of Appointment of Guardians Ad Litem: Douglas County Juvenile Court.

Quantitative data on the timing of appointments of GALs are available only for Douglas County. Data were run through the state's data management system but data on timing of appointments of GALs were not entered into the database for any counties.

We requested data of the Douglas County Juvenile Court on the appointments of GAL for the period of July 1, 2005 through June 30, 2006 as this time frame was used for the initial request to the state's data management system. Computerized data were provided which yielded significant information. In a limited number of cases, the computerized data indicated that GALs were appointed after the first hearing. The juvenile court administrator hand pulled these cases and provided correct data on these cases. The following summarizes the data from Douglas County Juvenile Court.

[102] 22 N.Y.C.R.R. § 127.5.

Case Filing to GAL Appointment

From July 1, 2005 through June 30, 2006, the Douglas County Juvenile Court opened 525 neglect and dependency cases. As Table 11 shows, in the great majority of cases, a GAL was appointed promptly after case filing.

Table 11. Douglas County Juvenile Court: Time from Filing Case to Appointment of GAL

Time of Appointment from Case Filing	Number of Cases	Percentage of Cases
Same day	23	4.4%
1 day later	163	31.0%
2 days later	94	17.9%
3 days later	79	15.0%
4 days later	57	10.8%
5 days later	47	8.9%
6 days later	29	5.5%
7 days later	8	1.5%
8 days later	4	.8%
9 days later	1	.2%
10 days later	4	.8%
11 days later	5	.9%
12 days later	3	.7%
13 days later	5	1.0%
19 days later	1	.2%
21 days later	1	.2%
24 days later	1	.2%
Total	525	100%*

*Does not precisely equal 100% due to rounding.

Table 12 summarizes the above information by time period from date of case filing to appointment of the GAL. As Table 12 shows, in the great majority of cases (68.4%), a GAL was appointed within 3 days of case filing. In another quarter of the cases, a GAL was appointed within 4 to 6 days of case filing.

Table 12. Douglas County Juvenile Court Summary: Date of Case Filing to Time of GAL Appointment

Date of Case Filing to GAL Appointment	Number of Cases	Percentage of Cases
Same Day	23	4.4%
1-3 Days	336	64.0%
4-6 Days	133	25.0%
7-10 Days	17	3.2%
11-24 Days	16	3.0%
Total	525	100%*

*Does not precisely equal 100% due to rounding.

GAL Appointment to First Hearing

Nebraska law requires that a GAL be appointed prior to the first hearing. In each dependency and neglect case filed in the Douglas County Juvenile Court, a GAL was appointed for the child before the first hearing. Table 13 provides detail on the number of days from GAL appointment to the first hearing.

Table 13. Douglas County Juvenile Court: Time from GAL Appointment to First Hearing

Time of First Hearing from Time of Appointment	Number of Cases	Percentage of Cases
Same day	22	4.1%
1 day later	45	8.6%
2 days later	67	12.7%
3 days later	5	1.0%
4 days later	15	2.9%
5 days later	67	12.8%
6 days later	84	16.0%
7 days later	82	15.6%
8 days later	52	9.9%
9 days later	19	3.6%
10 days later	8	1.5%
11 days later	3	.6%
12 days later	19	3.6%
13 days later	6	1.1%
14 days later	5	1.0%
16 days later	1	.2%
17 days later	2	.4%
18 days later	2	.4%
19 days later	3	.6%
20 days later	1	.2%
21 days later	1	.2%
22 days later	1	.2%
24 days later	1	.2%
25 days later	1	.2%
28 days later	2	.4%
30 days later	1	.2%
36 - 42 days later	3	.6%
2 to 3 months later	3	.6%
5 to 6 months later	4	.8%
Total	525	100%*

*****Does not precisely equal 100% due to rounding.

Table 14 summarizes the above information by time period from time of appointment to the first hearing. As Table 14 shows, in almost half (46.6%) of the cases, GALs had between 6 and 10 days to

prepare for the first hearing. In one quarter of the cases (25.5%), GALs were appointed on the same day of the first hearing or one to two days before the first hearing.

Table 14. Douglas County Juvenile Court Summary: Time of Appointment to First Hearing

Time of Appointment to First Hearing	Number of Cases	Percentage of Cases
Same Day	22	4.2%
1-2 Days	112	21.3%
3-5 Days	87	16.6%
6-10 Days	245	46.6%
11-20 Days	42	8%
21-30 Days	7	1.3%
31+ Days	10	1.9%
Total	525	100%*

*Does not precisely equal 100% due to rounding.

Survey Responses on Timing of GAL Appointments

GALs, CASAs, and DHHS caseworkers were asked on surveys to respond to the statement, "A GAL is appointed immediately after the opening of the child's case with the court." As Table 15 shows, CASAs and DHHS caseworkers were less likely to perceive that GALs are immediately appointed after the opening of the child's case with the court. One possible explanation is that their perceptions of appointment are tied to the GAL's actual contact with the child upon appointment.

Table 15. Stakeholders' Responses to "A GAL is appointed immediately after the opening of the child's case with the court."

	Always	Usually	Sometimes	Never	Do Not Know
GALS (n=71)	69%	24%	7%	--	--
CASAs (n=89)	55%	15%	6%	--	27%
DHHS Caseworkers (n=70)	51%	29%	16%	1%	3%

Interview Responses on Timing of GAL Appointments

GALs, judges and court administrators were asked for information on the timing of GAL appointments as a follow up to the survey responses and as part of the process audit interviews. GALs consistently reported that they were immediately appointed as a GAL, stating that they were appointed "upon the removal order," "before the temporary custody hearing or adjudication hearing," "as soon as the complaint is filed," "usually from the get go," and "as soon as possible when the petition is filed." One GAL, however, reported that in her county, DHHS does not always inform the court that the agency has removed a child and, as a result, the removal order is not signed and a GAL is not appointed for a few days. The GALs consistently reported immediate appointment for both foster care placement and

in-home placement cases. All but one judge said that GALs are appointed immediately as soon as the case comes into court; one judge said that a GAL is appointed within one week after the child's case is referred to court. All judges said that there is no difference in timing of GAL appointment for cases involving foster care and cases in which children remain with their families.

Court administrators stated that GALs are appointed at the removal order or if the child is home with family, at the first court hearing. One court administrator, however, said that if the child is not removed from home, the GAL would be appointed at "someone's request" and the child "may or may not get an attorney appointed."

When asked whether GALs believed that they had enough time to familiarize themselves with the child's case before the first hearing, responses varied. Some GALs stated that they received the background information from the court and the Department of Health and Human Services (DHHS) prior to the first hearing while others said that they receive only the removal order or petition and must wait a few days to receive information from DHHS. One GAL said that she did not have enough time to meet with the child before the temporary hearing as the appointment comes a day or two before the hearing. Most stakeholders interviewed said that it was rare for the GALs to be able to meet with a child client prior to the temporary custody hearing. GALs in two counties spoke of the benefits of "facilitation" or "pre-hearing conferences" that bring together the GAL, the child's CASA if there is one, the parents' attorney and the country attorney. Their comments indicated, however, that "facilitation" or "pre-hearing conferences" are not standard practice in all court rooms.

Young People's Perceptions on When their GALs Were Appointed

Several young people said that they could not remember when their GALs were appointed. One said that he/she didn't meet the GAL "until last year, and I have been in foster care for many years." Another said that he/she met the GAL "a few years after I entered care."

National Best Practice Standards

All national authorities in child welfare law agree that in order to comply with federal law and to truly protect children and vindicate their rights, the court should appoint an attorney *immediately* and ensure that the child is with representation for the duration of the dependency proceedings. The ABA holds that the child's attorney should be appointed at the earlier of the involuntary removal of the child due to allegations of abuse or neglect; the filing of a petition alleging abuse or neglect; or the lodging of allegations by a party in a proceeding that was not originally initiated by a petition concerning child maltreatment (ABA, 1996.) The NACC calls for the child to have a lawyer "at every stage" of a court proceeding. And the National Council of Juvenile and Family Court Judges recommends the appointment of an attorney at "the very first court hearing" (NCJFCJ, 1995.)

4. What are the practices of guardian ad litem supervision in Nebraska?

In surveys, GALs were asked to respond to the statement, "I receive the supervision I need to perform as a GAL." As Table 16 shows, one-half of the GALs were satisfied with the supervision they

receive. Only 12% expressed dissatisfaction with the level of supervision. Noteworthy are the 17% who reported that they do not receive supervision at all and the 21% who believed that they do not need supervision.

Table 16. GAL Responses to Statement, "I receive the supervision I need to perform well as a GAL." (n=71)

Strongly agree	Agree	Disagree	Strongly disagree	I do not have supervision	I do not need supervision
8%	42%	11%	--	17%	21%

In follow up interviews, most GALs reported that they do not receive supervision because they are in solo or private practice or are partners in a law firm. One GAL stated that she did not see lack of supervision as a problem when GALs are not "brand new" but indicated that new GALS need supervision. One GAL said that she received supervision through her law firm which has experienced GALs who can mentor her.

Judges were asked about GAL supervision. Five judges said that GALs were not supervised. One stated, "This is not an environment in which they are supervised," and another said there is "not very good supervision." One observed that the only supervision came from the court, and another judge said that it is "hard for me as a judge to know what they do and don't do." One judge commented, "They are licensed attorneys with experience and do not need supervision." One judge said that attorneys at the contract law firms were supervised but the remaining attorneys were in solo private practice. Another judge commented that he/she did not think that supervision would make a difference and that more ongoing training would have more of an impact. Six judges said that mentoring or apprenticeships might be helpful, if, according to one judge, "the more experienced attorneys are not teaching the new GALs bad practice skills." One judge thought that there would be resistance from the GALs if such a program were proposed "as they practically revolted when they had to start doing pre-hearing conferences . . ."

Two judges had diametrically opposed views on the use of new attorneys as GALs. One judge said, "I don't use the office of GAL as an attorney training ground. I don't take someone 25 minutes out of law school unless there is someone in their firm who can guide them. I don't use rookies as GALs in my county." Another said, "GAL work is a good place for a new attorney to get started because you don't have to worry about making mistakes from a legal point of view. They don't have to know how to use the rules of evidence because they don't apply in 3(a) cases."

County attorneys were asked to respond to the statement, "GALs receive the supervision they need to perform well s a GAL." Three of the four responding county attorneys agreed with the statement.

In interviews, one CASA commented that GAL supervision seemed adequate; another believed that GAL supervision is associated with the GAL's contact with the caseworker; and others said that they were not sure how GALs are supervised.

National Best Practice Standards

Because of the complexity of child welfare law and the singular, weighty responsibility of being a child's independent advocate in dependency proceedings, regularized opportunities for meaningful supervision of attorneys who do this work is essential. Good supervision ensures quality representation and fosters an environment of professional growth.

In the CWLO environment, experienced supervisors model quality representation, pass on best practices to staff, and engage in regular coaching and teaming with less experienced staff (NACC, 2006). Supervisors monitor staff compliance with standards of practice. Supervisors are also provide essential professional support, helping staff deal with the secondary trauma inherent in working with maltreated children and assisting them in avoiding burnout (Kahn, 2005; Koh Peters,2007).

Thus, for example, at JRP in New York City, the supervisor to staff attorney ratio in the Juvenile Rights Practice is approximately one to seven. Each supervisor is assigned a team of attorneys to supervise and meets with the team monthly for both supervisory and informational discussions. In addition, each attorney has individual scheduled time with his or her supervisor as well as impromptu supervision as the need arises. All attorneys are evaluated yearly by their supervisors. New attorneys are closely supervised. All attorneys are expected to consult with supervisors in cases involving potential conflicts. Each office has a designated supervisor who can be consulted each day if problems arise.

Supervision in the panel model is more difficult to achieve, particularly if panel attorneys are solo practitioners or work for small firms where they may be the only attorney handling dependency matters. Nevertheless, well organized panel systems build supervision into their programs through the use of paid mentors. For example, in Massachusetts, newly admitted panel attorneys are assigned an experienced attorney mentor, with whom they must meet and develop a mentoring plan before the attorney may accept her first appointment. Mentors are paid $60 per hour for their time spent mentoring, compared to the statutory rate of pay of $50 per hour paid to attorneys for their case work. Attorneys must have monthly meetings with their mentors during a period of probation. Mentors must observe a set number of hearings and sign off on the probationer's skills before the attorney can become a permanent member of the panel; advancement to the permanent panel requires the approval of the CAFL Trial Panel Director in addition to the mentor. Most-mentorships last about 24 months to ensure an adequate opportunity for the mentor to assess the attorneys' skills and to enable the attorney to have a robust period of guided professional development before they go out on their own. (The Massachusetts mentoring program manual is attached to this report as Attachment J; it should be noted that the program was undergoing some revisions at the time this report was finalized.)

Connecticut also has a paid mentoring program for its panel attorneys. Attorneys are required to meet with their mentors during their first year on the panel. The mentor must supervise the attorneys' first three case assignments and is available as a resource on other matters. The mentors must evaluate them prior to the expiration of the attorney's first contract (Connecticut Chief Child Protection Attorney, [CCPA], 2009).

In Colorado, the OCR has an informal mentoring program. New attorneys are partnered with a mentor within the same judicial district where applicable, but it is up to the mentor and mentee to establish how often they speak and how much assistance is provided. OCR attorneys must subscribe to the OCR listserv, which serves as a resource for attorneys around the state; only OCR attorneys and staff are allowed to be on the listserv.

More robustly, Colorado has a comprehensive complaint and audit process to ensure that its contract attorneys are providing service in accordance with that state's requirements. In fiscal year 2008, 18 formal complaints against GALs in dependency cases were filed and fully investigated. The OCR Deputy Director investigates each compliant, spending an average of 10 hours on each. Of the 18 complaints, two were founded. In the first founded complaint, the GAL did not visit the children in their initial placement in foster care within the 30 day timeframe required in Colorado for that initial visit. Additionally, the GAL failed to return phone calls from family members, including a relative who was the primary caregiver for the children at the time the case was filed. OCR concluded that the attorney did not conduct an independent investigation into the children's circumstances and failed to meet her professional responsibilities to the children. As a result of that investigation, the attorney voluntarily suspended her contract to provide GAL services in dependency and neglect cases and a new Guardian ad litem was appointed to represent the children in that case. In the second founded complaint, the GAL aligned with the County Department of Human Services in seeking removal of children from a foster home where they had lived for almost a year without conducting any independent investigation into the circumstances. As a result of this founded complaint, OCR investigated the attorney's caseload. That investigation revealed significant concerns about this GAL's independence from the County Department of Human Services in general. As a result, OCR terminated the attorney's contract. The 16 complaints that were unfounded had full investigations, the results of which were documented and kept on file in the OCR office.

In addition to responding to complaints, OCR has a formal audit process to sample attorneys' work in an objective fashion. In particular judicial districts, random computer generated samples of dependency cases are selected. For each case sampled, the GAL is required to provide the placement history for each child represented as well as the dates the GAL met with that child in those placements. GALs are also required to provide contact name and telephone information for each child's placement. OCR staff contacts the placements and interviews the care provider regarding the visit by the GAL and that attorney's level of involvement in the case. OCR actively follows up on all problems. Additionally, the OCR reviews hourly billing statements provided by GALs in order to ensure that the work done on a case is adequate, and that state dollars are used for only allowable expenditures. This is another way to monitor services on any given case.

6. To what extent are juvenile court facilities appropriate and adequate for abuse and neglect cases?

All stakeholders were surveyed about the quality of court facilities for children with abuse, neglect and dependency cases.

GALs

As Table 17 shows, more than half of the GALs (54%) disagreed or strongly disagree with the statement that GALs were able to find a quiet, private place to talk with their child clients. Most GALs (77%) did not find the court environment to be a comfortable place for children to be.

Table 17. GAL Responses Regarding Court Facilities (n=71)

	Strongly Agree	Agree	Disagree	Strongly Disagree
"I can easily find a quiet, private place to talk with my client before court hearings."	7%	39%	41%	13%
"The court environment is a comfortable place for children and youth to be."	1%	21%	63%	14%

When asked if "at least one client has expressed concerns about being in the court environment," 77% of GALs said "yes" and 23% said "no."

In follow up interviews, GALs characterized the overall court environment as "relatively warm and welcoming", "not very intimidating, the judge is very nice and friendly" to children, and "as accommodating and friendly as possible but I'm sure it is an intimidating experience for most of these kids." GALs associated positive court environments for children with judges who work to make the court less intimidating. One GAL said that "the courtroom is a place of business and not always welcoming, but the judges, staff, and bailiffs are always happy to see the children and try to be friendly and welcoming and non-threatening."

When asked about waiting times, GALs generally said that they were "not bad." GALs credited reasonable waiting times to punctual judges, scheduling all juvenile hearings on a single day of the week, and staggering hearings throughout the day. One GAL noted the one judge tends to fall behind but observed that the judge is very deliberate and spends a lot of time on each case. This GAL observed, "the caseload is too high because all judges should spend that much time on each case."

When asked about the quality of waiting rooms, GALs reported that in some cases, the space was not inviting but that renovations were underway. Others described the waiting area as "getting really crowded if dockets back up" or as "sufficient." One described a "wish list" of separate children's area. Some described waiting areas for children with books and toys. One GAL commented, "everyone goes out of their way to make it a friendly place and positive experience for children."

Young People

Young people were asked about how comfortable they felt in court. One young person commented on how the judge made her feel very comfortable while another found the judge to be intimidating. Another said that he/she didn't really like talking to the judge. Other young people described the anxiety associated with attending their court proceedings. One said that he/she "played with my hands the whole time." Another said "bawling your eyes out is uncomfortable." One youth commented that he/she didn't like the way the courtroom is set up."

Judges

Most judges stated that it was difficult for GALs to find a quiet, private place to talk with their child clients. Three judges reported that there are a few conference rooms available for GALs, but one indicated that most meetings take place the hallway outside the hearing. Some judges stated that while the courthouse was not welcoming for children, they try to make it as welcoming as possible so that it will not be intimidating or scary for children. Some judges have arranged for children's toys and art supplies to be available, and we were told that one judge has a collection of donated toys, books, and school supplies from which each child may select something with which to leave court. Other judges stated that the courtroom is not welcoming because it is a courtroom. One said that the courtroom "shouldn't be like a day care. It should be a serious place."

Other Stakeholders

In surveys, other stakeholders were asked to respond to statements regarding the court environment. Table 18 summarizes their responses. As the Table shows, half or more of all stakeholder groups did not see the court environment as a comfortable place for children and youth to be. Parents (100%) and Foster Care Review Board members (78%) more often "disagreed" or "strongly disagreed" with the statement that the court environment is a comfortable place for children and youth.

Table 18. Stakeholder responses to the statement that the court environment is a comfortable place for children and youth to be.

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know
CASAs (n=89)	7%	39%	51%	3%	--
Parents (N=4)	--	--	--	100%	--
Foster Parents (n=6)	--	33%	50%	--	16%
DHHS Caseworkers (n=70)	3%	41%	46%	10%	--
Foster Care Review Board Members (n=19)	--	22%	67%	11%	--

In interviews, CASAs generally gave court facilities a "good" or "pretty good" rating. Three CASAs described the use of therapy dogs at the court house to relieve children's stress and anxiety. Children are able to pat the dogs and play with them. One CASA noted that therapy dogs usually are used only

when a CASA is assigned to the case. One CASA, however, commented that the court facilities are not an issue because "no children have attended court." Another said that the court facilities were "fine" because "the child doesn't come to court very often." Most Foster Care Review Board Members who were interviewed had never been to court or been to court only once. The two Members who had been to the courthouse found it neither welcoming nor a good environment for children. One said that it is not good for children to be "told to wait in the hallway and have their names yelled out to come into the courtroom."

CASAs also were asked to respond to the statement, "I can easily find a quiet private place to talk with the child at the courthouse." As Table 19 shows, CASAs were about evenly split between agreement that they could easily find a quiet place to talk with the child at the courthouse (51%) and disagreement with this statement (49%).

Table 19. CASA Responses to the Statement, "I can easily find a quiet private place to talk with the child at the courthouse." (n=89)

	Strongly Agree	Agree	Disagree	Strongly Disagree
CASA Responses	8%	43%	42%	8%

The DHHS caseworkers who were interviewed expressed different views of the court facilities. One said that the court environment was "professional" and another described the court facilities as "not really conducive to making kids comfortable".

Evaluators' Observations

Two members of the evaluation team visited four county courthouses, three of which were in the counties selected for this study. Our observations were: (1) County A had no apparent private rooms except those connected with the judge's chambers and a waiting area that seemed small with no child-friendly books, toys, or magazines; (2) County B had a small waiting area that could accommodate about 30 people and a little child-friendly play area that had coloring books, children's magazines and books, and a few toys, but the court house also had three private conference rooms for attorney-client meetings; and (3) County C had a waiting area that could accommodate 30 to 40 people, but no apparent private meeting rooms or child-friendly materials. A fourth county courthouse was visited, and in this county there was no waiting area but benches in the hallway.

National Best Practice Standards

Jurisdictions do not need to commit to building or renovating entire courthouses in order to create a comfortable environment for children and to facilitate their relationship with counsel and their participation in court proceedings. Simple steps such as creating a safe and welcoming space within an existing court facility can go a long way to encouraging youth participation and minimizing any possible negative effects from attending court (Fordham Interdisciplinary Center, 2006.) For example, after a lobbying campaign spearheaded by youth in New York City, the Family Court there opened a dedicated

teen space, funded by a foundation grant and staffed by trained workers from a private social services agency (Children's Aid Society, n.d.; Markey, 2007). In general, it is quite possible for jurisdictions to implement the basic recommendations of the National Council of Juvenile and Family Court Judges, such as having smaller, less austere courtrooms than usual and locating dependency courtrooms away from courtrooms where adult and criminal matters are held, so as to protect children who are present from exposure to potentially upsetting sights and sounds. (NCJFCJ, 1995).

7. What is the compensation for Nebraska guardians ad litem?

In surveys, GALs were asked how they are compensated for the services they provide and the adequacy of compensation for GAL services. GALs reported a variety of payment mechanisms as shown in Table 20.

Table 20. GAL Responses Regarding their Compensation Mechanisms (n=71)

Type of Payment Mechanism	Percentage of GALs
On an hourly rate	70%
Pursuant to a contract in which the GAL is paid a set amount to take a specified number of cases	20%
Pursuant to a contract in which the GAL is paid a set amount to take an unlimited number of cases	1%
Based on a flat per-case fee, no matter how many hours the GAL works on the case	--
Other	8%

More than half of GALs believed that the compensation that they receive as GALs is inadequate. In response to the statement, "The compensation that I receive as a GAL is adequate":

- 1% strongly agreed
- 38% agreed
- 39% disagreed
- 20% strongly disagreed
- 1% did not respond

In the follow up interviews, GALs reported varying rates of hourly compensation based on the county where they practice: $60 per hour, $65 per hour, $70 per hour, $75 per hour, and $100 per hour. GALs who worked for firms that hold GAL contracts reported different payment arrangements. One said that she and her partner received $1000 per contract with "credit for one case regardless of how many cases spawn from that one case." Another reported that he and his partner were paid $7,000 per month for the contracts and further commented that "lawyers are not motivated because the pay is same no matter how many hours are worked."

In one county, contracts are executed with three law firms to provide GAL services. Table 21 provides detail on the payment arrangements for each of these three firms based on reviews of the publicly-available contracts.

Table 21. Financial Provisions of Contracts with Law Firms for GAL Services in One County

Law Firm	Financial Provision	Payment Per Case
Firm A	$3750 per month for 25 cases	$150 per month per case
Firm B	$24,885 per month for up to 315 cases $28,440 per month for between 316 and 360 cases	$79 per month per case
Firm C	$48,125 per month for up to 500 cases	$96.25 per month

Table 22 lists the concerns that GALs expressed about their compensation.

Table 22. GAL Concerns Regarding Compensation

- The higher compensation rate for attorneys when they are parents' attorneys in comparison to when they are GALs
- The need for uniform guidance on what is billable or recoverable from the court (such as whether travel or mileage is covered)
- The need to adjust the lower compensation rates in some counties to cover true costs, including travel time

One attorney who practices with a firm that holds a GAL contract indicated that the hourly rate was appropriate but did not translate into the attorney's own salary. The GAL commented that the salary paid was not commensurate with the workload. Another GAL said that "there are too many cases per GAL and not enough money to thoroughly complete cases."

Several judges thought that the compensation rates for GALs were reasonable. One judge said, "We're certainly getting our money's worth from the GALs, but nobody is complaining." Another judge said that GAL compensation is reasonable and added that he/she did not like flat rate system with the contracts because "the attorneys would do the bare minimum amount of work." This judge was "glad that they [the judges] convinced the county commissioners to end the contracts." Another judge stated that GAL compensation is reasonable as it matches what court appointed attorneys are paid in district court for criminal matters. This judge said that he/she hated the flat rate contract system as "the GAL did the absolute minimum; if people are rewarded for putting more time into the case, then at least some of them will do it." He/she added, "If I were cynical, I'd say these contractors saw the GAL cases as a way to make up money for their other cases where they put more time into it but didn't get paid."

Another judge said that he/she wanted to get out of the contract system, commenting that there is great turnover at the contract firms but also noting that one GAL at the big firm is "terrific and goes beyond the distance for [his/her] kids." This judge noted that one contracting GAL never does any GAL reports and another GAL said to him/her, "I didn't get the HHS report so I have nothing to say."

Two other judges spoke about changes with the move from a contract system to an hourly rate. One stated, "There's a risk that going to an hourly system will cost the county more but our board [of commissioners] is sympathetic to the needs of children and is willing to try this and listen to us [the judges] to see if there will be better results for the kids." Another judge, speaking of the change in the county from a contract to hourly rate system, stated, "[Under the contract system], it was becoming an easy place for them [the contract firms] to make money and shortchange clients because it was not like the children are calling them or complaining to them like their adult clients would."

Three judges thought that compensation rates were "low" or "lowish." One said, "I don't think juvenile court pays what it should pay. I hope their quality of work is not reflecting their compensation."

Two judges said that they did not care what the compensation was for GALs. Their reasons for this statement, however, differed. One judge said, "I don't care if the county does a flat rate versus an hourly rate. From a business point of view, if the firms are okay with it and willing to do it, it probably saves the county money and then everyone comes out ahead." Another said, "I don't care how they [GALs] get paid as long as they do their job and are helping the client."

One key informant said that the contracts are "a guaranteed recipe to ensure that GALs are not going to be good." This individual said that with the contracts, there is no accountability as to the number of hours of service provide or services offered.

County attorneys were asked in surveys to respond to the statement, "The compensation for GALs is adequate." The four attorneys either "strongly agreed" or "agreed"' with the statement.

In interviews, court administrators were asked about the processing of invoices submitted by GALs. Table 23 summarizes the information obtained from each county.

Table 23. County Processes for Paying GALs

	Process	Amount Paid	Expenses Paid	Expert Fee Paid
County A	Non contract attorneys submit motion for payment of fees with affidavit of time and explanation of how time was spent; judge reviews to see if there is anything	Non-contract attorney rate: $60	Costs reimbursed	Experts' requests come directly to the Juvenile Court Administrator; the county allows only $100 per hour of testimony time.

	Process	Amount Paid	Expenses Paid	Expert Fee Paid
	outrageous and signs order Processing time is only a few days.			
County B	Ten contracted law firms, with staggered expiration dates and caseloads. These contracts are not being renewed as the county moves to a strict hourly payment system. For example, one law firm takes 50 cases a year for which it is paid $72,000; does not submit a bill. Once the 50 case limit is up, attorneys are treated like non-contract attorneys. Non contracted attorneys submit their bills to Juvenile Court Administrator. Checks are processed pretty quickly.	$65 with time reimbursed for meeting time for children and meetings with caseworkers.	Non-contract attorneys submit expenses like photocopying, mileage	Very rare for GALs to use experts; if they subpoena a witness and pay expenses, they file a separate motion pre-hearing for payment.
County C	When parents are not indigent, the court finds the parent responsible for GAL fees; the county pays if the parent is indigent.	$70 per hour, including travel time	Mileage, copying and telephone bills are not reimbursed.	Magistrate could not recall a GAL ever using an expert.
County D	GALs submit claim forms to the	$100 per hour for travel time, time	Mileage, copying and telephone	Magistrate could not recall a GAL

	Process	Amount Paid	Expenses Paid	Expert Fee Paid
	juvenile court; the clerk submits the claim form to the judge for approval; the county commissioners approves submitted claims twice a month; GALs usually paid within a month	meeting with the child, case time	bills are paid separately.	ever using an expert.
County E[103]	Information not provided	$70 per hour; travel time to meet with child billed at $35/hr.	Mileage paid separately.	Information not provided

In the survey, GALs were asked about the submission and payment of their invoices. As Table 24 shows, most GALs (74%) reported promptly submitting their invoices and most (84%) reported that they are promptly paid.

Table 24. GAL Responses to Statements Regarding their Invoices (n=71)

	Always	Usually	Sometimes	Never	No Response
"I promptly submit invoices for my services for children."	44%	30%	13%	8%	6%
"I am promptly paid for the time I invoice the court."	47%	37%	8%	6%	6%

National Best Practice Standards

In order to attract top quality legal talent to the work of representing children in abuse and neglect cases, it is critical to offer them appropriate compensation. And to ensure that experienced lawyers stay in the child welfare field, compensation must be adjusted upwards to keep pace with inflation and the overall legal market. Like with other areas of poverty law, it has traditionally been a struggle for states and localities to provide adequate compensation to children's lawyers to meet these goals.

[103] Several requests were made to interview the court administrator in County E; this individual declined to be interviewed.

Compensation in CWLO Systems Compared to Panel Systems

By providing a steady paycheck to salaried staff attorneys, CWLOs typically offer better job security to lawyers than if the same individuals joined a panel system. With job security comes peace of mind, freeing the advocate to focus on her clients without worrying about whether she is getting enough work to pay the bills. CWLOs also offer normal fringe benefits such as health insurance, group life insurance, and contributions to a retirement fund. CWLOs additionally provide group malpractice insurance, frequently pay bar fees for their staff, and often pay access fees for electronic database services so that staff can do legal research. Many CWLOs have a set salary scale based on years of practice experience, providing transparency and predictability in compensation. The CWLO in Colorado has a salary scale that approximates that of the local district attorney's office, which is an appropriate analogue; many CWLOs seek to have pay parity with the county attorney in their area.

Attorneys in panel systems are generally solo practitioners who first and foremost must ensure that they receive enough court appointments to make ends meet. On top of the constant need to attend to business development, panel attorneys must obtain their own malpractice, health, and life insurance; maintain an office and pay overhead; pay for books and electronic research resources; fund their retirement accounts on their own; pay their bar dues; and pay both the employer and employee contributions for FICA taxes.

Another significant advantage to the CWLO system is that employees of a children's law office are eligible for federal loan forgiveness under the College Cost Reduction and Access Act,[104] whereas private attorneys who contract with the government are not. To qualify for federal loan forgiveness, a borrower must make monthly loan payments for ten years, while working in qualifying public service employment. Qualified employment includes traditional, 501(c)(3) non-profit organizations as well as "private public service organizations"—the latter of which, however, are specifically defined to exclude any entity that is organized for profit.

Compensation in Panel Systems: Flat-Rate Structure Compared to Hourly Structure

In those jurisdictions that use a panel system, the best practice for compensation is pay an hourly rate as opposed to a flat per-case fee. Paying a flat per-case fee is a disincentive to attorneys working more hours on any given case than they calculate to be financially remunerative. For example, if a jurisdiction pays $1000 per case and the attorney calculates that he must gross $100 per hour in order to meet his office expenses and make a living, then to work more than 10 hours on any case becomes a money-losing proposition. Systems that have "contracts" with individual attorneys or law firms, pursuant to which the attorney or firm is paid a flat amount to handle a set number of cases, contain the same disincentive. Contracts that require attorneys to take an unlimited number of cases for one universal flat fee are even more problematic, because with each additional case, the financial break-even point comes at a lower number of hours-per-case worked.

[104] Pub.L. 110-84, 121 Stat. 784 (Sept. 27, 2007).

It is for this reason that states such as Connecticut and Colorado have, in recent years, restructured their compensation schemes away from flat fees to hourly rates, consistent with NACC (2001) recommendations. In both Connecticut and Colorado, this was accomplished in large part by vigorous advocacy from new statewide entities (the Commission on Child Protection and the Office of the Child's Representative, respectively) built specifically to administer the panel systems. Connecticut's newly formed Commission on Child Protection successfully lobbied for a shift to hourly billing, and as a result, payments to attorneys increased by 44 percent. (COCP, 2009).

Those jurisdictions that pay an hourly rate to court-appointed counsel often do so pursuant to a specific statute that sets the rate. It is not unheard of for the hourly rate to remain the same for many years, because increasing the rate of pay to lawyers is rarely a legislative priority. Increasing the rate of pay to lawyers who help poor people is even less popular. Thus, for example, in 1986 New York State established the pay rate to court-appointed counsel as $40 per hour for in-court work and $25 per hour for out-of-court work. (Unsurprisingly, over half the attorneys submitted bills indicating that they had done fewer than five hours' work out-of-court.) Attorneys could receive a maximum of $800 per juvenile court case, though on a case-by-case basis this cap could be exceeded upon a showing of extraordinary circumstances. By 2001, these rates were the same, even though the cost of living and the cost of practicing law in New York had increased dramatically. Consequently, the panel attorneys sued the state to force a pay increase.[105] The court entered an order requiring the state to pay $90 per hour, but stayed the decision to permit the Legislature to take action. Ultimately, state law was amended to provide $75 per hour for work in-court or out-of-court, and the litigation was settled.

According to information gathered by the ABA Center on Children and the Law in 2006 (the most recent information available), most jurisdictions pay in the range of $50 to $70 per hour. Some have differentials for in-court and out-of-court time, and some have per-case maximums. At the high end, Nevada and Kentucky pay $100 per hour; at the low end, Rhode Island pays $30 per hour. Colorado currently pays $65 per hour.

Notably, in its most recent appropriation to the Commission on Child Protection, the Connecticut legislature approved a $40 per hour rate to panel attorneys but *the rate of pay is $75 per hour for Child Welfare Law Specialists.* As reported by the Chief Child Protection Attorney:

> In this way, experienced, knowledgeable and respected juvenile contract attorneys can receive a fair rate of pay for the exemplary work they do on behalf of the children and families the state is responsible to serve. In addition, a higher hourly rate for certified attorneys provides an incentive for competent attorneys interested in focusing on child welfare law to enter and remain in the field (Connecticut CCPA, 2009).

Determining what an appropriate compensation level is for attorneys who represent children in abuse and neglect proceedings is a complicated, multi-factored endeavor. In diverse states with differing costs of living and variation among counties in how legal services are delivered, especially between rural and urban areas of the same state, it can be even harder to calculate a uniform rate of

[105] *New York County Lawyers' Association v. State of New York*, 763 N.Y.S.2d 397 (N.Y. Co. Sup. Ct. 2003).

pay. California has recently risen to the challenge in making these calculations. Its Administrative Office of the Courts has done a remarkable amount of work to develop model compensation rates, taking into account regional cost of living variations and attorney experience levels. The result is a multi-tiered model that ranges from a $49,000 annual salary (or an hourly rate of $59) for junior attorneys in the least expensive region to $155,000 (or an hourly rate of $102) for the most experienced attorneys in the most expensive region (Judicial Council of California, 2008). Additional calculations for overhead expenses were made to take into account non-panel service delivery models.

8. How well are guardians ad litem trained?

In Nebraska, Guardians ad Litem Training is available from the Through The Eyes of a Child Initiative. Due to low registration numbers the Guardian ad Litem training sessions to be held in April 2009 at the University of Nebraska Lincoln Law College and Creighton University School of Law were cancelled. Guardian Ad Litem Online Basic Training, however, is continuously available. The syllabus for that training is reprinted in Table 25.

Table 25. Guardian Ad Litem Basic Online Training

Training Modules	**Reading Assignments**: From the Book: Child Welfare Law and Practice (Ventrell and Duquette, Eds.) Assigned readings to complete training: These are minimum assignments to address the learning objectives of the training. There are many other sections of this comprehensive volume that are useful and we recommend that guardians ad litem regularly use this book as a resource.
1. Guardian ad Litem Overview By Dr. Roger Lott. 2. Interviewing Children By Dr. Barbara Sturgis. 3. Child Maltreatment By Dr. Gregg Wright. 4. Advocating for Children By Mark Ells, J.D 5. Case and Statute Review By Mark Ells, J.D.	**Relevant state and federal statutes** 149-173 (Federal Statutes) 185-211 (Federal Case Law) **Child Maltreatment in the Context of Other Factors** 15-33 (Physical, Sexual, and Emotional Child Abuse and Neglect) 79-84 (Family Dynamics in Child Maltreatment) 95-99 (Cultural Context) 6-7 (Poverty, Race, and Maltreatment) **Child developmental considerations** 53-77 (Impact of Child Development on Maltreatment) **Advocating for children** 545-640 (Trial Advocacy) 220-221 (Safety)

	535-537 (Safety) 363-379 (Permanency)

Multiple stakeholders were asked about the quality of training that GALs receive with respect to performing their roles as GALs. Table 26 provides the GAL survey responses to the question about the adequacy of training for GALs pursuant to Rule 4-401 of the Nebraska Rules of Court. As the Table shows, over half of the responding GALs (55%) either disagreed or strongly disagreed that the training provided them with all the information they need to serve as a GAL.

Table 26. GAL Responses Regarding GAL Training (n=71)

	Strongly Agree	Agree	Disagree	Strongly Disagree	Have Not Had the Training
"The training provided to GALs pursuant to Rule 4-401 of the Nebraska Rules of Court gave me all the information I needed to perform my responsibilities as a GAL."	3%	35%	38%	17%	7%

In the survey, GALs were asked if they would like to receive more training on their roles and responsibilities as GALs. In response, 59% said "yes" and 41% said "no". Noteworthy is the finding that although 55% of the GALs said that the training did not provide them with all the information they needed, two-fifths believed that they did not need additional training as a GAL.

GALs also were asked about the training topics that would be of most help to them. Table 27 provides the list of topics provided to the GALs for their consideration.

Table 27. List of Training Topics Provided to GALs

• Federal child welfare law and requirements • The Indian Child Welfare Act (federal and state requirements) • State child welfare law and regulations • Nebraska guidelines for GALs for juveniles in juvenile court proceedings • The child welfare process (reports, investigations, different dispositions) • The Nebraska Department of Health and Human Services – how it works • Placement options when children enter foster care • Permanency planning for children in foster care	• Effects of parental alcohol/drug use on children • Immigration issues • Working with the Foster Care Review Boards and CASAs • Use of experts and others in assessing the child's needs • Decision making regarding separate legal counsel for the child • Representation of sibling groups • Communicating and forming relationships with children and youth • Communicating with foster parents and group home staff

• Child and adolescent development • The educational needs of children with histories of abuse or neglect • The emotional needs of children with histories of abuse/neglect • Children's mental health issues	• Communicating with DHHS caseworkers • Developing reports and recommendations for the court • Communicating and coordinating with a child's delinquency attorney • Trial skills

Table 28 provides the ten topics that GALS most frequently identified as helpful.

Table 28. Training Topics Most Frequently Identified by GALs as Helpful (n=71)

Training Topic	Percentage of GALs Identifying the Topic as Helpful
The emotional needs of children with histories of abuse/neglect	45%
Placement options when children enter foster care	41%
Children's mental health issues	41%
Permanency planning for children in foster care	31%
Immigration issues	31%
Federal child welfare law and requirements	30%
State child welfare law and regulations	30%
Child and adolescent development	30%
The educational needs of children with histories of abuse/neglect	30%
Use of experts and others in assessing the child's needs	25%

GALs also responded to questions about level of training. When asked hours of GAL-specific training that they received *prior* to beginning their work as a GAL:

- 63% said none
- 10% said between 3 and 8 hours
- 13% said between 10 and 16 hours
- 4% said that that they had taken what is "required"
- 3% said between 30 and 60 hours
- 3% said that they had taken a juvenile law class in law school or received "in house" training
- 5% said that they could not remember

GALs also were asked about the number of hours of CLEs they had received related to their work as a GAL over the past 12 months. As Table 29 shows, close to half of the GALS received 5 or less CLE hours over the past 12 months, with almost one quarter receiving no CLE hours over this time period.

Table 29. Responding GALs: Number of CLE Hours Received Over the Past 12 Months Related to their GAL Work (n=71)

Number of CLE Hours	Percentage of GALs
None	23%
3-5	13%
6-8	30%
10-14	15%
14-20	10%
15-20	8%
25-40	4%
What is required	4%
Do not remember/not certain	4%

When asked to respond to the statement, "I am familiar with social science research on child and adolescent development, most GALs strongly agreed or agreed (70%). Only 30% disagreed and no GALs strongly disagreed.

When asked whether resources were available to support their participation in training and conferences and professional networking opportunities as a GAL, 76% strongly agreed or agreed that such resources are available.

In follow up interviews with GALs, assessments of the current training were generally positive. GALs described the training as "good," "adequate", and "very useful and helpful." One GAL stated that the training was "excellent" but stated that it "boils down to not having the time to go to the training." One GAL, however was quite negative about the training, saying, "The approved training [for GALs] is horrendous. I considered it to be a waste of my time, since it did not provide information on how to be a GAL. While child development information is helpful, and it does not hurt to have a full understanding of the effects of abuse and removal on children, it does absolutely nothing to explain to me my statutory duties as a GAL. Furthermore, the training provided does nothing to explain what the courts expect from me as a GAL."

One GAL commented that the training should focus more on trial skills. When asked in interviews about their understanding of child abuse and neglect issues, all of the GALs said that they had an understanding of these issues, although some said that they could always learn more. One GAL said that she would like more training on social skill ramifications and medical and psychological impacts for children following abuse and trauma. One GAL stated that many GALs in her county do not attend training because they do not want to be away from their regular legal practice.

Other stakeholders were asked about the training for GALs. Table 30 shows the responses of different stakeholder groups to the statement, "The current training provides GALs with all they need to perform their responsibilities."

Table 30. Stakeholder Responses to the Statement, "The current training provides GALs with all they need to perform their responsibilities."

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know
County Attorneys (n=4)	--	100%	--	--	
CASAs (n=89)	10%	22%	11%	6%	51%
DHHS Caseworkers (n=70)	4%	39%	11%	4%	41%

Several judges said that the training was good to very good, but expressed concerns about GALs taking full advantage of the training. Among the comments:

- "Some put it [the training] to better use than others."
- "Not all GALs are taking advantage of it."

One judge expressed concern that GALs do not participate fully in training. He/she stated that at all day trainings, GALs leave at lunch once they have the minimum 3 hours of training that they need. This judge commented:

> "I love to learn. Even though I've been around for a while, I know that there are always new things to learn and take to improve my practice and better help these kids. Why these attorneys don't care, or do the bare minimum, I don't understand that behavior. That's not the kind of person I'd want to appoint in my cases. The ones who don't need it are the ones who always come to these trainings and the GALs who need it most aren't there."

One judge thought that the training had improved GAL performance, and two judges said that they could not tell in GALs' performance if the training had made a difference. One judge said that the GALs have given mixed reviews of the training and the need for training. Another said, "Some [GALs] are really good and some not as good and training won't fix that." Four judges outlined areas of needed training for GALs. Table 31 summarizes these training areas.

Table 31. Judges' Recommendations for Training Topics for GALs

- Child development
- Implications for children of different forms of abuse, including incest
- Adoption/permanency issues
- Importance of family connections
- Immigration issues

- Balance of school and work for older children
- Federal and state law
- The Indian Child Welfare Act
- Reasons that children enter foster care
- Housing and homelessness issues
- Safety issues
- Providing representation in a trauma-informed way
- Rules of evidence
- Being an advocate in court

In interviews, CASAs expressed a range of views about GAL training. One was not familiar with the GAL training program; two stated that GALs are properly trained; and one said that GALs are not adequately training, commenting that "GALs need to know what they are getting involved in." Foster Care Review Board members (n=19) were asked to respond to the statement, "Based on my review of cases, GALs seem well trained to advocate for their child clients." In response, 5% strongly agreed, 11% agreed, 47% disagreed, 5% strongly disagreed, and 32% did not know.

The three DHHS caseworkers who were interviewed believed that GALs have adequate training. One caseworker stated that "training wise, [we] usually have some pretty strong GALs because most of them really immerse themselves in the system. Every once in a while, we have a new one who doesn't know how to do the work."

Two court administrators stated that GALs receive adequate training. Two others did not have an opinion.

Key informants also were asked about GAL training. One stated, "Well intentioned GALs across the state have strengthened their practice as a result of training; it has not made an impact on the ones who are terrible or mediocre." Another key informant observed that the training is excellent but he/she was not sure that it had had a measureable effect on the quality of GAL representation. This individual noted that there was initial grumbling among GALs about the training, feeling that it was beneath them. Yet another key informant described the training as "deplorable", stating that it does not "deal with the rubber-hits-the-road gritty realities of how GALs should conduct their work." This individual characterized the training as "too theoretical and basic 101 type stuff."

National Best Practice Standards

Training Content

Lawyers who represent children in dependency cases require extensive and varied training in order to obtain and maintain the basic competencies necessary to be effective and zealous advocates. Competent representation in any area of law requires knowledge, skill, thoroughness, and preparation. For child welfare law, this means familiarity with state and federal substantive law (constitutional, statutory, and regulatory); juvenile court procedure; trial advocacy; and child development (NACC, 2001). The training must be multi-disciplinary and it must go well beyond the sort of courses

traditionally offered in law schools (Pew Commission on Children in Foster Care, 2004). Indeed, in 1996, when it endorsed its *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases,* the American Bar Association noted eight broad content areas in which these attorneys must be trained:

> (1) Relevant federal and state laws and agency regulations;
>
> (2) Relevant court decisions and court rules;
>
> (3) The court process and key personnel in child-related litigation;
>
> (4) Applicable guidelines and standards for representation;
>
> (5) Child development;
>
> (6) Information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in his or her home;
>
> (7) Information concerning family dynamics and dysfunction including substance abuse, and the use of kinship care; and
>
> (8) Information on accessible child welfare, family preservation, medical, educational, and mental health resources for child clients and their families, including placement, evaluation/diagnostic, and treatment services; the structure of agencies providing such services as well as provisions and constraints related to agency payment for services.

(ABA, 1996). Additionally, the ABA called for the provision of written material (e.g., representation manuals, checklists, sample forms), including listings of useful material available from other sources.

As part of the process of certifying Child Welfare Law Specialists, the NACC has developed an examination in child welfare law that all applicants must pass to earn the CWLS credential (among other requirements, as discussed above under "Structure and Resource Allocation"). The exam tests for knowledge that is understood by experts in the field to be essential to effective representation in the dependency arena. The universe of material that is subject to inclusion in the test is contained in the NACC's *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases.* This 700-page volume – which is currently being revised with a second edition to be released in 2010 – represents the best, current thinking in the field as to what content all competent child welfare attorneys must master. Major chapter headings are provided in Table 32.

Table 32. NACC's *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases:* Chapter Headings

Child Maltreatment in America
Physical, Sexual, and Emotional Child Abuse and Neglect
Mental Health and Related Professional Evaluations in Child Welfare Proceedings
The Impact of Maltreatment on Child Development
Family Dynamics in Child Maltreatment
Cultural Context in Abuse and Neglect Practice: Tips for Attorneys
The History of Child Welfare Law
Federal Child Welfare Law and Policy
Child Welfare Constitutional Case Law
A Child's Journey Through the Child Welfare System
Dependency Court Jurisdiction and Interstate and International Proceedings
Collateral Proceedings (including delinquency, divorce/child custody, domestic violence, immigration, special education, and involuntary mental health commitments)
Evidentiary Issues
Children in Court
Non-Adversarial Case Resolution
Permanency
Child Welfare Appellate Law and Practice
The Role and Duties of Legal Counsel in Child Welfare Proceedings (with separate chapters for agency attorneys, parents' counsel, and children's counsel)
Trial Advocacy

The second edition will also include new chapters on Interviewing Children; the Indian Child Welfare Act; Child Protective Services Investigations; Child Safety and Risk Assessments; Due Process and Child Protection; and Children Aging Out of Foster Care.

Another leading text in the field, used in many law school clinical courses, is Jean Koh Peters's *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions*. This volume presumes that the reader has the substantive knowledge of child welfare law and instead focuses on the role of the child's attorney, presenting a variety of techniques and strategies for communicating effectively with child-clients and negotiating the difficult process of determining what position to take in court. The book devotes substantial attention to guiding attorneys who practice in states (like Nebraska) where governing law charges them with representing the child's "best interests."

Additional consensus thinking in the field is gathered in a 2006 volume of the *Nevada Law Journal*, memorializing the proceedings of a conference of the leading academics and practitioners in child welfare law concerning the representation of children. The volume contains reports from working groups addressing issues such as the Role of Family; the Role of Age and Stage of Development; the Role of Race, Ethnicity, and Class; Representing the Whole Child; and Best Interests of the Child and the Role of the Attorney. The issue also includes dozens of recommendations for improving child advocacy practice, most of which would require additional training modules to be fully realized.

Delivery of Training in the CWLO Model

Considering the incredibly diverse and numerous areas for training in the child welfare field, it is unsurprising that CWLOs have developed extensive and rigorous training programs for their new staff attorneys. Indeed, one of the paramount strengths of the CWLO model is that it allows for the regularization and standardization of training, delivered by full-time training staff who are constantly refining and adding to their program. In the CWLO model, new attorneys can attend mandatory pre-service training sessions and experienced attorneys can attend in-service and ongoing trainings throughout the year. Critically, staff attorneys at CWLOs are able to attend training seminars (whether offered in-house or at other CLE providers) while still being paid their everyday salary. Many CWLOs have a budget to send their staff to national training conferences, where they learn cutting edge practices occurring in other jurisdictions and meet peers and experts from around the country.

For example, JRP in New York City offers intense and constant training to all its staff. Over the last year, JRP has undertaken a complete restructuring of its child welfare training program. In the past, child welfare training for new staff attorneys was conducted as one five- to six-week session. These sessions were typically held once or twice per year, and hiring classes were coordinated with these periods of time. Although the information communicated in these sessions was comprehensive, based on staff input after a series of meetings, a new model, consisting of four components, went into effect in the fall of 2009.

(1) **Welcome Packets:** When a new staff member comes to JRP, he or she will be given a folder with a set of documents. These documents will include a letter outlining the staff member's first days with JRP, a guide to Family Court, an introduction to juvenile

delinquency and child abuse and neglect proceedings[106], and borough-specific orientation materials.

(2) **Core Training:** Every new staff member will undergo a three-week core training, which will be offered three times annually. The core training is an intensive course addressing all of the key elements of representing children in child welfare proceedings. The sessions will include PowerPoint presentations as well as the use of case studies. As staff learns about each stage of a child welfare proceeding, they will immediately use the skills they have learned by working as a group to prepare for that stage of a proceeding based on a hypothetical case example. The core training is also open to non-JRP attorneys, such as other institutional providers who represent children in New York State as well as parents' attorneys.

(3) **Modules:** Once new staff has completed the core training, they will return to their borough offices where they will begin to build their caseloads. While they acclimate to their role at JRP, they will continue their formal training by attending "modules". Module topics include working with adolescent clients and clients with special needs; educational advocacy; daily life in foster care; and advanced evidence skills. The modules, which are typically five hours long, will be broken down into one-hour sessions so that staff can attend while handling a caseload. Additionally, the modules will be presented in the borough offices by the borough's supervisory team with assistance from trainers and other senior managers at JRP. All supervisors will participate in trainer sessions to ensure consistency and comfort. They will be using PowerPoint presentations and trainer outlines that are being created centrally, so that every borough's staff will receive the same substantive material. Like the core training, the modules will be available to non-JRP attorneys. Additionally, while these sessions will only be mandatory for new staff, they will be open to all of JRP. Many senior staff members have already expressed an interest in attending these trainings as a refresher course for basic information.

(4) **Informational Cards:** JRP's training committee has also developed a series of 5x7 inch information cards for use by all of JRP's staff. The cards are designed to make information accessible and portable, so that they can be easily referenced at case conferences and court hearings. Topics currently include evidence, special juvenile immigrant status, education, state foster care regulations, and adolescents in foster care.

In addition to overhauling its new staff training, JRP continues to provide ongoing training for experienced staff. Each borough has a supervisor who acts as the Training Coordinator and works closely with the Child Welfare Trainer to provide numerous training opportunities over the course of the

[106] In addition to being appointed by the New York City Family Court to represent children in abuse and neglect cases, JRP also serves as the juvenile public defender.

year for all levels of staff. Over the past year, JRP has held trainings on such diverse topics as engaging difficult clients; navigating the human services system to help clients obtain daycare services; juvenile immigration issues; contempt and enforcement of orders; preserving the record for appeal; and domestic violence. New York State also recently issued new Rules of Professional Conduct, following which JRP held training sessions to ensure that its attorneys became familiar with the rules and incorporated them into their daily practice.

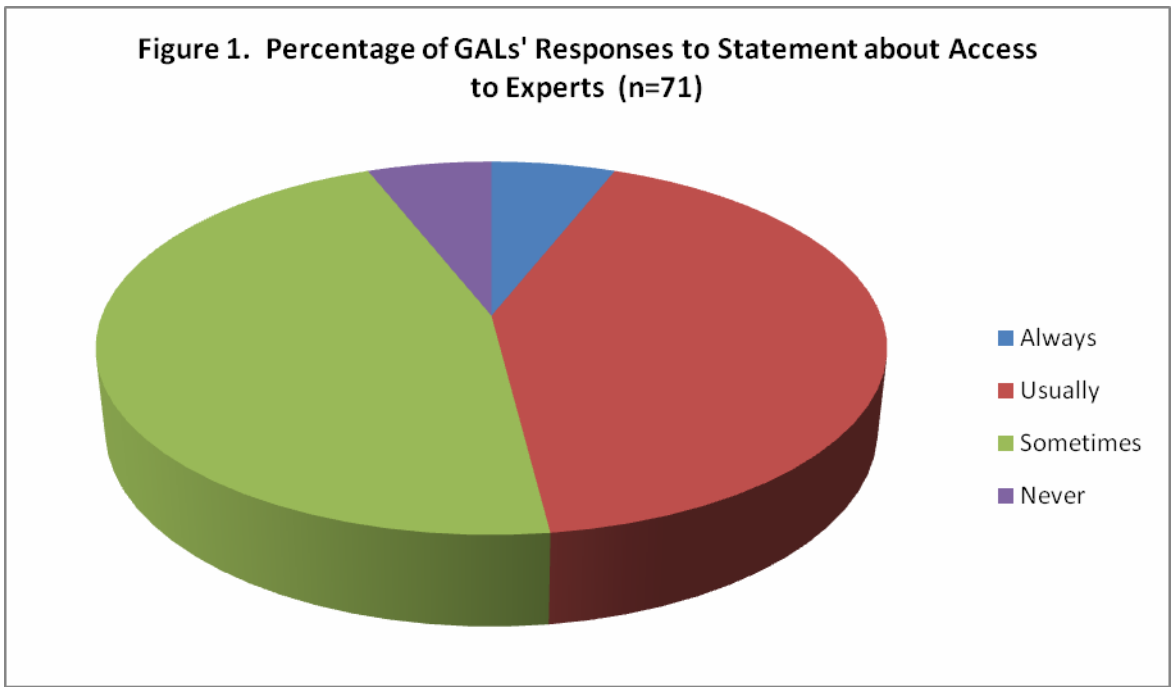
Delivery of Training in the Panel Model

Delivering effective training is far more challenging in jurisdictions that do not have CWLOs. However, jurisdictions that have a statewide entity to administer the system of legal services for children are in a better position to impose training requirements and to control the quality of training. For example, in Massachusetts, the CAFL program has two full-time trainers who coordinate the mandatory training program as well as ongoing training opportunities. As noted above, in order to become certified to take child welfare cases, attorneys must be admitted to the CAFL training course – a competitive application process – and successfully complete the five-day program (three days of substantive law and two days of trial skills). The schedule for the most recent training program is attached to this report as Attachment L. Attorneys must also complete eight hours of CLE each year, and they may only count those programs that have been designated by CAFL as appropriate for this purpose. Historically, attorneys have been paid their usual hourly rate for their eight hours of CLE attendance, but recent budget cuts have forced CAFL to eliminate this benefit.

In Colorado, a directive from the Chief Justice mandates that all GALs with OCR contracts attend 10 hours of ongoing CLE provided or sponsored by the OCR. OCR sponsors at least three multi-day CLE's per year, and partners with other organizations to sponsor/attend other trainings.

9. What are the processes in place to provide guardians ad litem access to investigators, experts, social workers and support staff?

In surveys, GALs were asked to respond to statements regarding their access to individuals who could provide them with assistance in representing the child. One statement was "I have access to experts to help me in making assessments of the child's needs." As Figure 1 shows, GALs were somewhat evenly divided: 6% of the GALs said "always," 42% said "usually," 46% said "sometimes," and 6% said "never."



In contrast, GALs reported less access to social workers independent of DHHS to assist them. In response to the statement, "I have access to social workers independent of DHHS to assist me in my GAL work": 1% strongly agreed; 18% agreed; 46% disagreed; 32% strongly disagreed; and 1% did not respond.

In the follow up interviews, GALs reported rarely using experts in their representation of children. Some GALs reported not using them at all. Some seemed perplexed by the question and appeared to believe that there was no need for an expert other than the mental health professionals that DHHS used. One GAL said that she could not think of an occasion that a GAL might need an expert, investigator or independent social worker.

GALs explained that psychological and psychiatric evaluations are ordered by the court and the GAL files a motion for an evaluation only if DHHS has not done so or the evaluation has been ordered but not conducted. One GAL, however, stated that the judge will grant her motions for an evaluation if she gives a reason. Another GAL stated that DHHS does "pre-treatment assessments" but added that they "are not worth the paper they are written on." This GAL stated that he/she regularly files a motion with the court for an evaluation which judges routinely grant. He/she stated that the managed care Medicaid provider in the state, Magellan, regularly denies requests for mental health evaluations for children and a court order is necessary to get the evaluations completed.

Nine judges said that GALs never use investigators and experts. Three commented that GALs with contract firms do not use them because "it comes out of payment to the firm," "it would be expensive," and "they are restrained by the contract" from using them. Two said that non-contract attorneys have used experts. Three judges said that GALs either "on occasion" or "rarely" use experts.

One judge said that GALs could file a motion if they needed an expert to counter the state's expert and that he/she always grants such motions if the GAL asks ahead of time and offers a justification.

County attorneys were asked to respond to the statement," GALs have access to investigators, experts, and social workers to assist them in understanding the issues that may affect the best interest of the child." Two county attorneys agreed with the statement; one strongly disagreed; and one did not know.

National Best Practice Standards

Given the complexity of social, economic, and cultural influences at issue in child welfare cases, attorneys who represent children in these matters must incorporate the expertise of other disciplines to best represent their clients (NACC, 2006). Advocates for children must be able to assess the full range of their clients' social, physical, psychological, educational, developmental, and legal needs – or collaborate with other professionals able to do so, within the penumbra of the protected attorney-client relationship. No single profession, including attorneys, is likely to possess the broad skills and specialized knowledge necessary to advocate for developmentally appropriate and individualized recommendations for each client. After all, "[i]n nearly all of the decisions faced by children in the course of child-protective proceedings, the standards for decision-making refer to important principles in non-legal fields. . .[T]he best interests standard, which has been explored in many of the helping professions, clearly makes reference to important research in other fields." (Koh Peters, 2007, p. 387.)

Relying on the state child welfare department's staff to provide this multi-disciplinary knowledge defeats the purpose of having a court-appointed, independent advocate for the child. This is why in a steadily increasing number of jurisdictions, lawyers representing children work side-by-side with social workers and other professional consultants in collaborative advocacy on behalf of the clients. The 2006 *Nevada Law Journal* conference discussed earlier in this report resulted in a ringing endorsement of the importance of such a team approach:

> Lawyers representing children need to understand the child in context, which includes an appreciation of all of the legal and social issues related to the presenting problem that is the initial or primary subject of the representation.
>
> Representation of children should be conducted in a multidisciplinary fashion that takes into account children's place in their families and communities as well as the full range of systems in which the children are enmeshed. The imperative to work in a multi-disciplinary fashion applies to both the representation of individual clients and to efforts at system reform.
>
> A. Definition
>
> Multidisciplinary practice:

1. Is informed by knowledge of the existence, domains, methods, and practices of other disciplines;

2. Includes the knowledge of when and how to access the services of professionals from other disciplines;

3. Includes the ability to collaborate with and evaluate the opinions of professionals from other disciplines.

B. Recommendations for Practice

The representation of children is best practiced through a multi-disciplinary team approach. The multi-disciplinary team should operate in a way that provides children with the benefits of the team approach while minimizing the potentially negative impact of having the client participate in repeated interviewing.

The multi-disciplinary team can be composed of staff employed or consultants retained by the attorney or firm representing the child or can be assembled on a case-by-case basis.

In forming a team, attorneys should be sure to explain to other prospective team members the attorney's professional obligations to the client. The attorney should also solicit from the prospective team members their understanding of their own professional obligations.

The attorney must ensure that all team members understand the way in which decisions will be made within the representation.

When not authorized to do so unilaterally, lawyers should obtain the resources to retain and pay for the services of other professionals by seeking judicial approval to do so.

C. Recommendation for Education

Lawyers need to be able to recognize presenting issues that require the services of other professionals and to access those services, but should also recognize the limits of their own professional expertise.

Lawyers should develop sufficient knowledge of other disciplines to formulate requests for evaluations and services from other professionals and to evaluate and use professional opinions.

Lawyers should be familiar with fundamental principles governing practice in other disciplines, such as the necessity that practices be evidence-based and peer-reviewed.

> Lawyers should be aware of issues from other disciplines that recur frequently in their practice (e.g., current treatments, evaluation methods, outcomes).

(Nevada Law Journal, 2006, pp. 667-68; footnotes omitted.)

The role of experts who work directly with the child's attorney varies from case to case. The following is a non-exhaustive list of some of the common ways MSW level social workers contribute to child advocacy by working directly with and for children's lawyers:

- Assessments of clients and their families;
- Review and critique of assessments of clients and families prepared by DHHS;
- Reviews and evaluations of DHHS service plans and special education plans;
- Development of alternative service plans for children and, in cases in which the child's attorney favors reunification, development of appropriate plans to support that goal;
- Development of alternative placement plans for children, focusing on the least restrictive alternative and keeping children closer to their communities of origin;
- Consultation regarding attorney-client, attorney-family, and client-family dynamics;
- In cases in which the child's attorney supports reunification, referrals to parents for public benefits to enable them to safely care for their children, and in cases in which the child's attorney supports kinship guardianship as the permanency plan, similar referrals to the proposed guardian;
- Consultation regarding specialized client issues—for example, a deaf client with mental illness (Koh Peters, 2007, p. 393);
- Participation in treatment team meetings, foster care reviews, and other similar meetings;
- Case management;
- Crisis intervention;
- Court testimony; and
- Assist attorneys in preparing to examine expert witnesses called by county attorneys and/or parents' attorneys.

Multi-Disciplinary Child Advocacy in the CWLO Model

At JRP in New York City, children's lawyers have long worked in tandem with in-house social workers from the agency's Juvenile Services Unit (JSU). Since its inception, the JSU social work practice has developed in response to the changing needs and issues of the clients, the attorneys who represent them, the social service agencies which serve them, and the court within which they appear. Over the past year, the social work staff has been confronted with a variety of challenges and additional demands. JRP was recently able to greatly expand its attorney staff, which translated into both a sharp increase in social work referrals and a significant amount of time spent in "informal training" through joint interviews and case consultations with the new staff. At the same time, JRP moved to a clearly articulated client-directed practice in which engagement and counseling are at the core of its representation. As a result, social work expertise became even more critical in interviewing, assessing the child's developmental capacity, and ensuring the child's understanding of the court process. And, in

response to a movement to have more children attend court, social workers were called upon to assist in preparing children for and debriefing them after court appearances.

The problems of the complex New York child welfare system were compounded by significant state and municipal budget cuts. The JRP social work staff was often expected to compensate for the failures of the public agency or its private providers, often to assist with case planning or service delivery. The public agency in New York has been moving to close congregate facilities and transition youth to family settings, sometimes very quickly and without adequate sharing of information from one private provider to another. The JRP social workers were called upon to attend planning conferences where they were often the only people with the case history and a relationship with the client.

For older clients who are aging out of the foster care system, agency planning often falls far short of providing the necessary housing, supports, and connections for the youth to make a successful transition to adulthood. JRP social workers are the ones with the client and systems knowledge to intervene and ensure that appropriate assistance was provided, both before and after the youth left the system.

Multi-Disciplinary Child Advocacy in the Panel Model

Clearly, attorneys in a panel system are at a significant disadvantage, compared to staff lawyers in a CWLO, when it comes to developing the kind of in-depth, ongoing interdisciplinary team approach to their child advocacy. Those jurisdictions that use a panel system are able to make, at best, modest efforts to provide attorneys access to independent experts and support staff. The leading example is Massachusetts, which, through its Indigent Court Costs Act, pays social workers and other experts along a range of rates, so long as the attorney has obtained an order from the judge allowing the expense. For example, social workers with an MSW degree will be paid in the range of $75-100 per hour.[107] An expert may always bill at a rate lower than the minimum of the range, but for the expert to be paid at a rate exceeding the maximum of the range, the attorney must obtain the approval not only of the court but also of the director of the CAFL panel administration. Experts submit their bills (an electronic billing system is in development) to CAFL for payment. CAFL maintains a list of qualified experts in various fields (including social workers, psychologists, and investigators, among others); experts who wish to be added to the list submit their qualifications to the program for review.

In Colorado, the OCR, through the mandated services line in the budget, pays for experts at the request of GALs. Under Colorado law, the court does not have jurisdiction to order OCR to pay for experts; GALs must make their requests directly to the OCR. Experts are paid by the OCR at a maximum of $100 per hour.

[107] Due to recent budget recissions in Massachusetts, the maximum rate in the experts' ranges has been reduced by five percent.

10. What are the processes in place to provide guardians ad litem access to educational officers, teachers, educational staff and truancy officers?

11. What is the nature of the relationship between guardians ad litem, juvenile legal counsel and the judicial system with identified educational staff regarding a child's educational status and truancy?

Stakeholders were asked about (1) GALs' contacts with children's teachers and education staff and (2) GALs' work on school attendance, including truancy, issues.

GALs Contacts with Children's Teachers and Education Staff

The GAL surveys contained a number of statements regarding the educational needs of children with active child welfare cases. As Table 33 shows, few GALs report always having some direct communication with children's teachers with most GALs saying that they "sometimes" do so. Their "sometimes" responses to the meaningfulness of information from teachers and educational staff may reflect this practice pattern.

Table 33. GAL Responses to Statements Regarding Children's Educational Needs (n=71)

	Always	Usually	Sometimes	Never
"I communicate with the child's teachers and other education staff."	11%	31%	54%	4%
"I receive meaningful information from the child's teachers and educational staff."	6%	38%	54%	3%

In follow up interviews, most GALs reported they had some contact with teachers and school counselors. One GAL stated that he likes to meet with children at their schools as they are separated from parents or foster parents and are less guarded and more candid. One said that the best source of information about a child is the teacher, and another reported regularly contacting the school counselor to learn more about the child. One GAL said that before preparing her six month review report, she talks with teachers and counselors and reviews the school record. Another GAL said that she does not usually speak to teachers, but in some cases, she has monthly meetings with the school counselor. One GAL reported that although the court has authorized GALs to have direct access to teachers and school personnel, the county DHHS has taken the position that a GAL may not talk with a teacher without direct authorization from the caseworker and a signed release.

Most GALs said that they were able to get information from the schools although some GALs stated that contact with the schools was the responsibility of other professionals: social workers, county attorneys or CASAs. One GAL said that getting information was "pretty easy once you jump through the various hoops," that is, provide the school with a court order. Getting information from schools, according to other GALs, however, is not always easy. One GAL said that she tries to get records from schools, but "it is hard to do." Another GAL described a recent situation in which school counselors were told not to provide any information about children because to do so was allegedly a HIPPA

violation. This GAL commented that it is easier to obtain information from high-risk schools than from schools in more affluent areas where fewer are children are in foster care and schools are more stringent about following the law.

One court administrator stated that access to school information depends on the school. Some schools are very good about providing information to the court and the GAL. More rural schools have more challenges providing education information. Other court administrators were less certain about GAL's access to education information but believed that the court received children's educational information through social workers and GALs.

Other stakeholders were asked about GALs' representation of children with respect to educational issues. The following describes young people's perspectives and other stakeholders' perspectives on GALs' work with children's teachers and educational staff.

Young People's Perspectives

Young people were asked in focus groups about their GALs' understanding of their educational needs and experiences. Two young people said that their GALs were on top of their educational needs. One young person said that his/her GAL did ask about his/her grades. Another said that his/her GAL "was like a mom – I would get nagged by her." All others, however, said that their GALs knew very little, if any, about their grades, school transfers, or school attendance issues. Most said that that GALs were not aware of their educational successes and challenges, their special education needs or their favorite and least favorite subjects because they do not ask. Among the comments:

> "He didn't know a lot about me. He didn't know half of what happened to me; half of what I did."
>
> "They should know how you are doing in school. They should know your grades."
>
> "Haven't talked to him in a long time."
>
> "GALs have no clue about what is going on at school."

Only one young person said that his/her GAL had visited him/her at school.

In one focus group, the young people shared their educational and career goals: one wanted to be a surgeon, another, a vet tech (though he/she admitted that he/she didn't like blood); another wanted to be a marine biologist; and another wanted to open his/her own day care center. These goals were poignant in light of the many changes in schools that they reported experiencing. One young person commented that it "probably would have helped had the GALs advocated that we get to stay in the same schools" when young people must move to a different foster home.

Other Stakeholders' Assessments of GALs' Work with Children's Teachers and Educational Staff

County attorneys and Foster Care Review Board members were asked about GALs' responsiveness to children's educational needs. The four county attorneys had varying opinions about

this issue, with one saying that GALs "always" pay attention to these issue; two saying that GALs "usually" do so; and one saying that GALs "sometimes" do so. As Table 34 shows, Foster Care Review Board members in a large percentage disagreed with the statement, "GALs have a good understanding of children's educational needs."

Table 34. Foster Care Review Board Members' Responses to GALs' Attention to Education Issues

	Strongly Agree	Agree	Disagree	Strongly Disagree
"GALs have a good understanding of children's educational needs." (n=19)	--	21%	68%	11%

Foster Care Review Board (FCRB) members from one county indicated that GALs do not include any discussion of education in their reports. Another said that GALs had no understanding of their child clients' educational needs. This member said, "Attorneys would be well-served to have teachers come testify or have reports from the teachers to give to the court about how the child is doing."

In interviews, some CASAs said that GALs have information on children's educational needs through reading reports, but many stated that GALs have little understanding of educational issues. One CASA said that GALs who get to know their clients do understand children's education needs. Another commented that the GAL in his/her case did not know that an Individual Education Plan was done for the child. Another stated that the GALs' focus is more on where children are living and not how they are doing in school, adding, "they probably have no idea what is going on at school."

DHHS caseworkers who were interviewed reported different experiences with GALs regarding their child client's educational needs. One caseworker said that one GAL recently gave good advice at a team meeting for a client with behavioral problems that were impacting school performance. Another caseworker said that GALs do not focus on anything related to education and instead focus on behaviors and permanency.

Parents and foster parents also were asked about their child's/foster child's GALs' attention to education issues. As Table 35 shows, significant percentages did not believe that the GALs attended to educational issues for their children/foster children.

Table 35. Parent and Foster Parent Responses to Statement About The GAL's Attention to Education Issues

	Strongly Agree	Agree	Disagree	Strongly Disagree	Does not apply to my child
Parents: "The GAL talks with me about my child's educational progress and needs." (n=4)	--	--	25%	75%	--

	Strongly Agree	Agree	Disagree	Strongly Disagree	Does not apply to my child
Foster Parents: "The GAL is aware of my foster's child educational progress and needs." (n=6)	--	50%	16%	16%	16%

School Attendance Issues, Including Truancy

In their survey responses, GALs reported high levels of comfort in responding to school attendance issues, including truancy. As Table 36 shows, 72% either strongly agreed or agreed that they were comfortable responding to school attendance issues including truancy.

Table 36. GAL Responses to Comfort in Handling School Attendance Issues (n=71)

	Strongly agree	Agree	Disagree	Strongly disagree
"I am comfortable responding to children's school attendance problems, including truancy issues."	11%	61%	13%	1%

In follow up interviews, GALs reported that they are involved with truancy issues to some degree. The nature of the GAL's involvement varied, in part depending upon how truancies are handled in their county, especially as to whether truancies are prosecuted in juvenile court or handled internally at the school level. One GAL said that if a child he or she represented was picked up on truancy, he would become involved to some extent, depending on his relationship with the child. A GAL from the same county explained that most children with truancy cases have a GAL, not an attorney, as they waive the right to counsel when their GAL is present at the truancy hearing. Should the GAL not be present at a later truancy hearing, the judge will appoint an attorney for the child. In another county, the GAL said that she becomes involved with truancy cases when the court appoints her as attorney for the parents of truant children. A GAL from a different county said that she represents children and parents in truancy matters. She commented that with elementary-age children, cases may start out as a truancy case and then "blossom" into a dependency case when a petition alleging educational neglect is filed against the parent. More often, however, the truancy case "blossoms" into a delinquency cases when the child fails to follow the court's order or is picked up on a law violation. A GAL from a different county said that he represented children when the case was brought by the county attorney's office but not when the issue is at the school administrative level. Another GAL stated that she had been appointed to represent children in educational neglect cases.

Other Stakeholders' Viewpoints

Judges were asked whether GALs meet with children's teachers and educational staff. They generally agreed that GALs do not directly communicate with teachers or education staff. Several

commented that talking to the school was more often handled by CASAs or the DHHS caseworker. One judge said that GALs "don't always go to the school," suggesting that perhaps they sometimes do; and one judge said "sometimes yes, sometimes, no." Another said that a few GALs may go to education team meetings but he/she did not think that GALs usually get involved in education issues.

Judges were asked whether GALs were effective advocates in truancy matters. Several judges said that there were few children who were prosecuted for truancy and that when this occurred, it raised questions as to why the child was placed in a foster home or group home that could not get the child to school. One judge, however, commented that in his/her county, there is "a ridiculous number of truancy petitions because the county attorney files on every single referral from the schools. A lot of these should be handled by the school or school district rather than using the court system." A number of judges said that whenever possible, they rolled the truancy matter into the 3(a) case. When the child had a delinquency case involving truancy, most judges said that GAL in the 3(a) case became the GAL in the delinquency case with either the Public Defender or a private defense attorney representing the child in the matter.

County attorneys and Foster Care Review Board members also were asked about GALs' effectiveness in cases involving truancy. County attorneys generally agree that GALs are effective in handling truancy cases. As Table 37 shows, Foster Care Review Board members largely disagreed with the statement, "GALs are effective in responding to their child client's school attendance problems, including truancy."

Table 37. Foster Care Review Board Members About GALs' Effectiveness in Truancy Cases (n=19)

	Strongly Agree	Agree	Disagree	Strongly Disagree
"GALs are effective in responding to their child client's school attendance problems, including truancy."	--	11%	74%	16%

Parents were asked to response to a statement regarding GALs' responses to school attendance issues. As Table 38 shows, parents reported either not having a child of school age or strongly disagreeing with the statement regarding GAL talking with them about school attendance issues.

Table 38. Parents' Responses to the Statement, "The GAL talks with me about any school attendance issues my child is experiencing." (n=4)

	Strongly Agree	Agree	Disagree	Strongly Disagree	Does not apply to my child
"The GAL talks with me about any school attendance issues my child is experiencing."	--	--	--	50%	50%

National Best Practice Standards

The three goals of the child welfare system – safety, permanency, and well-being – can sometimes obscure the importance of education in the life of a foster child, because on the surface it does not appear to fit neatly into one of these topic areas. However, children in state custody suffer disproportionately poor outcomes in education compared to their peers living at home, which only adds to the general disadvantages that they face going through childhood and beyond (McNaught, 2005). For example, foster children have a greater rate of dropping out of school. Some of the causes of this include frequent school changes (often related to multiple foster placement moves); delays in transferring education records from one school to the next; difficulty in sharing a child's education record and history; failure to identify school issues and needs; inappropriate placement in special education; higher rates of discipline; and lack of involvement in extracurricular activities (McNaught, 2005).

For this reason, national authorities such as the National Council of Juvenile and Family Court Judges and the American Bar Association's Center on Children and the Law urge all stakeholders in the child welfare system to engage in a relentless focus on the education status and needs of foster youth, including the basic question of whether each child is enrolled and attending school. The NCJFCJ (2008) has developed an educational checklist and technical assistance brief to assist dependency court judges in monitoring education issues in each case. Excellent resources are also available from the Legal Center for Foster Care and Education, a collaborative project among the ABA Center on Children and the Law, Casey Family Programs, the Education Law Center, and the Juvenile Law Center (available at: http://www.abanet.org/child/education/).

Chief among these is its *Blueprint for Change*, which can be used by children's attorneys in individual cases as a checklist to ensure that the child's education needs are being met (Available through the Legal Center for Foster Care and Education at: http://www.abanet.org/child/education/publications/blueprint_second_edition_final.pdf).

Collaboration among stakeholders is absolutely vital to the enterprise of nurturing the educational success of foster children. The key persons and entities that must collaborate include the local school district in which a child is enrolled when she first enters foster care; subsequent districts where she is enrolled; the public foster care agency; private providers of foster care or residential care; the court; the parents, if the plan is reunification; and the child's attorney. In some jurisdictions, statutory amendments have created structures that enable this collaboration to occur, particularly when a bureaucratic culture of "silos" (i.e., each department or agency focuses on its own mission without regard to how other departments interact with shared clients) dominates. For example, in 2003, California enacted AB 490 which, among other things, requires every school district to designate a liaison for foster children, charged with facilitating the transfer of records and enrollment. The bill also requires school districts to permit foster children to maintain their enrollment in their existing school even if the child moves to a new district, if the move is due to their status as a foster child. In those instances where the child welfare department deems it necessary for the child to change schools, the law requires school districts to facilitate the transfer of records within two days. Long-existing law in

California also requires the child welfare agency to maintain an "education passport"; the agency must maintain updated education records on children in its custody and provide the "passport" to foster parents within 30 days of placement.

Because education is governed by a complex set of intersecting laws and regulations at the federal, state, and local levels, misunderstandings about what the law requires and what rights children and their parents have abound. Because foster care is also governed by a complex set of rules – some federal, some state – the challenges to understanding education for foster children are even greater. These challenges are particularly evident in the area of information sharing, where the tension between privacy norms and child protection/welfare norms is especially noticeable. For example, it is common in both child welfare and school systems to strictly limit access to information (whether in the form of documents or simple conversations about a child), sometimes in a manner that seems unthinking or overly cautious. This privacy instinct is motivated by a desire to protect children from inappropriate sharing of information about sensitive matters and is often has some colorable legal basis. On the other hand, in order to effectively protect children and ensure that their needs are being met, it is important for information to be shared, particularly when the law vests authority over and responsibility for the child in multiple entities and individuals.

The leading source on the laws governing the education of children in foster care, especially around issues of information sharing and decision making, is a monograph by Kathleen McNaught at the ABA Center on Children and the Law (2005). The paper makes clear that it is indeed possible for child welfare workers, school officials, foster parents, children's attorneys, and the court to all work together and share information about a child's educational status and needs. Some states have done the hard work to untangle the complexities in the law and to provide a roadmap to stakeholders to navigate education issues for foster children. For example, Washington State has a field guide for information sharing that includes a decision-making tree to show what types of information can be shared, and with whom (Washington Department of Social and Health Services, 2004).

It is absolutely critical for foster children's attorneys to be fully informed of their clients' educational status and to zealously advocate for any unmet needs to be addressed. In a murky and confusing environment with multiple bureaucracies overlapping and intersecting to care for the child, the attorney is often the one person with the knowledge and the standing to vindicate her client's educational rights. These rights will go unenforced if the attorney does not know of problems her client is facing (ABA, 1996; NACC, 2001). Many states with detailed standards of practice for dependency attorneys reflect this imperative (Massachusetts CPCS, 2007; New York State Bar Association, 2007). Children's attorneys must obtain their clients' school records, including especially any special education plans, and must remain informed of progress and changes. Clearly, any problems related to non-attendance must be addressed as they reflect shortcomings on the part of the foster care system. As these issues are deeply entwined with the foster care placement itself, they should be handled in the context of the child welfare case. Truancy issues for foster children tend to be connected to something amiss with their physical placement or the underlying trauma they have experienced and can often be resolved with an appropriate, professional assessment and provision of additional services, all without the need to open a status offender prosecution.

While many misunderstand the Family Educational Rights and Privacy Act (FERPA) to build an impenetrable wall around school records, it is actually the case that FERPA provides for some clear exceptions that would allow a child's attorney to gain access to a client's school records. FERPA permits a parent to consent to the release of a child's school information. If a state has a statute or regulation that defines "parent" to include the public foster care agency for children in its custody, then it would appear that the agency could consent to the release of those records. Moreover, FERPA has a clear exception to its general privacy rule permitting the release of information pursuant to court order. Thus, some states either include blanket language in their appointment orders invoking FERPA and permitting children's counsel to access school information, or attorneys file motions to obtain an education-access court order separately, consistent with national standards (ABA, 1996).

12. What is the time to permanency and time in court for children in the Nebraska foster care system?

Data provided by the Nebraska Department of Health and Human Services indicate that average length of stay for children in foster care in the five counties selected for this evaluation has remained relatively stable over the past six fiscal years. As Table 39 shows, there have been, however, slight increases in average length of stay in most of the five counties. Table 39 also shows that there is considerable variation among counties regarding children's average length of stay in foster care, ranging from two year (24 months) in County A to 15 months in County D.

Table 39. Average Length of Stay in Months for All Children Discharged from Foster Care in the Fiscal Year

	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	Difference between FY2003 and FY2008
County A	22	23	19	22	23	24	+10%
County B	24	25	24	23	22	25	+4%
County C	20	19	17	17	15	22	+10%
County D	14	14	12	15	14	15	+7.1%
County E	21	18	17	17	18	17	-14%

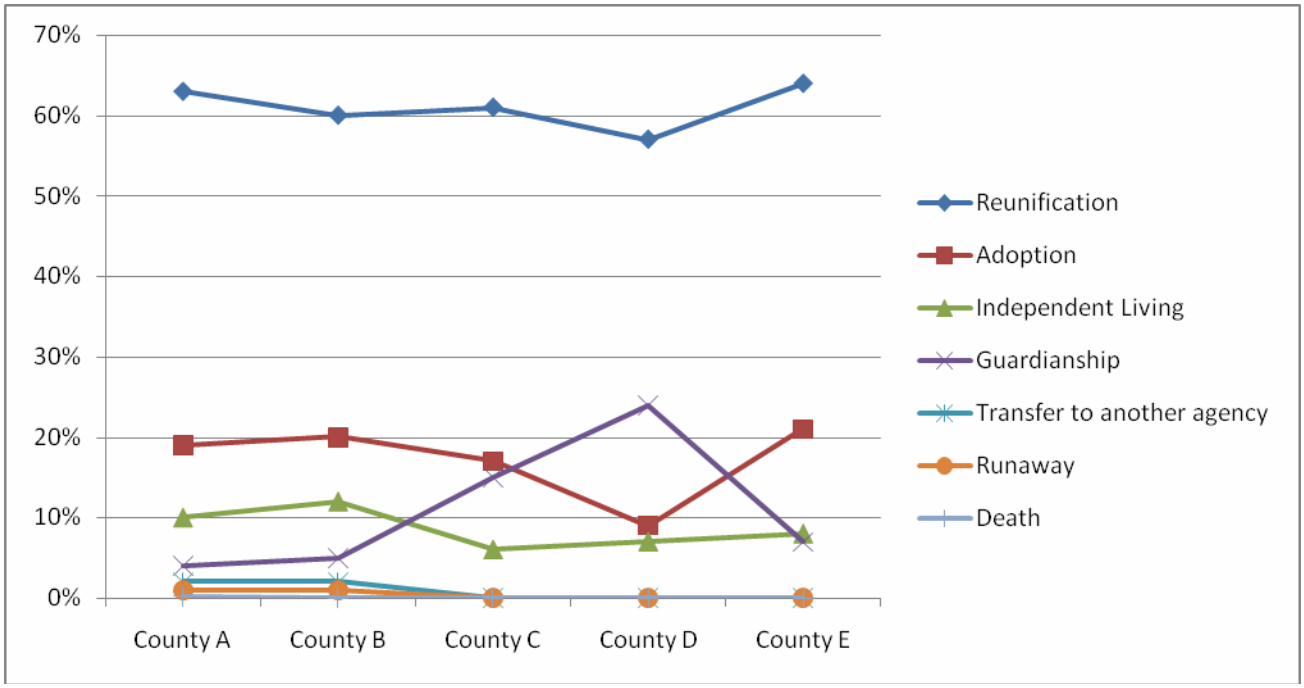
Variation is also seen among counties regarding the average length of stay in foster care for children who leave care to adoptive families. As Table 40 shows, in FY 2008, some counties averaged just over two years (25 months) for these children while other counties averaged more than three years. Three counties decreased the average length of stay for children who exited to adoptive families while one county remained the same and another showed a significant increase.

Table 40. Average Length of Stay in Months for Children Discharged from Foster Care to Adoption in the Fiscal Year

	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	Difference FY 2003 to FY 2008
County A	40	44	42	43	40	37	-.08%
County B	40	39	38	36	37	40	-0-
County C	52	22	37	31	37	44	-15.4%
County D	17	38	Not available	29	32	25	+47.0%
County E	42	32	30	32	24	25	-40.0%

Figure 2 provides a comparison of discharge outcomes for FY 2008 for the five selected counties.

Figure 2. Comparison of Permanency Outcomes for FY 2008



Over the past 6 years (FY 2003 through FY 2008), certain trends regarding permanency outcomes are evident in each of the five counties. All counties have experienced increases in the percentage of children exiting foster care to reunification; many have experienced increases in exits to guardianship; and in most counties, smaller percentages of children have exited foster care to independent living or adoption.

In follow up interviews, GALs from different counties had different impressions regarding permanency outcomes for children. One GAL estimated that 80 to 85% of children exiting care return home, 10% are adopted and 5% age out. In another county, the GAL estimated that 75% of exiting children go home or age out and about a quarter are adopted. Another GAL in the same country estimated that 60 to 70% of children return home. In another county, the GAL said that it does not seem that children return home often enough. She believed that the majority of her cases go to termination of parental rights, adoption or guardianship. One GAL with cases in two counties said that in one county, far more children go home than are adopted or age out, while in the other county, the issues bringing children into foster care are more serious (including parental meth abuse and untreated parental mental illness) and more cases results in termination of parental rights. Another GAL said that only younger children are adopted. Yet another GAL said that the number of cases with petitions to terminate parental rights has increased but expressed concerns that children who are freed for adoption are not being placed with adoptive families and are left as legal orphans.

A GAL in one county estimated that only 10% of children return home at the temporary custody hearing, usually only because the abuse or neglect was a one-time incident or the home is dirty. She said that only about 5% of cases are dismissed at this point, usually when parents are middle to upper class and have money to hire a private attorney. They agree to go to therapy and the case is treated as a voluntary case.

GALs were asked how long children remain in foster care. In one county, one GAL said that the average length of stay in care is about 12 months in his county, and a GAL in another county said that, based on statistics that she had seen, length of stay is much longer than elsewhere in the state. In yet another county, the GAL said that reunifications tend to happen within 9 months to a year, and for children who are adopted wait an average of 18 to 20 months. A GAL from another county said that the time children spend in foster care varies but that many children are returning home sooner as a result of more focus at the front end when children come into foster care. A GAL in the same county said it seemed that most of the children she represents have been in foster care between 1.5 and 2 years. In another county, the GAL said that it is rare that children spend years in foster care. Few cases go beyond the third 6-month review. By contrast, a GAL from a different county said that children are staying in foster care much longer, observing that “it’s hell to get them out of HHS.” This GAL said that the DHHS supervisor believes that no one is perfect for the child and never wants children to return home. Another GAL said that two or three years is probably the average length of time that children remain in foster care.

When asked about the permanency outcomes for the children they represent, the GALs identified a number of factors that seem to prolong children’s stays in foster care: judges’ reluctance to return children home without there being an absolute assurance that there are no risks; failure of county attorneys to file petitions to terminate parental rights; failure to follow the requirements of the Adoption and Safe Families Act regarding filing petitions to terminate parental rights; the costs associated with GALs’ filing petitions to terminate parental rights; parents’ decisions to take termination of parental rights actions to trial; and too few judges. One GAL identified more guardianships as a factor

expediting permanency. Some GALs said that they simply did not know what factors have been important.

Several GALs discussed the issue of who files a petition to terminate parental rights. Several GALs stated that the filing of a petition was the responsibility of the county attorney.[108] GALs said that when they believe that termination of parental rights is in a child's best interest, they ask the county attorney to file. When county attorneys fail to do so, some GALs report that they file the petition. One GAL said that he can file for termination of parental rights if the county attorney is in agreement, "which is most of the time." This GAL said that he tries to identify these types of cases early so that the case does not go to the Adoption and Safe Families Act timeline (15 out of 22 months). Another GAL stated that other GALs do not file petitions to terminate parental rights because they are not paid extra for it. Another GAL said that the firm does not have the resources to pay for experts as the county attorney has. One GAL expressed concerns about filing a termination of parental rights petition because it moved him out of his neutral position and his role of advocating for the child and results in his advocating against somebody.

Judges likewise reported that GALs at best, occasionally, file motions to terminate parental rights (TPR). Three judges said that GALs never file TPR motions. One judge said that "GALs aren't TPR'ing or pushing the county attorney to TPR. There are too many cases where there should be a TPR but nobody is filing it." Another said that there are only two prosecutors in the county doing TPRs and that the "GAL should file for TPR if necessary – be proactive and don't wait." Those judges who reported some TPR filings by GALs said:

- In 20 years on the bench, there have been only 2 or 3 cases where the GAL filed for TPR.
- In more than 15 years on the bench, only one TPR case has been filed by a GAL. "The GALs should carry the water when the prosecutors aren't doing it."
- There is one GAL who has three pending TPRs and filed them because the county attorney's caseload was too high.
- There has been a spate of GALs filing TPR motions and taking the lead on prosecuting the motions because the deputy county attorney who is assigned is overburdened and the GALs realize that and they work out an arrangement.

One CASA said that the GAL in her case will agree to termination of parental rights "based on what other people have included in their reports." One key informant stated that GALs never file for termination of parental rights (TPR). This key informant indicated his/her belief that GALs should file when the case involves aggravated circumstances and the county attorney is not moving forward with a TPR. He/she said, "The GALs overwhelmingly do nothing but serve as a back up to the county attorneys; they never do anything proactively."

[108] Under state statute, GALs have the legal right to file TPR motions. RRS Neb § 43-272.01(2)(h)

National Standards on Achieving Permanency for Children and Youth in Foster Care

The Child and Family Service Reviews

Overview

The 1994 Amendments to the Social Security Act (SSA) authorize the U.S. Department of Health and Human Services (HHS) to review State child and family service programs to ensure conformity with the requirements in Titles IV-B and IV-E of the SSA. Traditionally, reviews focused primarily on assessing State agencies' compliance with procedural requirements, as evidenced by case file documentation. In addition, past reviews did not provide States with opportunities for making improvements before imposing penalties.

On January 25, 2000, the HHS published a final rule in the *Federal Register* to establish a new approach to monitoring State child welfare programs. Under the rule, which became effective March 25, 2000, States are assessed for substantial conformity with certain Federal requirements for child protective, foster care, adoption, family preservation and family support, and independent living services.

The Children's Bureau, part of the HHS, administers the review system, known as the Child and Family Services Reviews (CFSRs). The CFSRs enable the Children's Bureau to: (1) ensure conformity with Federal child welfare requirements; (2) determine what is actually happening to children and families as they are engaged in child welfare services; and (3) assist States to enhance their capacity to help children and families achieve positive outcomes. Ultimately, the goal of the reviews is to help States improve child welfare services and achieve the following outcomes for families and children who receive services: Safety, Permanency, and Well Being. The Federal Government conducts the reviews in partnership with State child welfare agency staff; consultant reviewers supplement the Federal Review Team. The reviews are structured to help States identify strengths and areas needing improvement within their agencies and programs.

The Review Process

Each CFSR is a two-stage process consisting of a Statewide Assessment and an onsite review of child and family service outcomes and program systems. For the Statewide Assessment, the Children's Bureau prepares and transmits to the State the data profiles that contain aggregate data on the State's foster care and in-home service populations. The data profiles allow each State to compare certain safety and permanency data indicators with national standards determined by the Children's Bureau. After the Statewide Assessment, an onsite review of the State child welfare program is conducted by a joint Federal-State team. The onsite portion of the review includes: (1) case record reviews; (2) interviews with children and families engaged in services; and (3) interviews with community stakeholders, such as the courts and community agencies, foster families, and caseworkers and service providers. At the end of the onsite review, States determined not to have achieved substantial conformity in all the areas assessed are required to develop and implement Program Improvement Plans (PIPs) addressing the areas of nonconformity. The Children's Bureau supports the States with technical

assistance and monitors implementation of their plans. States that do not achieve their required improvements sustain penalties as prescribed in the Federal regulations.

All 50 States, the District of Columbia, and Puerto Rico completed their first review by 2004. No State was found to be in substantial conformity in all of the seven outcome areas or seven systemic factors. Since that time, States have implemented their PIPs to correct those outcome areas not found in substantial conformity. The second round of reviews began in the spring of 2007 and will be completed in 2010. Nebraska's first round CRSR took place in 2002; its second round CFSR took place in 2008.

Nebraska CFSR Results: First Round in 2002 and Second Round in 2008

The following summarizes the findings from the Child and Family Service Reviews (CFSRs) for Nebraska on the two permanency outcomes on which the federal government rates the states.

Permanency Outcome 1: Children have permanency and stability in their living situation.

Nebraska was not in compliance with Permanency Outcome 1 in the first or second round of the CFSR. In the second and most recent round of the CFSR, this outcome was achieved in only 25% of the cases reviewed, which is far less than the 95 percent required for an overall rating of substantial conformity. Some of the counties selected for this evaluation participated in the CFSR. The following Table summarizes the percent of cases in each of these counties that met the national standard in the Second Round of the CFSRs.

Table 41. County Performance on Permanency Outcome 1: Second CFSR Round (50 cases)

County	Percentage of cases in compliance with federal standard	Percentage from national standard
County A	20%	-75%
County D	27%	-68%
County E	33%	-62%

In the second round of the CFSR, Nebraska met the national standard for only one of the four data composites: Composite 3, Permanency for children in foster care for extended periods of time.[109] The CFSR identified several challenges with respect to achieving permanency for children in state foster care:

[109] Detailed information on the data indicators and composites can be found at US Department of Health and Human Services, Administration on Children and Families.
http://www.acf.hhs.gov/programs/cb/cwmonitoring/data_indicators.htm

- The state agency was not consistent with regard to establishing a child's permanency goal in a timely manner.
- The state agency was not consistent with regard to attaining the goals of reunification, permanent placement with relatives, or guardianship in a timely manner.
- The state agency was not consistent with regard to achieving adoptions in a timely manner.

Permanency Outcome 2. The continuity of family relationships and connections is preserved for children.

In the first and second rounds of the CFSR, Nebraska was not in substantial conformity with Permanency Outcome 2. In the second and most recent round, this outcome was rated as substantially achieved in only 67.5% of the cases, below the 95% required for substantial conformity. Some of the counties selected for this evaluation participated in the CFSR. The following Table summarizes the percent of cases in each of these counties that met the national standard.

Table 42. County Performance on Permanency Outcome 2: Second CFSR Round (n=50)

County	Percentage of cases in compliance with federal standard	Percentage from national standard
County A	80%	-15%
County D	45%	-50%
County E	67%	-28%

The CFSR identified several challenges with respect to preserving family relationships and connections for children:

- The state agency was not consistent with regard to promoting visits between and among siblings in foster care.
- The state agency was not consistent with regard to efforts to maintain the child's connections with extended family, culture and community or with regard to efforts to maintain and strengthen the parent-child relationship while children are in foster care.
- The agency was not consistent with regard to seeking and evaluating relatives as potential placement resources.

National Best Practices in Achieving Permanency for Children in Foster Care: Best Practices

The following describes a range of best or promising practices that have been identified by the California Evidence Based Clearinghouse for Child Welfare[110] and leading experts in the field of child welfare (Kerman, Freundlich & Maluccio, 2009; Javier, et al, 2007; Mallon & Hess, 2005).

[110] Information the Clearinghouse and the programs described in this report can be found at: http://www.cachildwelfareclearinghouse.org/

Practice Models

Motivational Interviewing (MI) a client-centered, directive method designed to enhance client motivation for behavior change. It focuses on exploring and resolving ambivalence by increasing intrinsic motivation to change. *MI* has been shown to be effective in improving substance abuse outcomes by itself, as well as in combination with other treatments. This practice model is particularly relevant to achieving permanency for children in foster care because of the high incidence of substance abuse among parents whose children enter foster care.

Family Group Decision Making (FGDM) is an innovative approach that positions the "family group" as leaders in decision making about their children's safety, permanency, and well-being. Through *FGDM* processes, the "family group" (children, youth, families, their support networks, and community members) is given the opportunity to develop plans. Since the "family group" is involved, the plans have a greater likelihood of being family-centered, reflective of the family group's culture and strengths, and comprehensive. The intent of these plans is to resolve the issues endangering both young and adult family members. After the "family group" has constructed a plan that addresses the issues presented to them, the public agency representatives agree to the plan's action steps and authorize necessary resources. Public agency representatives, in partnership with family members, serve to monitor the plan; the "family group" can reconvene as needed to modify the plan. Research indicates that FGDM as well as other family teaming models are effective in expediting permanency.

Structured Decision Making (SDM) is a comprehensive case management system for Child Protective Services (CPS). CPS workers employ objective assessment procedures at major case decision points from intake to reunification to improve child welfare decision-making. *SDM* targets agency services to children and families at high risk of maltreatment and helps ensure that service plans reflect the strengths and needs of families. When effectively implemented, it increases the consistency and validity of case decisions, reduces subsequent child maltreatment, and expedites permanency. The assessments from the model also provide data that help agency managers monitor, plan, and evaluate service delivery operations.

Engaging and Strengthening Families/Reunification

Supporting Family Involvement (SFI) is a preventive intervention designed to enhance fathers' positive involvement with their children. The curriculum is based on an empirically-validated family risk model. This model predicts that children's development is predicted by risks and buffers in five interconnected domains:

- family members' characteristics
- 3-generational expectations and relationship patterns
- quality of parent-child relationship
- quality of parents' relationship
- balance of stressors versus social support for the family.

The curriculum highlights the potential contributions fathers make to the family. The program is aimed at strengthening fathers' involvement in the family, promoting healthy child development, and preventing key factors implicated in child abuse.

HOMEBUILDERS is a home and community-based intensive family preservation services treatment program designed to avoid unnecessary placement of children and youth into foster care, group care, psychiatric hospitals, or juvenile justice facilities; it is also used to support reunification. The goals of *HOMEBUILDERS* are to reduce child abuse and neglect, family conflict, and child behavior problems; and to teach families the skills they need to prevent placement or successfully reunify with their children. The program model engages families by delivering services in their natural environment, at times when they are most receptive to learning, and by enlisting them as partners in assessment, goal setting, and treatment planning. Reunification cases often require case activities related to reintegrating the child into the home and community. Examples include helping the parent find childcare, enrolling the child in school, refurbishing the child's bedroom, and helping the child connect with clubs, sports or other community groups. Child neglect referrals often require case activities related to improving the physical condition of the home, improving supervision of children, decreasing parental depression and/or alcohol and substance abuse, and helping families access needed community supports.

Family Visitation Services is a program that provides a safe way for children and parents to have court order supervised visits. Supervised Visitation Specialists observe and report the interaction between children and the adult they are visiting (i.e., their parents/caretakers/ grandparents, etc.) to the Nebraska Health and Human Services (NHHS) Protection and Safety/Integrated Care Coordination Unit (ICCU) case manager. All relevant interaction that takes place between family members is documented and reported. Supervised Visitation Specialists will not provide educational assistance during these sessions, unless there is an identifiable safety concern. Supervised Visitation Specialists will complete two full sessions to observe and document the interventions that are necessary for the family to function, and will not terminate a visit unless a child's safety is at risk. A service assessment will be completed after the two sessions to determine the most appropriate service for the family. If the agency determines that family support is necessary, the program coordinator will contact the case manager and request family support referral and authorization.

Kinship Care and Subsidized Guardianship

Kinship care is the full time care, nurturing and protection of children by relatives, members of their tribes or clans, godparents, stepparents, or any adult who has a kinship bond with a child. This definition is designed to be inclusive and respectful of cultural values and ties of affection. It allows a child to grow to adulthood in a family environment. Research suggests that kinship care offers greater stability for children who are living with their relatives. Adoption may be an appropriate permanency option for some kin families; however, child welfare professionals should engage families in the decision-making process to establish a legal permanent plan.

Other forms of permanence such as legal guardianship may be an option for families to consider. Legal guardianship offers kin an opportunity to assume responsibility for the child, without

severing parental rights. Some states are considering standby guardianship as a means of assisting kin when parents are terminally ill or incapacitated.

Subsidized guardianship is the transfer of legal responsibility for a minor child from the state to a private caregiver or guardian, who is provided with a monthly subsidy for the care and support of the child. The transfer of legal responsibility removes the child from the child welfare system, allows a caregiver to make important decisions on the child's behalf, and creates a long-term caregiver for the child. Recently, several states have begun using subsidized guardianship as a tool to expedite permanency for children who are in the child welfare system, and for whom reunification with the birth parents or adoption are not options. At least thirty-four states and the District of Columbia have established some kind of subsidized guardianship program. The new federal law, Fostering Connections to Success and Increasing Adoptions Act of 2008, provides states with the option of providing qualified relatives and children with federally supported guardianship assistance. Planning for permanence for children also includes seeking appropriate support services for kin families. Kinship families are in need of support services such as: day care, support groups, physical and mental health services, educational services and legal assistance for kin caregivers. These services support children while they remain in a safe and stable family setting.

Adoption

Recent assessments of best practices in adoption have identified a number of practices as supporting the timely achievement of permanency through adoption for children in foster care. These practices are listed in the Table 43.

Table 43. Best Practices in Adoption

- Concurrent planning that includes consideration of adoption as “Plan B” while efforts are being made to safely reunify the family (“Plan A”)
- Recruitment of resource families who provide care for the child while in foster care and support reunification efforts and who stand ready to be the permanent family for the child should reunification prove not to be a viable option for the child
- Judicial involvement in and support for concurrent planning
- Court oversight of permanency planning efforts at each review hearing, including the court’s oversight regarding change of the permanency plan to adoption under the federally mandated timelines
- Trauma-informed preparation of children in foster care for adoption
- Casework and therapeutic work with adolescents in foster care around adoption planning, including

work that focuses on "unpacking the no" that adolescents may express about adoption

- Identification of extended family members and individuals already in children's natural networks as prospective adoptive families for the child
- Active recruitment of prospective adoptive families through child specific recruitment activities, including web-based photolistings
- Preparation of prospective adoptive parents to meet the special needs of children in foster care who are waiting for adoptive families (including physical, mental health and developmental needs)
- Exploration of open adoption – ongoing connections between adoptive and birth families in ways that meet the safety and well being needs of the child
- Post-placement services for children and families
- Post-finalization services for children and their adoptive families

13. What are the current procedures for coordination of representation for those juveniles that may have been appointed an attorney in a juvenile delinquency matter and a guardian ad litem because of abuse and neglect?

GALs and other stakeholders were asked about the coordination between GALs in abuse, neglect and dependency matters and lawyers for the same children in delinquency matters. GALS were asked in surveys to respond to the statement, "When my client has a lawyer appointed in a delinquency case, I am able to coordinate with the child's lawyers in the delinquency case." As Table 44 shows, 93% of the GALs strongly agreed or agreed with the statement that they coordinated with the child's lawyer in the delinquency case.

Table 44. GAL Responses to the Statement, "When my client has a lawyer appointed in a delinquency case, I am able to coordinate with the child's lawyers in the delinquency case." (n=71)

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Response
GAL Responses	23%	70%	4%	--	3%

In follow up interviews, GALs reported good working relationships with delinquency attorneys. Some GALs reported that either the public defender or a private defense attorney is appointed by the court to represent the child. Two GALs reported serving as the child's GAL in the delinquency matter. Three other GALs reported that they become the child's delinquency attorney.

GALs were asked how they received notice of a child's arrest. Most GALs said that they were notified by the DHHS caseworker or the court about the child's arrest. Some GALs reported not receiving notice until considerably after the fact. One GAL said that she only learned about a child's arrest when the bailiff calls her to serve as the child's delinquency attorney. Another GAL said, "The other thing that bugs me is, a kid will run. You [the GAL] don't get the information that they ran and there's a warrant out for them. You only find out the kid ran when you get notice of the detention hearing." This GAL explained that DHHS puts arrest warrants out for runaways from foster homes and group homes and the child becomes a law violator for "absconding" from the home and is held at juvenile hall. Other stakeholders from the same county said that DHHS sends a "capeas" to law enforcement about the runaway, but that the 3(a) child should be delivered to the juvenile court (if during business hours), to the DHHS shelter, or back to the placement. However, they conceded that on occasion runaway 3(a) children have been held at the "staff-secure" section of the juvenile hall, ostensibly for the child's own protection, and are kept separate from delinquent youth in the general population.

Most GALs reported knowing quickly who the defense attorney is for the child. In some cases, the GAL is the defense attorney. In other cases, the defense attorney is from the Public Defender's juvenile office or one of a very limited number of attorneys who do this type of representation. The GALs in one county described their roles very differently in these types of cases: one said the he follows his 3(a) cases to delinquency and is their defender, and one, who described his role more as a "grandpa," said the he continues to be the child's GAL in delinquency cases. Another GAL said that she shows up at the hearing or is told by the caseworker, court administrator or bailiff who the defense attorney is for the child.

One young person in a focus group took issue with the role of GALs in delinquency matters. He/she explained that the GAL did not listen: "I wanted to fight my ticket [for reckless driving], I had evidence, she [the GAL] said no, she didn't represent what I wanted." The young person reported that the GAL was with him/her at the delinquency hearing and was not willing to fight the case on his/her behalf. Most troubling, there was no other attorney present to represent this child, even though this was a county where the practice is to appoint a new attorney to defend the child in delinquency proceedings. The charge was admitted, and the young person's driver's license was suspended for a year.

GALs identified a number of challenges when children have both dependency and delinquency cases. These issues included:

- Challenges in finding the root cause for the child's delinquent behavior. One GAL said, "I am concerned that the abuse and neglect is leading to the law violations. Kids are acting up to get out of the foster home or group home."
- The DHHS practice of requesting a capeas that requires the police to pick up a child and bring them to the court to resolve the placement problems that led to the child going AWOL; the capeas states that the child is in violation of a court order, namely the placement order.
- Lack of information about the child's history before the delinquency case.

- Lack of control over the child's placement – the child is at "the mercy" of probation
- Too much time for evaluations of children. Children have to sit in juvenile hall for a psychological or placement evaluation. Children who may have a minor status offense or truancy matter are "detained for ages" on an absconding charge. One GAL reported that clients had waited in juvenile hall as long as 4 to 5 months for an evaluation. (Others in this county contradicted this report).
- The contracted public defender as the first line of appointment can create logistical delays.
- Confusion regarding the role of the GAL in abuse/neglect cases when there is a law violation case

One GAL said that the judge in her county chooses one path for the child – usually child welfare but if there are insufficient resources for the child through DHHS, delinquency. She described this approach as "not a challenge but an opportunity." One key informant expressed concern about the handling of dependency and delinquency cases, observing, "There is a blurred distinction between dependency and delinquency in most counties."

Other stakeholders were asked about coordination of child abuse, neglect, and dependency cases and delinquency cases.

In general, judges said that when children in 3(a) cases cross over to delinquency, they appoint the Public Defender or a private defense attorney to represent the child, but they expect the GAL to be present at delinquency hearings and serve as the child's GAL on the delinquency matter. One judge said, for example, "GALs should care about delinquency matters."

One judge said that the GAL is appointed as the defender but "in all delinquency cases, they slide into GAL mode . . . which I think is fine." Another said that GALs serve as the juvenile defenders in these cases as they are "able to be a good zealous criminal defender and switch modes." This judge added, "Many of the attorneys are more comfortable in that mode than in the GAL mode."

One judge said that when a 3(a) child is a status offender, "it opens up new funding streams" because Probation reports to the court and the court can order specific services that the court cannot do with DHHS. This judge said that "about the only thing I can do with DHHS is to remind them that their court reports are late."

Court administrators described different processes in their counties regarding the coordination of the 3(a) and delinquency cases when children are involved with both systems. Only two court administrators were able to describe the process. The county administrator in County C stated that if the child has only a 3(a) GAL, the child is appointed a new attorney in a law violation case. Contract attorneys are used for delinquency cases. There is some overlap between the GAL and delinquency lists. The court administrator in County D reported that the court usually appoints the child's GAL to be the child's attorney in the delinquency case. The Public Defenders' Office in County D does not handle delinquency cases.

National Best Practice Standards

A well developed research literature documents that youth who are involved in the child welfare system are far more likely to be involved in the juvenile justice system as well, compared to their peers. (English et al., 2002; Jonson-Reid & Barth, 2000; Morris & Freundlich, 2004Ryan & Testa, 2005; Smith & Thornberry, 1995;). Particularly important is the finding that juvenile court judges are more likely to detain a youth pre-trial if the child is in foster care – especially if the child is in group care – as opposed to living at home (Conger & Ross, 2001). However, the presence of a guardian or other responsible adult at arraignment and subsequent delinquency proceedings can reduce the likelihood of detention. (Munson & Freundlich, 2005; Ross & Conger, 2009).

A full explication of these phenomena is beyond the scope of this report; nevertheless, it is instructive to note that, because of the greater likelihood that their clients will be arrested (as compared to children who do not have abuse and neglect cases), lawyers who represent children in dependency court must be familiar with the juvenile justice system and prepared to assist their clients in it where necessary. (Similarly, juvenile defenders should be familiar with the foster care system. See Pitchal, 2005.) A recent study in Los Angeles found that youth represented by the local CWLO (the Children's Law Center of Los Angeles) in their dependency cases are significantly less likely, when arrested, to become wards of the delinquency court than youth who are represented in their dependency cases by solo practitioners on the panel (Herz, Ryan, & Bilchik, 2009).

Jurisdictions take differing approaches to the question of what role the child's dependency attorney should play in the delinquency proceeding. It would appear that the best practice is for the same attorney to represent the child in both matters, as this ensures continuity of representation and complete transfer of knowledge and information. This is the approach taken in New York City, where JRP is both the juvenile public defender agency as well as the agency appointed to almost every single child in foster care. When one of JRP's dependency clients is arrested, either the same staff attorney or another lawyer in the organization will handle the delinquency case.[111] However, JRP is unique among CWLOs for also having the institutional role of juvenile defender—most CWLOs are limited in scope to child welfare law and thus unable to handle delinquency cases.[112] In this regard, panel systems are often able to provide the better model of representation, as individual attorneys may be certified to be on the dependency panel and the delinquency panel in their community, appearing in the local juvenile court on both types of cases. For example, this is being done in several counties in California, where a 2005 statute permits the court to "dually commit" a child to both the foster care agency and the juvenile justice agency. (Under prior law, unique in the nation, a foster child sent to juvenile detention would be removed from the custody of the foster care agency (Piazza, 2008).).

[111] Occasionally, two or more of JRP's existing dependency clients will be arrested together for the same offense; in this scenario, JRP is unable to represent any of the children in the delinquency case due to the irresolvable conflict of interest it poses.

[112] In several counties in California, the juvenile unit of the Public Defender's office represents abused and neglected children in dependency proceedings, as well as delinquent youth, and therefore they are able to ensure continuity of representation for the child across the two types of cases.

The model of having the same attorney handle a client's dependency and delinquency case comes with one significant cautionary note. This model contains a built-in structural problem in those jurisdictions where the dependency attorney is charged by statute or rule with representing the client's "best interests" (as determined by the attorney). Juvenile public defenders are ethically bound to be zealous advocates for their clients' wishes; it is a clear violation of professional conduct for a defense attorney to advocate for his own conception of what is best for the client instead (Hertz et al., 2008; In re Gault; NJDC, 2009). If an attorney has been advocating for "best interests" in the dependency case, it may be difficult for her to make the transition to the client-directed approach demanded in the delinquency case. This is especially true if the dispositional plan favored by the client for the delinquency docket conflicts with the service plan that the attorney had been advocating for in the dependency matter.

For this reason, jurisdictions that charge dependency attorneys with the "best interests" role (or even a hybrid role) must make an exception for those cases where the foster child crosses over into the juvenile justice system, if the courts wish the same attorney to handle both matters for the same client.[113] In those jurisdictions where a different attorney handles the delinquency matter, the role of the dependency attorney must nevertheless continue to be that of a zealous advocate to protect and vindicate the child's rights. As noted above, the lack of a parent or guardian's presence during the arraignment proceeding can redound to the client's severe detriment; one critical action the dependency attorney can take is to either "work the system" to recruit the foster care agency worker, the foster parent, or a group home staff member to come to court on the child's behalf. Alternatively, the dependency attorney herself should appear in the delinquency proceeding as a show of support for the child; to convey positive information about the child to the court; and to ensure that the child does not languish in locked confinement while awaiting evaluations or long-term placement.

At a minimum, the dependency attorney should communicate with the delinquency attorney and share information about the child's strengths, needs, and service plan, to aid in the delinquency attorney's advocacy and dispositional planning. Indeed, the fighting issue in many delinquency cases is whether, upon disposition, the court will place the child in a secure detention facility or release him back into the community. Considering that the custodian of foster children is the state foster care agency, any community-based dispositional plan must be developed in conjunction with that agency. As the one person who is best positioned to advocate on the child's behalf with the foster care agency, the dependency attorney must be an aggressive and ever-present player in the coordinated approach to developing the child's new plan. Otherwise, dependent children will languish in secure confinement without a responsible adult to whom they may be released by the delinquency court. An example of the types of actions required by the dependency attorney in delinquency proceedings is found in the

[113] It should be noted that the JRP attorneys in New York City do not face this issue, because New York State's standards of representation and court rules require children's dependency attorneys to advocate according to direction from their clients (New York State Bar Association; New York State Chief Judge Rules). Only if the child is too young or developmentally delayed to formulate a reasoned position in the case may the attorney use a "substituted judgment" approach (modeled on guardianship-of-the-person principles for incapacitated adults). For children who are old enough to be arrested and prosecuted as delinquents, it is presumed that the child has the capacity to direct the representation in the dependency case as well as in the delinquency case.

detailed protocol for these situations developed by the Children's Law Center of Los Angeles, which represents children in dependency cases but not in delinquency cases (Duey & Abrams, 2006). This protocol may explain the significant, positive impact the CLC-LA's attorneys have for their clients who are arrested (Herz, Ryan, & Bilchik 2010).

14. What is the nature of the relationship between the juvenile and guardian ad litem?

How Young People View their GALs

Who is your GAL?

Prior to the focus groups, young people were asked to complete a form, "Something About Me," in which they were asked a number of questions about their backgrounds (the results are described later on page 219). One question that they were asked is whether they knew who their GAL was and if so, the name of their GAL. As Table 45 shows, of the 16 focus group participants, 75% of the young people knew who their GAL was, although only about one-third could give their GAL's first and last names.

Table 45. Focus Groups Participants' Responses to Whether they Knew their GAL

	Total
Knew His/Her GAL	12 (75%): Could name the GAL by first and last name: 38% Could name the GAL by first name only: 37%
Did not know GAL	4 (25%)

Young people made a range of comments in connection to the question whether they knew who their GAL is. On the positive side, young people said:

"Only had one GAL. Got me out of going to juvie."

"Same one since age 5. He calls me and asks me when there is a good time to review the report. Sits on the phone or comes to visit me. Visits me at least once a month."

Other young people, however, reported less than satisfactory relationships with their GALs. These young people made the following comments:

"He had white hair, that's all I know."

"He sends other people from his office to visit me."

"He asks me how I've been. [I tell him] go read the papers because obviously you don't care – you don't visit me."

"See her at team meetings but we never talk."

One young person described the GAL as "pretty cool" but then went to say that she had visited him "twice in a year" and he had been to court once. Another said, "If the kids actually knew they had a GAL, it would help a lot." Another expressed the same sentiment, "Kids should be informed that they have a GAL." One young person described his/her situation as follows:

"I don't see a use for GALs. I have been in so many group homes, a high school in another state, and the GAL didn't even know. I was in foster care for 18 years and I didn't even know that I had a GAL until the very last year. I went to court one time in 18 years and that time, the GAL was not there."

What is the GALs' job?

Most of the young people understood that the GAL is there to "represent you". Most said that the GAL was their attorney to tell the court what the young person wanted, although one young person said that the GAL "represents your best interests." One young person said that he/she didn't "have a clue" about the GAL's job. Another said, "I don't even know what a GAL is."

Do their siblings have the same GAL?

Some young people said that they and their siblings have the same GAL and others said that they do not.

How often do you meet with your GAL?

Young people reported infrequent meetings with their GALs. Among their comments:

"I've met him only once."

"In the past year, my attorney has visited me only once."

"Once or twice a year."

"I've met with him twice in fours years before I went to court hearings."

"Only met with mine once in one year."

"How can they know what I need or want if they never come to meet with me?"

"My GAL had nothing to do with me."

One young person said that his/her GAL "didn't come to see me." He/she said that he/she had the GAL's phone number but chose not to call the GAL. Most young people, however, reported that they did not know their GAL's phone number.

What are the meetings with your GAL like?

Young people described their meetings with their GALs as "quick" and "rushed". One said that GALs "call you the day before and ask you what you want at the last minute." Young people said that they met with their GALs in hallway outside the courtroom or at the GAL's office. One young person said that he/she met with the GAL at his office when he/she wanted to see him.

Young people reported difficulties in communicating with their GALs. Some said that GALs did not explain the process nor did they listen. One young person said, "He talks in legal terms which I don't understand." One young person, however, said that his/her GAL listened and explained things.

Most young people said that they did not trust their GALs. Several commented that GALs ask young people what they want and then do not do it or follow through. One said that GALs are "full of poop."

Young people who reported not having met or interacted with the GALs were asked what they would have wanted. Their responses were to be seen more often by the GALs, at least once a month or every other month. Young people wanted the GALs to get to know them. One said, "Maybe take us out for a few hours, for pizza or something, know who we are beyond what is written down on paper."

Does/did having a GAL make a difference for you?

Of the 16 youth, only one definitively said that having a GAL made a positive difference in his/her life. Other young people said "no" or said that they were not sure how to tell. Most expressed negative feelings about their GALs. One said, "I could have done a better job myself. It's like having another caseworker." Another commented, "If they are going to listen to you – that would make a difference. If not, it's not helpful." The young people agreed that there was no one to complain to about the poor job that their GALs were doing.

How GALs View their Relationships with Their Child Clients

In surveys, GALs were asked to respond to a range of statements related to their relationship with the child and youth whom they represent. One set of statements related to the type and frequency of contact that GALs have with their child/youth clients and the nature of their understanding of the child's needs and strengths. Table 46 provides the responses of GALs to these statements.

As detailed in Table 46, GALs generally rate themselves highly on their timeliness, frequency and responsiveness in meeting with their child clients.

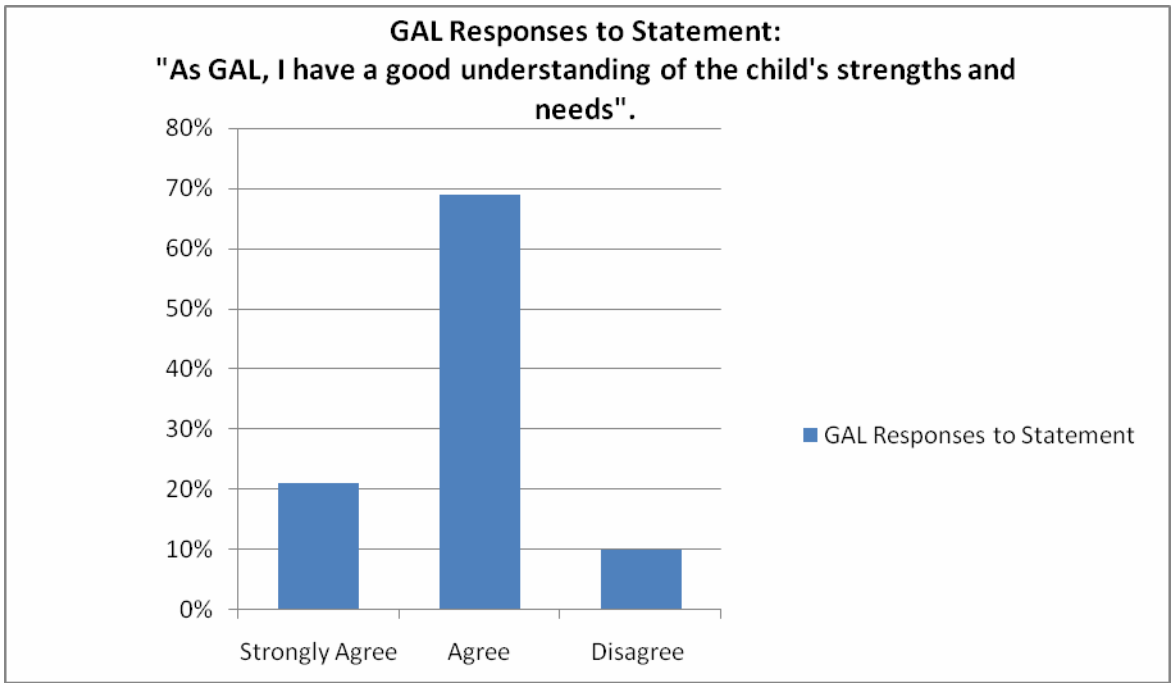
Table 46. GAL Responses to Statements Regarding Meeting with and Getting to Know their Clients (n=71)

	Always	Usually	Sometimes	Never
"I meet personally with the child within two weeks of my appointment as a GAL."	28%	56%	14%	1%
I personally meet with the child at least every 6 months."	48%	46%	4%	1%
"I meet with the child at the child's home, foster home, or group home/facility."	51%	41%	7%	1%
"I meet with the child whenever he/she requests a meeting with me."	76%	20%	3%	1%
"I meet with the child well in advance of any hearing on substantive issues (safety, permanency, placement change or well being)."	23%	65%	11%	1%
"In between my personal meetings with a child, I maintain contact with the child by telephone."	14%	35%	51%	--
"If a child calls me, I return his/her call in the same timely manner I would return the phone call of any paying legal client."	83%	15%	1%	--
"As GAL, I have a good understanding of the child's strengths and needs."	23%	69%	8%	--

Interestingly, one GAL provided the following comment after completing the survey, "Just to clarify . . . regarding home visits, I do not 'personally' visit the child before every hearing. But I always make sure that a Paralegal or law clerk does a visit." Several youth reported in focus groups that their GALs did not visit or meet with them, but instead sent a different paralegal, law student, or secretary to meet with them prior to review hearings.

GALs were also asked about their understanding of their child client's strengths and needs. As Figure 3 shows, the large majority either strongly agreed (21%) or agreed (69%) with the statement, "As GAL, I have a good understanding of the child's strengths and needs." Only 10% disagreed.

Figure 3. GAL Responses to the Statement Regarding Their Understanding of their Child Clients' Strengths and Needs (n=71)



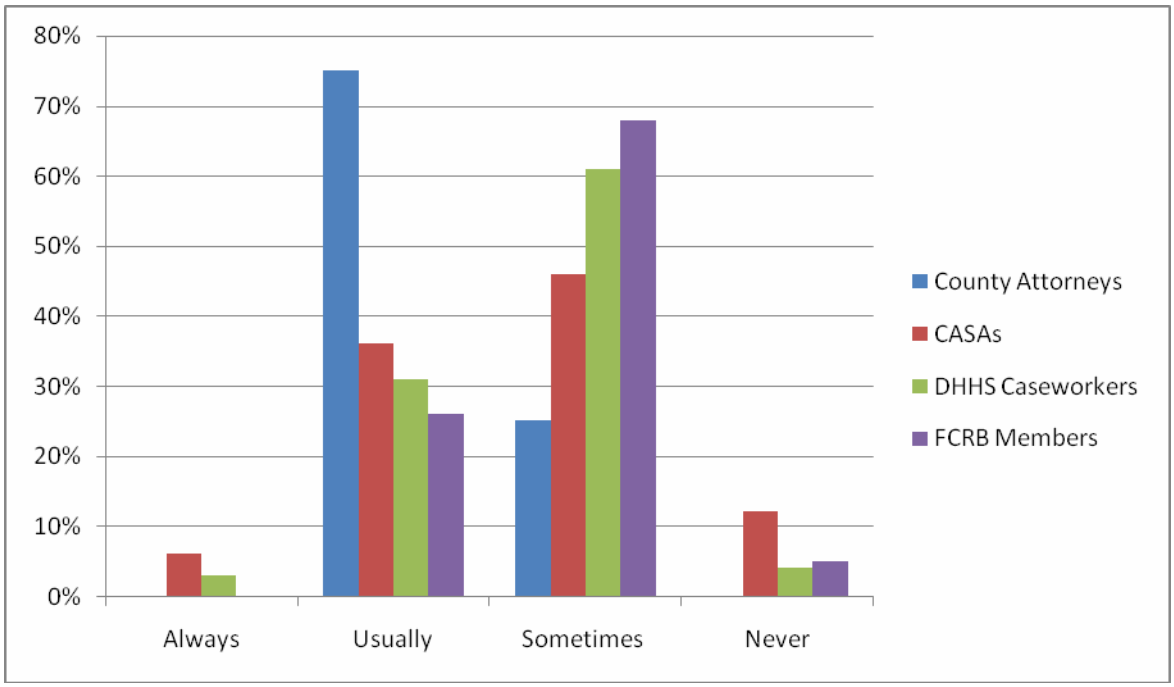
Other stakeholders were less convinced of GALs' understanding of their child clients' strengths and needs. Table 47 provides the percentages of the responses of four stakeholder groups to the statement, "GALs have a good understanding of the child's strengths and needs."

Table 47. Stakeholder Responses to the Statement, "GALs have a good understanding of the child's strengths and needs."

	Always	Usually	Sometimes	Never
CASAs (n=89)	6%	36%	46%	12%
DHHS Caseworkers (n=70)	3%	31%	61%	4%
Foster Care Review Board Members (n=19)	--	26%	68%	5%

Figure 4 shows a side by side comparison of the responses of the different stakeholder groups to the statement, "GALs have a good understanding of the child's strengths and needs." Their responses indicate that they are less certain that GALs have a good understanding of children's strengths and needs than the GALs appear to be (79% of the GALs either strongly agreed or agreed that they have a good understanding of children's strengths and needs).

Figure 4. Side by Side Percentage Comparisons of Stakeholders' Responses to the Statement, "GALs have a good understanding of the child's strengths and needs."



In follow up interviews, GALs were asked about their ability to meet and get to know their child clients. Some GALs stated that they get to know their clients but their descriptions of their contacts with their clients raised questions in this regard. Other GALs admitted that they simply did not have the time or resources to get to know some or all of the children they represented. GALs surveyed indicated that they make every effort to meet with their client(s) even sooner than the statutory requirement of two weeks from the date of appointment, meeting with their clients before the temporary custody hearing, The also reported, however, that as a result of caseloads and an inability to get information from HHS as to where the child is located, initial meetings often do not take place within two weeks of appointment. Some GALs stated that others in their offices visited the children. Others provided reasons for not visiting their child clients. Some of the GAL comments:

> "Given my small caseload, I really have a chance to get to know the child and his family."
>
> "I visit children every six months and use my law clerk to do follow up visits in between and get more eyes on the child and see them more frequently."
>
> "I know some children better than others. The hardest cases are when children have returned to parents but are not yet in school – the 3 or 4 year olds – the parents restrict what they do and the children are verbal but not that verbal."
>
> "The ones with problems I see more often. Some I may see only once every six months. Some kids I talk to weekly."

"I contact all children within 72 hours of being appointed. I meet with the kids every six months, except when they are placed a long way from home. CASAs will travel to see the kids out there."

"I am able to meet with children but I am mindful of the costs to the court of traveling so far, especially children who have group or mental health placements far away. For older kids, the bulk of contact is by phone if they are placed far away."

"I visit children in their foster and group homes but I don't want to be another person intruding in their home so the foster parents will also bring the child to my offices to meet with me."

"Not with the amount of cases I have. There is never enough time to get to know them really well unless I worked 12 hours a day and weekends."

"When my caseload was as little as 80, I was able to get to know the child. But not recently with my caseload."

How Other Stakeholders View GALs' Relationship with their Child Clients

In surveys, stakeholder groups were asked about the quality of GALs' relationships with their clients. The following information and tables provide the responses of each stakeholder group to a series of statements designed to elicit stakeholders' perspectives on the relationship between GALs and their clients.

Professional Stakeholders

Table 48 shows that CASAs, DHHS caseworkers and Foster Care Review Board Members were most likely to respond with "sometimes" to the statement" GALs personally meet with the child on a regular basis." Extremely few county attorneys, CASAs, DHHS caseworkers, and Foster Care Review Board Members stated that GALs personally meet with the child "always."

Table 48. Stakeholder Responses to the Statement, "GALs personally meet with the child on a regular basis."

	Always	Usually	Sometimes	Never	Do Not Know
CASAs (n=89)	8%	28%	35%	29%	--
DHHS Caseworkers (n=70)	3%	13%	67%	13%	4%
Foster Care Review Board Members (n=19)	--	--	95%	5%	--

CASAs, in the comments following completion of the surveys, frequently expressed concerns that GALs were not meeting with their child clients. Among their written comments:

"GALs in [County E] have little to no contact with the children. They will be at the hearings but haven not contacted the children prior to. [I had] one case [where] the GAL within a 17-month

> time period had no contact [with the child]. In another case, the GAL met the children 3 days after removal from the home and did not see them again for 15 months. I have only had one case where the GAL met with the child a few times."
>
> "GALs that I have worked with do not visit the child more than once (typically when they are first assigned to the case). They provide the court with cookie cutter reports that have no specific information just a basic form of fill in the blanks."
>
> "We find that the majority of GALs see the child only when the child comes to court. That should not be counted as a visit with the child."

In interviews, CASAs expressed different views of GALs' relationships with their clients. In response to the question, CASAs variously said that "GALs develop a very poor relationship with their clients", they "absolutely do not" develop relationships with their clients, and sometimes they develop a relationship and sometimes they do not. One CASA explained that in one case, the GAL only sees the child right before the court hearing and in another case, the GAL attends meetings and conferences and listens to the CASA. One CASA commented, "GALs probably understand the children's needs in general. But unless the children are brought to the GAL, GALs would never check up on them." In interviews, one DHHS caseworker said that some GALs meet with their clients, with GALs being more likely to be very involved in the case when there are safety issues. This caseworker reported that "otherwise, the GAL will rely on the caseworker's report." Another DHHS caseworker commented that GALs "do not develop as much of a relationship as I would like to see." This caseworker estimated that about one-third do not build a relationship with the child; one-third build a professional relationship; and the other "go all out and really bond with the client."

In an interview with a Foster Care Review Board Member from one county, the respondent stated that GALs are not meeting with their clients within two weeks of appointment as required by law. FCRB Members reported different views of whether GALs' visit with their child clients every six months. One said that he/she thought that they were visiting every six months in most cases, but it is "at best, once every six months." Another reported that foster parents at Foster Care Review Board reviews, when asked about their child's GAL, usually respond that they do not know who the GAL is. A third Foster Care Review Board member said that based on foster parent reports, he/she didn't think that the GALs were making visits even every six months. Another said that GALs would do a better job if they met their child clients and were in regular contact with them. In comments following completing the survey, Foster Care Review Board Members stated the following:

> "It has been of great concern to our board that in nearly all of our cases, the GAL has never had contract or very little contact with the child or the foster parents. They rarely bother to fill out our 6 month questionnaires. I must add that in possibly two or three cases, the GAL has been a REAL advocate for the child; and we have always commended those persons for their help."
>
> "When we have face to face meetings with interested parties (youth or foster parents/guardians), we always about GAL involvement and the usual response is 'Who?'"

A key informant referenced a report prepared by the Foster Care Review Board entitled *Finding Permanent Homes* that found that more than one-third of the GALs were not meeting with their child clients every six months as required by law. Another key informant stated "we don't have GALs visiting their clients at the level recommended in the Supreme Court Guidelines for GALs." This individual outlined several potential reasons for GALs' failures to visit their clients: no one is overseeing them, including many judges; they are busy; in some parts of the state, GAL work is viewed solely as a steady source of income and not important or a priority; and the GALs are not aware of the requirements on visitation. Another key informant commented that monthly visitation is "unreasonable" but that every six months is not sufficient.

Judges were asked about the extent to which GALs meet with and get to know their child clients. Two judges said that GALs meet with and know their clients. One said, "GALs are able to get to know the child and their needs." Another judge said that all GALs visit clients monthly. This judge was not able to provide reasons for believing that GALs make monthly visits. On the other hand, the majority of judges said that GALs do not meet with or get to know their clients. One judge did not believe that GALs ever meet with the child within two weeks of appointment as required by statute, commenting, "I'd be surprised if one GAL has ever done that. Many GALs are still reporting that they have not met with or spoken to the child." One judge referenced the county-specific checklist developed by the court to guide GALs in making their reports, and which ask about their visits with the child. This judge reported that more GALs are visiting their clients as a result of having to complete the checklist, but there are still GALs saying that they have not met the child. Another judge said, "I'm getting these snotty notes on the GAL form saying, 'I decided not to disturb him with a visit' and things like that." This judge said that the GALs continue to not visit their clients and that reporting lack of visits to the court is not shaming GALs into doing their job. That said, this judge thought that the new GAL report form has improved the quality of reports somewhat and has encouraged the GALs to meet with the clients.

Some judges provided examples of excuses that GALs offer for not seeing their clients (see Table 49).

Table 49. GAL Excuses for Not Meeting with the Child as Reported by Judges

- "The child is a 10 month old baby and can't talk."
  [Judge's comment: "They don't seem to realize that part of their meeting the child is to lay eyes on the child and see where he is living."]
- "I saw the child at the last review hearing."
- "The child lives in ___, an hour's drive away."
  [Judge's comment: "The court will pay for travel and there is always the phone."]
- "My visiting might traumatize the child."

One judge commented on GALs' reluctance to visit children who are placed out of state. This judge said that he/she tells GALs to visit the children once a year or twice a year if DHHS has not sent a caseworker to visit the child. He/she tells the GALs, "If this were your kid, you'd want someone to lay eyes on them." The judge indicated that GALs are annoyed but "most people are professional and roll their eyes out of my presence." He/she tells the GALs that travel expenses will be paid, and s/he grants motions for travel expenses.

Three judges said that they ask the GAL if and when they met with the child. One said, "I ask flat out if the GAL has met with the child." Another said that he/she asked GALs on the record if they have met with their client. "It makes me unpopular with the attorneys but I don't care. I'm the one looking out for the children." This judge said that the GALs will "hang their heads and not answer the question or have a lot of excuses why they didn't talk to the client." He/she added, "My passion is for the kids and we're all are human and make mistakes. But, I have a hard time when the GALs are not even making the effort to meet with children." Another judge said because many GALs do not meet with their clients, he/she wants all children at court. This judge stated several years ago, a former foster youth told him/her that the judge should ask the GAL and the caseworker in every case, "When was the last time you saw the child?" This judge said that he/she thought this advice was "terrific" and now asks that question each time a child is not present in court. Another judge said that he/she will not embarrass the GAL in the courtroom but will call the GAL up to the bench and tell the GAL to visit the child. This judge said that if a private attorney is not visiting his/her child client, he/she crosses their names off the appointment list but if the attorney is with a contract firm, "there is nothing I can do." Another judge that he/she sometimes asks GALs if and when they visited their child, but "probably not as much as I should, but I don't think asking them would change what they do."

Participation in Conferences, Staffings and Team Meetings

GALS were asked about their participation in conferences, staffing, and team meeting. As Table 50 shows, 83% of the responding GALs said that they always or usually attend these sessions.

Table 50. GALs: Participation in Conferences, Staffings, and Team Meetings for the Child (n=71)

	Always	Usually	Sometimes	Never
"As GAL, I participate in conferences, staffings, and team meetings for the child."	13%	73%	14%	--

Table 51 shows that the three stakeholder groups most often said that GALs only "sometimes" participate in conferences, staffing, and team meetings for the child."

Table 51. Stakeholder Responses to the Statement, "GALs participate in conferences, staffings, and team meetings for the child."

	Always	Usually	Sometimes	Never
CASAs (n=89)	10%	36%	47%	7%
DHHS Caseworkers (n=70)	3%	23%	63%	11%

	Always	Usually	Sometimes	Never
Foster Care Review Board Members (n=19)	--	--	95%	5%-

Parents and foster parent also were asked about GALs' participation in conferences and team meetings for their child/foster child. As Table 52 shows, one half of parents and 85% of foster parents either disagreed or strongly disagreed with the statement that GALs attend conferences and team meeting on behalf of their child clients.

Table 52. Parent and Foster Parent Responses to a statement that the GAL attends conferences and team meetings on behalf of the child

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do not know
Parents (n=4)	--	--	--	50%	50%
Foster Parents (n=6)	--	17%	67%	17%	--

Table 53 provides the responses of Foster Care Review Board members to the statement, "In each case that I have reviewed, the GAL played an active role in the case." As Table 53 shows, Foster Care Review Board members generally do not find that GALs play an active role in their child clients' cases.

Table 53. Foster Care Review Board Members' Responses Regarding GALs' Active Involvement in Children's Cases (n=19)

	Strongly Agree	Agree	Disagree	Strongly Disagree
"In each case I have reviewed, the GAL played an active role in the case."	--	11%	53%	37%

When asked in interviews to describe the relationship that GALs develop with their clients, Foster Care Review Board (FCRB) Members in one selected county described their role as "not very active," "spotty, some really excellent GALs, but overall it is dismal," and "poor." One FCRB Member said that he/she repeatedly sees no GAL report and no documented visitation. This Member reported that he/she finds across the board that children, foster parents and birth parents who attend Review Board meetings say that they have not heard from the GAL and often, they do not know who the GAL is. He/she stated that these GALs are "getting paid for doing squat." Another FCRB Member said that of the 8 cases that he/she reviews each month, there is a GAL report in only one or two cases. He/she went on to say, "The ones that are there are sketchy and pro forma and could have been written without visiting the child. There are some GALS who are writing excellent reports and these are thorough and extremely helpful." A third FCRB Member stated that only one GAL has attended a FCRB meeting in the four years that he/she has been on the panel.

Meetings with the Child

Foster parents were asked to respond to statements about the timing of GALs' meetings with the child. As Table 54 shows, foster parents generally reported that GALs did not meet with their foster children within two weeks of being appointed or every six months.

Table 54. Foster Parent Responses to Statements about the Timing of GAL Meetings with their Child/Foster Child (n=6)

	Yes	No	Do not know
"The GAL met with my child/foster child within 2 weeks of being appointed the child's GAL."	17%	50%	33%
"The GAL meets with my foster child at least once every six months."	--	67%	33%

In interviews, CASAs did not describe close relationships between children and their GALs. One said that the child would probably not know his GAL's name but would probably be able to recognize her. Two CASAs described the relationship between GALs and children as "professional" and not personal. Two CASAs said that a relationship cannot be developed when GALs do not spend any time with children. One characterized the relationship between GALs and children as "poor." Another CASA said that the relationship between GALs and their child clients were "fair" and that GALs generally lacked involvement, commenting that the GAL on his/her case "never visited the child" and was "hard to get a hold of."

With respect to GALs' understanding of children's needs, CASAs who were interviewed expressed different views. One said that GALs understand children's needs; another said that GALs understand children's "basic needs for a home, food, school"; yet another said that GALs come at it from a professional perspective and do not understand children's needs; and a fourth said that GALs at times lump all cases together and do not give enough individualized attention in each case.

Three FCRB Members from one county who were interviewed said, based on the GAL reports that they see, that GALs generally do not have an understanding of the child's needs. Among their comments: "Any vestiture in these children is minimal; they just don't have the nuts and bolts on kids they are representing;" "Judging from their reports, they don't have a handle on these kids' needs;" and "GALs only seem to talk about placement – minimal discussion of education, mental health or therapy."

Familiarity with Services in the Community

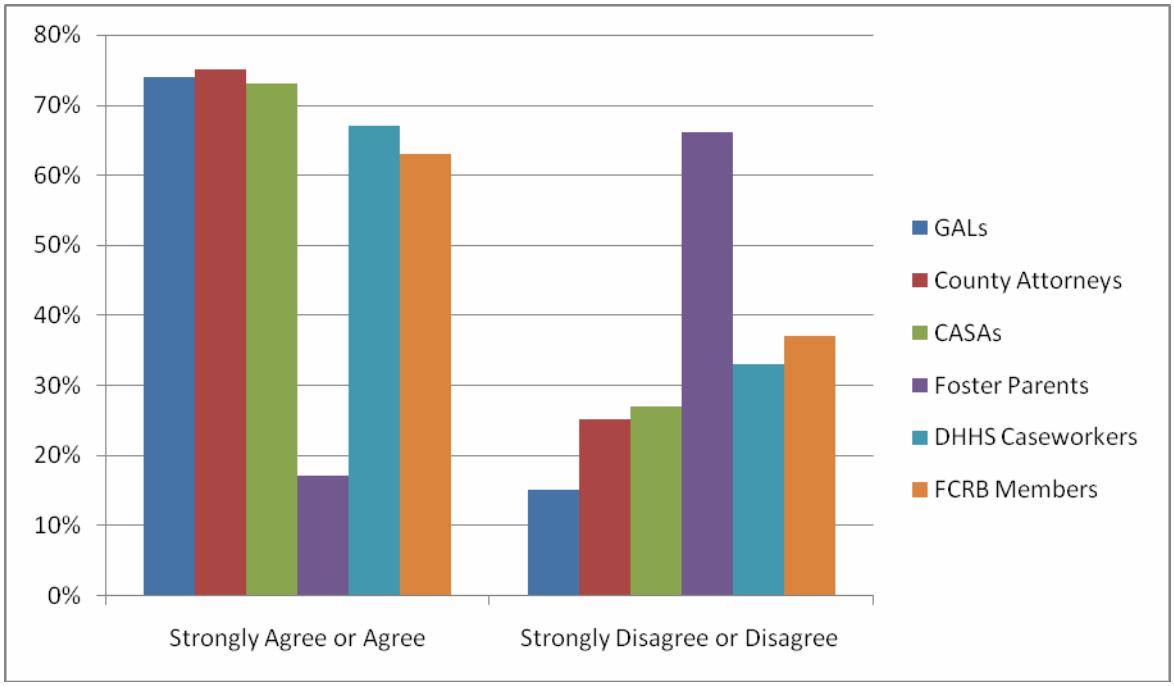
Stakeholder groups also were asked to respond to statements about GALs' familiarity with services in the community for children, youth and families. As Table 55 shows, there is general agreement that GALs have knowledge about services in the community, although GALs tended to rate their knowledge higher than other stakeholder groups.

Table 55. Stakeholder Responses: GALs' Familiarity with Services in the Community

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know
GALs: ""I am familiar with services available in the community for children, youth and families. (n=71)	15%	69%	14%	1%	--
Other Stakeholders: "GALs are familiar with the services available in the community."					
CASAs (n=89)	10%	63%	24%	3%	
Parents (n=4)	--	--	--	--	100%
Foster Parents (n=6)	--	17%	33%	33%	17%
DHHS Caseworkers (n=70)	4%	63%	23%	10%	--
Foster Care Review Board Members (n=19)	--	63%	32%	5%	--

Figure 5 provides a side-by-side comparison of different stakeholders' assessments of GALs' knowledge of community services.

Figure 5. Side by Side Comparison: Stakeholders' Responses to Statements that GALs have knowledge of community services



Parents' and Foster Parents' Views of GALs' Performance

In surveys, parents and foster parents were asked their general views of the job that GALs do on behalf of their children/foster children. As Table 56 shows, neither parents nor foster parents expressed high levels of confidence in the work that GALs do.

Table 56. Parents' (n=4) and Foster Parents' (n=6) Responses to Statements About the Work that GALs Do

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know
Parents: "My children's GAL knows what he/she is doing on behalf of my children."	--	--	25%	75%	--
Parents: "The GAL does a good job in court."	--	--	25%	50%	25%
Foster Parents: "The GAL does a good job on behalf of my foster child."	--	33%	33%	16%	16%

Parents and foster parents were asked to respond to a range of statements about the quality of GAL representation of children. Table 57 provides the responses of the four parents that completed the survey. As the Table shows, parents generally do not perceive their children's GALs as meeting with their children or getting to know their children; they do not perceive their children as trusting their GALs.

Table 57. Parent Responses to Statements regarding GALs' Relationships with their Children (n=4)

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know
"The GAL meets with my child frequently."	--	--	--	75%	25%
"The GAL listens to what my child wants."	--	25%	--	50%	25%
"The GAL works to get to know my child."	--	--	25%	50%	25%
"The GAL spends time with my child at home or at the foster/group home where my child lives."	--	--	--	75%	25%
"When my child meets with his/her GAL, the GAL takes time to talk with my child."	--	--	25%	75%	25%
"My child trusts his/her GAL."	--	--	25%	50%	25%
"The GAL meets with my child when my child wants a meeting."	--	--	25%	75%	
"My child looks forward to his or her meetings with the GAL."	--	--	50%	25%	25%
"The GAL only meets with my child	50%	--	--	25%	25%

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know
right before a court hearing at the courthouse."					
"The GAL talks with me about what my child needs."	--	--	25%	75%	--

Table 58 provides the responses of the nine foster parents who completed the survey. As Table 58 shows, foster parents indicate that GALs do not spend time with their foster children at their home and that their foster children generally do not trust their GALs.

Table 58. Foster Parent Responses to Statements regarding GALs' Relationships with their Foster Children (n=6)

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know/ Child is Too Young to Meet
"The GAL listens to what my child wants."	--	33%	16%	16%	33%
"The GAL works to get to know my foster child. "	16%	16%	16%	--	50%
"The GAL spends time with my child at my home."	--	16%	16%	67%	--
"When my foster child meets with his/her GAL, he GAL takes time to talk with my foster child."	--	16%	50%	33%	--
"My foster child trusts his/her GAL."	--	16%	50%	33%	--
""The GAL meets with my foster child when my foster child wants a meeting."	--	16%	--	16%	66%
"My foster child looks forward to his/her meetings with his/her GAL."	--	16%	16%	16%	50%
"The GAL only meets with my foster child right before a court hearing at the courthouse."	16%	--	83%	--	--
"The GAL talks with me about what my foster child needs."	--	50%	16%	33%	--
"The GAL asks me about my experiences and views of my foster child."	16%	67%	--	16%	--

Parents and foster parents also were asked to respond to statements about getting in touch with the child's GAL. As Table 59 shows, foster parents were far more likely to know how to reach a GAL than were parents or children/foster children.

Table 59. Parent (n=4) and Foster Parent (n=6) Responses About Getting in Touch with the Child's GAL

	Parents			Foster Parents		
	Yes	**No**	**Do Not Know**	**Yes**	**No**	**Do Not Know**
"My child/foster child knows how to get in touch with his/her GAL if my child wants to talk with him/her."	--	50%	50%	16%	83%	--
"I know how to get in touch with my child's GAL."	25%	75%		83%	16%	

One key informant stated, "The dual role is not the biggest problem with the GALs in Nebraska. The biggest problem is that GALs don't talk to their clients or ever meet with their clients, so they don't even know what the child's position is." This key informant identified several reasons for this failure on the part of GALs:

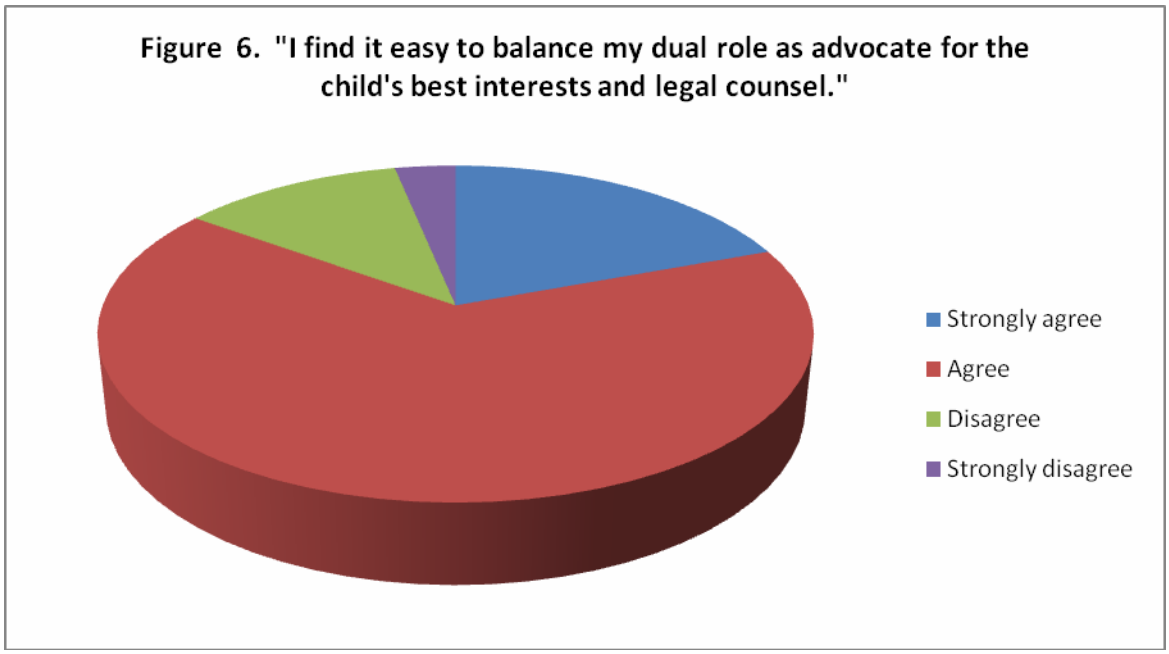
> *The culture*. GALs have "historically been viewed as not being a real lawyer and so you can get away with less because the kids aren't going to complain and the view that it's not worth talking to kids."
> *Funding structure of paying per case instead of per hour worked.* Only Douglas County continues to use contracts. "Douglas County contracts prevent a marketplace of the best attorneys doing best practices as it is really hard for people who want to do this work to get the work because it is all tied up in contracts." In addition, some counties pay per case or per court appearance, so there is no incentive for GALs to do any additional work.
> *Lack of accountability*. Judges do not have a way to monitor the quality of GAL work.

The Roles and Responsibilities of GALs

Dual Role

In surveys, GALs were asked about their roles and responsibilities in light of their dual role under Nebraska law. GALs were asked to respond to the following statement: "I find it easy to balance my dual role as advocate for the child's best interest and legal counsel." Figure 6 graphically presents their

responses to the statement, to which 79% of the GALs either strongly agreed or agreed and 14% either disagreed or strongly disagreed.



In follow up interviews, GALs made the following comments with respect to their dual roles, some of which convey some confusion about exactly which role they play:

> "I separate myself – in terms of children's legal counsel, in that position I see myself as counselor than an attorney – I counsel [children] as to what is happening and why it is happening."

> "The tricky part is advocating for best interest and explaining to the kid why [the attorney] is taking a different position when he's arguing for best interest and it conflicts with what the child wants."

> "I present witnesses and evidence but it isn't to the extent you would as a defense attorney or a parents' attorney. Most of the time, the GAL falls along the county attorney side or the parents' side."

> "I very delicately handle the balance."

> "It is kind of bizarre to have two simultaneous roles in the case. It's always kind of bugged me but that's the way it is."

> "I am basically not a criminal defense attorney, so I don't go at these cases from that standpoint. I'm much more comfortable working on best interests cases."

"When I am GAL, I'm going to get out testimony even if I know that it hurts my client, if it helps their best interest; versus when I'm their [delinquency] attorney I'm not going to ask questions that hurt."

"I balance the dual role with my life experiences. Being a father of three children makes me a better GAL than when I started. I can have the compassion and a personal connection to a child to fight for best interest yet at the same time, I need to apply rules of law and exercise professional judgment and my legal skills to the benefit of the child."

"I go with the child's stated interest if the child is mature enough to express it – usually teenagers."

"One of our balancing acts is telling the kid why the best interest may not be what he wants. But, you don't want the kid to shut down or stop talking."

"It's not my job to be their attorney and fight for what they want. I'm their GAL who represents their best interests."

"I want them to think of me as their grandpa, someone there to help them."

"For the most part, I am able to do it."

Some GALs described issues that raised the evaluators' concerns about the nature of the representation that was being provided. In one case, for example, the GAL said, "the client is both a mom and a child and what is in her interest as a mom vis a vis the baby may conflict with what is in her interest as a 3(a) child."

Other stakeholders were asked about GALs' dual roles. Table 60 provides the responses of different stakeholder groups to the statement, "GALs appropriately balance their dual roles as advocates for the child's best interest and legal attorneys." As the Table shows, CASAs were most likely to question the ability of GALs to appropriately balance their dual roles.

Table 60. Stakeholder Responses to the Statement, "GALs appropriately balance their dual roles as advocates for the child's best interest and legal attorneys".

	Strongly Agree	Agree	Disagree	Strongly Disagree
CASAs (n=89)	11%	56%	24%	9%
DHHS Caseworkers (n=70)	6%	76%	19%	--

Two judges disagreed with the premise that GALs have dual roles. One judge stated that GALs do not have a dual role under the statute but their only statutory duty is to look out for the child's best interests. This judge said that the statute does not call for the GAL to represent the child's legal interest. The second judge said, "Our GALs are not the child's counsel. They don't have that role in the State of

Nebraska. Their role is strictly best interest under our statute." A third judge said that GALs should represent best interest only and do not have the obligation to be the child's legal counsel.

Other judges, however, agreed that GALs have a dual role under Nebraska law. Eight judges thought that most GALs are able to balance their dual responsibilities. One judge said that the dual role is "the best of both worlds" and most GALs understand the concept and manage it well. Another said, "[GALs] do a good job at striking the balance." One judge, however, said that GALs do not strike the balance. This judge said, "They tend to go straight to the best interest role and forget that they under the statute are also the child's legal counsel." He/she commented, "Since so many do not meet with their clients, it is hard for them to know what the child's preferences are in making the best interest determination."

One key informant observed that the dual role is confusing to attorneys and that they often misunderstand what their dual role is.

GALs' Performance in Court

GALs were asked to respond to a range of statements regarding their work in court. Table 61 provides their responses to key court activities. As it shows, virtually all GALs reported always attending court hearing unless excused.

Table 61. GAL Responses to Attending Court Hearings (n=71)

	Always	Usually	Sometimes	Never
"I attend all court hearings for the child unless excused by the judge."	98%	2%	--	--

Other stakeholders were asked about GALs attending court hearings. Judges said that most GALs attend court hearings. Court administrators agreed that GALs attend all court hearings unless excused by the judge. As Table 62 shows, other stakeholders' responses indicate that smaller percentages believe that GALs are "always" at hearings compared to GALs.

Table 62. Stakeholder Responses to Statements About GAL Attendance at Hearings

	Always	Usually	Sometimes	Never	Do Not Know
CASAs: "GALs attend all court hearings for the child unless they are excused by the judge." (n=89)	57%	39%	2%	1%	--
Foster Parents: "The GAL is at every court hearing that involves my foster child." (n=6)	16%	33%	16%	16%	16%
Parents: "The GAL is at every court hearing that involves me and my child." (n=4)	--	75%	--	--	25%

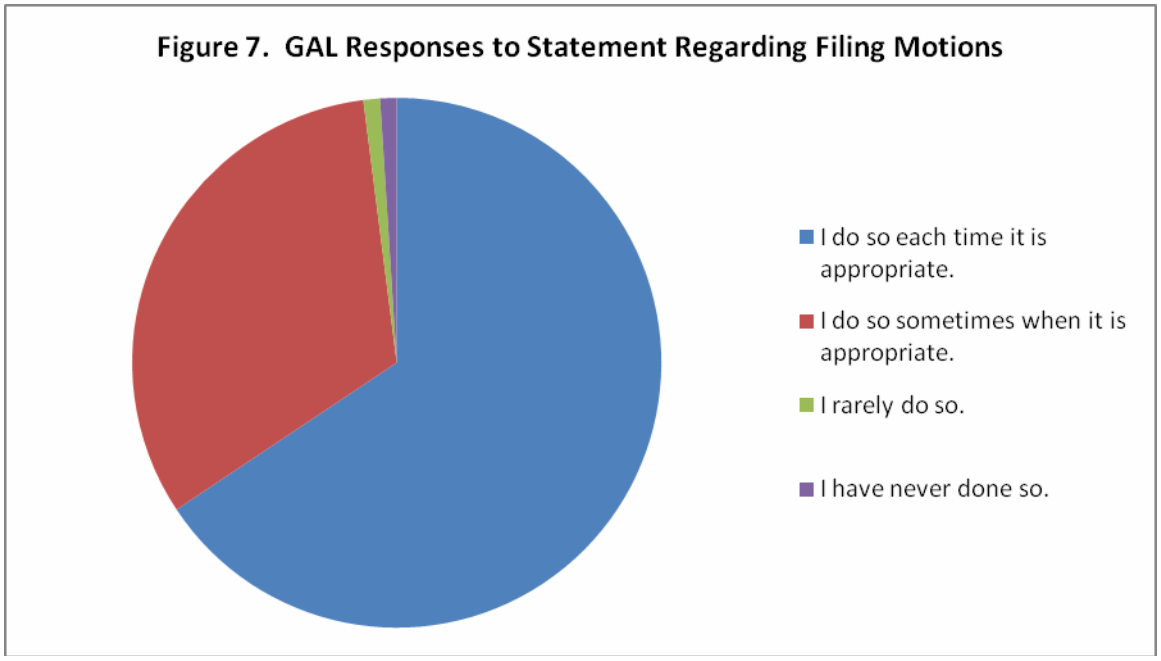
DHHS Caseworkers: "GALs attend all court hearings for the child unless they are excused by the judge." (n=70)	60%	37%	3%	--	--

GALs were asked about GALs' introduction, examination and cross examination of witnesses and introduction of evidence. As Table 63 shows, GAL report varying levels of practice in both areas.

Table 63. GAL (n=71) Responses to Statements Regarding Witnesses and Evidence

	Always	Usually	Sometimes	Never
"As a GAL, I introduce, examine, and/or cross examine witnesses."	39%	35%	21%	4%
"As a GAL, I introduce evidence on behalf of my child client."	27%	31%	39%	3%

In surveys, GALs were asked to respond to a statement, "I bring motions to address my client's needs or wishes when other participants fail to do so." As Figure 7 shows, the majority of GALs (65%) said that they do so each time it is appropriate. Only 1% said that they rarely do so and only 1% said that they had never filed a motion.



GALs also were asked to respond to the statement, "I bring motions to enforce the court's orders when other parties are not in compliance." In response: 13% said "always"; 42% said "usually"; 32% said "sometimes"; 4% said "never"; and 8% said "not relevant to my GAL practice."

The GALs who were interviewed stated that when acting as advocate for the child's best interests, they also act "like an attorney," presenting evidence and witnesses and filing motions.

Judges were asked about GALs' motion practice. One judge said that he/she would like to see GALs file more motions, and another judge said that there had been instances when GALs file motions but it is rare. Two judges reported that GALs are more likely to make motions about placement or visitation, and two judges said that GALs do not normally make motions asking HHS to provide services. One judge, however, said that GALs do not need to make such motions because "DHHS does a pretty good job." One judge said that GALs are prompt to make motions when DHHS says "Magellan [the managed care provider of mental health services] says we can't do X or Y," or "Magellan says that it will be a 6 month wait for a therapist." In these cases, this judge said that GALs do a good job "fleshing it out for me so I can order the department to do it."

County attorneys were asked to respond to the statement, "GALs actively participate in court by filing appropriate motions." In response, 25% said "always," 50% said "usually," and 25% said "sometimes." A key informant, however, was more critical of GALs' motion practice. He/she said that GALs leave it to the county attorney to file motions, noting that GALs may view being a GAL as getting to "sit back and it's a comfortable role . . . [they]don't have to file motions or take a more assertive stance on things".

GALs' Legal and Professional Skills

Surveys asked GALs to rate their legal and professional skills as GALs. Table 64 summarizes their self-ratings. As it shows, the majority of GALs rate themselves as "very strong" or "strong" on all of the legal and professional skills listed. Small percentages believed that they needed to develop these skills further or that these skills were not relevant to their GAL practice.

Table 64. GALs' Self Ratings on Legal and Professional Skills (n=71)

	Very strong	Strong	Adequate	Working to develop	Not relevant to my GAL practice
Making opening and closing statements	23%	51%	17%	--	10%
Making appropriate objections	27%	49%	17%	4%	3%
Conducting direct examination	27%	59%	13%	--	1%
Conducting cross examination	30%	54%	14%	1%	1%
Proffering exhibits	34%	42%	23%	--	1%
Presenting and cross examining expert witnesses	17%	48%	30%	4%	1%
Ensuring that information about the child's placement is on the record	31%	48%	20%	--	1%
Ensuring that information about the child's needs and the Department's response to those needs is on the record	35%	46%	11%	3%	4%
Speaking with and relating to	35%	45%	15%	3%	1%

children and youth					

GALs in their comments following completion of the survey and in interviews did not explicitly focus on their advocacy skills, with the exception of one GAL who wrote the following:

> "In representing the needs of children that I act as GAL for, I have actually had to stand up to the Health and Human Services worker, her supervisor, and her supervisor's supervisor before finally going to the judge with my concerns that the child's best interests were not being addressed. As a GAL, I have been able to locate private funding that allowed one of my juveniles to go to summer camp for the first time in his life. We are currently making arrangements to allow of my other juveniles to have regular visits with his dog who he was separated from when he was removed from his home. The dog, thanks to a good DHHS worker, was also placed in a "foster care" placement with a local family and the caseworker was even able to get the child's guinea pigs into a "foster care" placement with a neighbor. As GAL, I have regularly advocated that the child should continue to keep his relationship with his dog and guinea pigs."

GALs and county attorneys also were asked about GALs' comfort in applying federal and state child welfare law. One-half of the county attorneys agreed and one-half disagreed with the statement, "GALs are skilled in applying federal and state child welfare law (including the Indian Child Welfare Act) in cases." As Table 65 shows, most GALs (85%) either "strongly agreed" or "agreed" with the statement, "I am comfortable applying federal and state child welfare law, including the Indian Child Welfare Act, in cases where I serve as a GAL.

Table 65. GAL (n=71) Responses to GAL Ability to Apply Federal and State Child Welfare Act

	Strongly Agree	Agree	Disagree	Strongly Disagree
"I am comfortable applying federal and state child welfare law, including the Indian Child Welfare Act, in cases where I serve as a GAL."	13%	72%	15%	---

The surveys also asked the GALs to respond to a series of statements about moving cases forward. Their responses are provided in Table 66. As the Table shows, the great majority of GALs state that they object to unnecessary continuances and advocate for speedy case disposition "always" or "usually." A small percentage viewed these activities as irrelevant to their GAL practice.

Table 66. GALs' Responses to Statements Regarding Case Disposition (n=71)

	Always	Usually	Sometimes	Never	Not relevant to my GAL practice
"I object to unnecessary continuances."	24%	46%	25%	--	4%
"I advocate for speedy case disposition."	23%	59%	14%	--	4%

County attorneys also were asked about GALs practice in objecting to unnecessary continuances and GALs advocacy for speedy case disposition. County attorneys rated GAL performance lower in this area than did the GALs. In response to the statement, "GALs routinely object to unnecessary continuances," one-half agreed and one-half disagreed. In response to the statement, "GALs routinely advocate for speedy case disposition," three agreed and one disagreed.

Judges were asked about GALs legal and professional skills. Some judges expressed positive views of GALs' skills. One judge stated that GALs introduce evidence and have a good grasp of the law. Another stated that GALs will make placement motions, cross examine witnesses and introduce evidence. Another judge said, "I don't think there is any question that they don't know the law. They treat these cases like their other paying clients." Two other judges said that GALs "absolutely" or "mostly" act like attorneys. Other judges gave GALs mixed review on their legal and advocacy skills. Among the comments:

> "GALs have mixed legal skills. Some know the law."
>
> "Some know the law but they don't participate that much in court. They don't object as much as they should. They will cross examine witnesses."
>
> "Only a few do advocacy. I would like to see them make more objections."
>
> "Most GALs don't see their role as independent of the prosecutor."

Other judges expressed greater concerns:

> "The GALs don't know the word 'subpoena'".
>
> "For some lawyers, it's quasi-legal work and it's not for everybody but at the same time it doesn't mean you're a passive participant in the court room."
>
> "I have had multi-hour and multi-day hearings and trials and some contract GALs do not ask a single question." This judge stated that he/she has never seen a GAL call a witness or initiate a motion to have DHHS do something. He/she added, "They sit there." The judge drew a clear distinction between contract attorneys and private attorneys who serve as GAL, stating that of the contract attorneys, only one presents evidence, whereas the non-contract (i.e., paid hourly) attorneys almost always do.

County attorneys also were asked about GALs' legal and professional skills. County attorneys, on average, agreed that most GALs had the requisite skills. CASAs and Foster Care Review Board Members were asked to respond to a range of statements about GALs' advocacy skills. As Table 67 shows, only small percentages of CASAs and no Foster Care Review Board members "strongly agreed" with statements regarding GALs' advocacy on behalf of their clients or GALs' critical evaluation of the

DHHS plan. Both CASAs and Foster Care Review Board members evidenced disagreement with statements about GALs being effective advocates for their child clients.

Table 67. CASA (n=89) and Foster Care Review Board Member (FCRB) (n=19) Responses to Statements Regarding GALs' Advocacy Skills

	Strongly Agree		Agree		Disagree		Strongly Disagree	
	CASA	**FCRB**	**CASA**	**FCRB**	**CASA**	**FCRB**	**CASA**	**FCRB**
"GALs are effective advocates for their clients in court."	13%	5%	50%	37%	26%	42%	10%	16%
"GALs are effective advocates for their clients with DHHS."	9%	5%	55%	32%	26%	47%	10%	16%
"GALs critically evaluate the plan presented by DHHS."	11%	--	52%	32%	29%	58%	8%	-11%

With respect to GALs' critical assessment of the plan presented by DHHS, most judges indicated that GALs sometimes make such assessments. Among their comments about GALs' critical assessment of the DHHS plan: "sometimes . . . but not often enough," "usually not," "don't usually," "from time to time," and "sometimes yes, sometimes no." Three judges, however, gave GALs higher marks in this area. Two said that GALs "often" critically assess the DHHS plan, and another said, "GALs here are really good at contesting what the department says." Another judge said that GALs should not be "rubberstamping" DHHS.

In interviews, CASAs expressed different views of GALs' legal skills on one hand and their advocacy skills on the other. Four CASAs said that GALs' legal skills were good to excellent, but they characterized their advocacy skills as "not as strong" and "weaker" than their legal skills. One CASA said that the level of advocacy skills varied based on the GAL and the GAL's years of experience. One CASA said that in a recent case involving the child's possible return home, the GAL did not ask a single question and did not call a witness, and the child did not return home. The CASA summed up the situation by saying, "It was just pathetic." Other CASAs commented on GALs' advocacy skills by pointing out that it is difficult to advocate for someone whom the GALs have never met or spent any time with.

Foster Care Review Board (FCRB) members were asked in interviews about GALs' advocacy on behalf of their child clients. One described GALs' advocacy as "minimal" and other stated, "Like everything else, it's spotty" and "the weak reports make me think that if they're turning in a weak report, they're a weak advocate and don't know much about the child or the child's needs." One FCRB member observed: "If a judge demands good representation for a child, GALs will pick up the pace. I think the judges in [this county] can hold the GALs' feet to the fire if they're not representing the children. And it certainly takes that level of involvement sometimes to get the GALs to do their jobs."

One key informant said that, “My sense and experience have been that GALs are not very strong advocates . . . Some are excellent but by and large, they are not pushing the envelope and tend to be passive in court.” This individual added, “GALs don’t see themselves as advocates.”

Foster parents were asked to respond to the statement, “The GAL speaks up in court on behalf of my foster child.” Their responses were evenly divided: 16% strongly agreed,16% agreed, 16% disagreed, 16% strongly disagreed, and 33% did not know. Foster parents also were asked if their foster child’s GAL had called them as a witness in court hearing involving their foster child. In response, 16% said “only once” and 83% said “never.”

DHHS caseworkers were asked to respond to the statement, “GALs are skillful in examining and cross-examining me when I testify in court.” In response, 15% said “always,” 69% said “usually,” 15% said “sometimes”, and 1% said “never.”

In interviews, CASAs expressed different views of the extent to which GALs are prepared for court hearings. One said that her GAL was prepared for the court. Another said that the one-third of GALS who are doing their jobs and providing reports are prepared for court but “many GALs are just there. They are bound by law to attend but I am not sure that they are prepared.” Another described GAL preparation for court as “poor.” Three GALs reported that GALs are usually prepared for court because they have others’ reports: the DHHS report, the CASA report, and the foster parents’ report. One CASA stated that “they don’t spend a lot of time reading the reports. They glance through and hit the highlights.”

One key informant observed that from his/her experience in observing contested abuse/neglect cases, the county attorney asks all the questions and the GAL does not ask anything except to “sweep up” after the county attorney and ask any follow up questions they missed. “The GALs in these cases don’t seem to focus on what might be in the child’s best interest, including going home, and just act like a second seat county attorney doing clean up after the county attorney asks all the questions.”

GAL Reports and Recommendations

In the surveys, GALs were asked to respond to a series of statements regarding the reports and recommendations that they make to the court. Responses are provided in Table 68.

Table 68. GAL Responses to Statements Regarding Their Reports and Recommendations to the Court (n=71)

	Always	Usually	Sometimes	Never	No Response
“I submit a written report to the court at each dispositional and review hearing.”	56%	37%	6%	1%	--
“My written reports state any concerns that I have that need attention to protect the child’s legal and best interest.”	86%	11%	--	3%	--

	Always	Usually	Sometimes	Never	No Response
"I make written recommendations to the court."	55%	35%	8%	2%	1%
"As a GAL, I make recommendations regarding the child's best interest independent of the court."	45%	52%	1%	--	--
"In making recommendations regarding the child's best interest, I defer to the preferences of the child."	--	4%	70%	25%	--
"My written recommendations to the court when a child is placed in foster care address the child's temporary and permanent placement."	68%	25%	4%	3%	--
"When my recommendations regarding the child's best interests differ from the child's preference, I make sure to nevertheless also tell the court what the child's wishes are."**	72%	13%	1%	--	--

** 20% (14 GALs) replied that it had never happened in their caseloads.

Of note in these results are the following:

- Two-fifths (44%) of GALs reported that they do not provide a report to the court at every dispositional and review hearing for their child client.
- Forty-four percent said that they do not make written recommendations to the court for all of their child clients.
- Slightly more than half (53%) of the GALs reported that they did not always make recommendations independent of the court. These findings relate to the GALs' response to the statement, "I sometimes feel pressure from the court to make certain recommendations with which I disagree." In response, 21% said "yes" and 79% said "no."
- One-third (32%) of the GALs said that they do not always make written recommendations regarding the child's temporary and permanent placement.

With respect to GALs' actions in relation to the plan presented by DHHS, GALs were asked to respond to the statement, "I agree with the plans presented by DHHS." In response, 46% said that they "usually" agreed and 50% said that they "sometimes" agreed. DHHS caseworkers (n=70) were asked to respond to the question, "GALs critically assess the plan presented by DHHS." In response: 7% strongly agreed; 56% agreed; 33% disagreed; and 4% strong disagreed.

Other stakeholders were asked about GALs' reports and recommendations to the court. Court administrators reported that GALs file reports for the 6 month review hearings. Table 69 provides the time periods for submissions of reports and recommendations in the selected counties.

Table 69. County Guidelines for Submission of GAL Report and Recommendations

County	When GAL Reports and Recommendations Must be Filed
County A	3 business days before the hearing
County B	Usually 3 to 5 business days before the hearing (now uses a standard GAL report format)
County C	At least 24 hours before the review hearing
County D	Usually filed the day before the hearing but sometimes, the GAL hands it to the judge in court
County E	Information not provided[114]

Some GALs referenced a standardized report form for GAL reports used in their county. One GAL described the format as requiring identification information, when the GAL spoke with the child, where they met, other people contacted, doctors' orders, criminal history of the parents, and recommendations. This GAL commented, "The GALs don't like the form and are frustrated that no one asked their opinion of the report." Another GAL said that GALs are to file a report after the adjudication hearing but went on to say," sometimes, I just go to the judge and don't write a report."

Judges were asked about the quality of GAL reports. Only one judge gave unqualified good reviews to the GAL reports, saying, "Always have good information." Another said, "GAL reports [which show that that GAL has had contact with the child] are really good at highlighting all the issues that are probably going to come up for appellate review." Other judges either thought the GAL reports were not helpful at all or gave GAL reports mixed reviews at best. Judges characterized reports as:

"Usually useful but it depends on the individual GAL. Some are consistently good."

"Sometimes meaningful"

"Normally not meaningful"

"Useless"

"So abbreviated that they don't add anything to the case."

"The most useful reports are the CASA and caregiver reports because they are in actual contact with the child. The foster parent can also report when the GAL has not visited the child."

Several judges found the GAL reports to be unhelpful because they simply agreed with the Department's position:

"For the most part, GAL reports [by contract attorneys] are not useful. They are not independent of the county attorney and they just agree what is in the DHHS report. Private

[114] Several requests were made to interview the court administrator; this individual declined to be interviewed.

> attorneys are willing to take on DHHS, to challenge the Department and county attorneys. The GALs don't say much of anything different from the county attorneys." [This judge said that to try to break GALs of this habit, he/she calls on them first in the courtroom.]
>
> "Sometimes independent of the county attorneys and sometimes, GALs add recommendations in their reports"
>
> "Historically, they have been a rubberstamp for the county attorney and a passive presence in the courtroom."
>
> "Most reports are meaningless – most just say, 'agree with county attorney.'
>
> "Sometimes the GAL reports are useful when they go beyond what the Department wants but usually they just agree with what DHHS is recommending"
>
> "Some reports are useful, some are rubberstamps. It's this stupid, 'I've read the department report and I agree' type of report all too often."

Judges also made the following statements:

> "I can't remember the last time that a GAL was advocating for reunification if the county attorney wasn't."
>
> "I'm the only one in the room pushing for change. I have talked to the GALs about this [pushing DHHS] and they don't think it's their job."

In interviews, CASAs varied in their views of GALs' independence from the court DHHS. Two said that GALs function independently of the court and DHHS. Another said that GALs are supposed to be independent but generally are not. One CASA said, "they [the GALs] are a mouthpiece for DHHS. They are not representing the client; they are representing DHHS. The parties involved, including the GAL, have a goal to check the completed box and move the case along as quickly as possible.' Another CASA stated that GALs rely too much on DHHS reports and what they assume the court will do. In their comments following completion of the surveys, CASAs made the following observations:

> "As a CASA, I have never had a GAL that did anything other than show up for court and regurgitate the DHHS recommendations."
>
> "For the most part, they [GALs] rubberstamp what DHHS says." "My limited experience is that the GAL simply rubber stamps the recommendations of the Case Worker without any real effort to discover information independently. The GALs indicate that they are too busy to deal with each case independently."

Caseworkers indicated that GALS sometimes adopt DHHS recommendations and sometimes do not. The Foster Care Review Board Members from one county who were interviewed said that GALs usually "go along with DHHS". More than half (58%) of Foster Care Review Board members (n=19)

strongly agreed or agreed that GALs make a determination of best interest independent of DHHS; 42% either disagreed or strongly disagreed.

Other stakeholders were asked to respond to a series of questions about the recommendations made by GALs.

Young People's Perspectives

Young people were asked if they had ever disagreed with what the GAL recommended to the court and how that situation was handled. Young people expressed dissatisfaction with the way that disagreements were handled; some, however, assertively dealt with the issue. Among their responses:

"He [the GAL] wouldn't listen to me."

"My GAL ignored me, told me I couldn't go to court."

"I was pretty mad when he just said what he wanted, and not what I wanted."

"Yes [I did disagree] and I tell the judge right then and there."

"He was open about it. After I cussed him out, he started talking to me before court."

"He didn't disagree with me after I called him out."

"I told him off one day when he wouldn't listen to me."

"How can the GAL or the court know what I need when nobody has spoken to me?"

Some young people said that they did not know what the GAL's recommendations were. One said, "they [GALs] are looking at a paper I don't have a copy of. I should be able to see the papers and know what they are talking about."

Many of the disagreements that young people described related to placement moves. One young person said, "If they are considering a different foster home, they wouldn't really tell us." Another said, "I wasn't warned before I was moved. No warning. They came over and took our stuff and moved us three houses down." A third young person commented, "My GAL didn't tell me I was moving out – and the decision had been made months earlier."

Young people indicated that they did not receive copies of court report. One said, "Whenever I asked for it, there was a reason I couldn't receive it."

Other Stakeholder Perspectives

Three stakeholder groups were asked specifically about GALs' written recommendation to the court. As Table 70 shows, most stakeholders said that GALs "usually" make written recommendations, although 34% of CASAs and 46% of DHHS caseworkers said that GALs make recommendations only "sometimes" or "never." Table 71 shows that CASAs and DHHS caseworkers in large percentages

believe that GALs make determinations of best interest independent of the court and that GALs are not influenced by the child's preferences in making the best interest determination.

Table 70. Responses to the Statement, "GALs make written recommendations to the court."

	Always	Usually	Sometimes	Never
CASAs (n=89)	36%	30%	28%	6%
DHHS Caseworkers (n=70)	10%	44%	40%	6%
Foster Care Review Board Members (n=19)	5%	21%	74%	--

Table 71. Stakeholder Responses to Statements about GAL Reports and the Nature and Quality of GAL Recommendations

	Strongly Agree	Agree	Disagree	Strongly Disagree
CASAs (n=89)				
"GALs make a determination of the child's best interest independent of DHHS."	10%	52%	33%	5%
"GALs make a determination of the child's best interest notwithstanding the child's preference."	8%	65%	22%	4%
DHHS Caseworkers (n=70)				
"GALs make recommendations regarding the child's best interest independent of the court."	6%	69%	24%	--
"GALs usually defer to the preferences of the child in making recommendations to the court."	6%	39%	50%	6%
Parents (n=4)				
"The GAL makes good recommendations to the court." (One parent stated that he/she did not know.)	--	--	--	75%
Foster Parents (n=6)				
"The GAL makes good recommendations for my foster child to the court." (Two foster parents said that they did not know.)	16%	16%	16%	16%

In interviews, CASAs shared different observations about GAL reports. One CASA reported never having seen a report from the GAL. Several CASAs reported that GAL reports are written off what the other reports say. One CASA said that the GAL for the case in which she is involved always provides reports and makes good recommendations. Another said that only about one-third of GALs provide

reports and they range from good to excellent with good recommendations. Another commented that GAL reports had improved. This CASA noted that GALs submit a written report or they present recommendations orally on the record. A fourth CASA said that "I have never been given a report from a GAL." With respect to recommendations, this CASA said that GALs agree with whatever DHHS says. Another CASA made a similar statement, saying that the GAL in his/her cases "never made a recommendation on his/her own. He/she agrees with everything that county attorney recommends."

One CASA commented that GALs' reports are often given out right before the hearings as everyone is walking into court. In his/her county, reports are due at least three business days prior to the hearing; he/she commented that this happens only about 10% of the time.

In interviews, DHHS caseworkers differed on the receipt of GAL reports and the usefulness of these reports. One said that GAL reports are "accurate and thorough" and another said that it was "50/50" with respect to the timeliness and usefulness of GAL reports. A third said that he/she often receives reports right before court.

Foster Care Review Board (FCRB) Members from a selected county described GALs' reports and recommendations. Two stated that the GAL's recommendations are compelling and useful if the GAL has met the child. However, one of these FCRB Members noted that the reports are sometimes so sketchy, "it is two sentences saying that they agree with the DHHS plan." Another said that GALs "never offer anything new in their reports."

Conflicts Between the GAL's Recommendations and the Child's Wishes/Conflicts Among Siblings' Interests and Appointment of Separate Counsel

In interviews, GALs said that they let the court know what the child wants and why they disagree with the child's position and what they think the child's best interest is. One GAL said, "I have an obligation to articulate to [children] a reason why I disagree with them and give them reasons why I have a different position." Another GAL said that if she and the child disagree, she brings the disagreement to the judge's attention. She noted that disagreements have not happened often.

Judges were asked in interviews about GALs' communicating to the court the child's wishes, particularly when they are different than the GALs' recommendations. Several judges said that GALs often do not alert the court to the client's wishes because they have not met with the client. Judges, for example, said:

> "We may not know that there is a conflict if the attorney has not met the child."
>
> "The problem is that the GALs don't know what the child's wishes are because the GALs haven't spoken with the child or met the child."
>
> "It's hard to know what the child's preferences are if you've never met the child."

One judge said that he/she will not know if there is a conflict if he/she does not ask the question or the GAL does not tell him/her. One judge, however, said that the GALs "trouble shoot" any possible conflicts, try to resolve, and then bring it to the court when the conflict cannot be resolved.

Some judges indicated that conflicts do not occur as often as one might think, and when it does occur, it is with adolescents. One judge, for example, said that the conflict often surfaces only when teenagers are in court and tell the judge that the GAL is not saying what the teen wants.

CASAs expressed concerns about GALs communicating children's wishes to the court. One said, "It's hard to say what the children want when they've never met them." Foster Care Review Board Members expressed similar concerns. One said, "They [GALs] are not meeting with the children, so how would they know what the children want?" Another asked, "does the GAL have a good enough rapport to talk to the child ethically both about what the child may want and what is in their best interests?" In interviews, DHHS caseworkers states that GALs usually tell the court what the child wants even when the child's desires differ from the GAL's recommendations.

Both the surveys and follow up interviews explored the issue of separate counsel when the GAL's recommendations differ from what the child desires and when the best interest of siblings are adverse to one another. Table 72 provides the responses of GALs to survey statements regarding separate counsel. As this Table shows, one-fifth of GALs reported that the child's preference had never differed from the GALs' recommendations. When a conflict between the child's preferences and the GAL recommendations occurs, more than one-third of the GALs stated that they "sometimes" seek separate representation for the child, and another 10% said that they never do so. More than one-half (54%) reported that a conflict among siblings' interests has never happened in their GAL caseloads.

Table 72. GAL Responses to Questions Regarding Separate Representation

	Always	Usually	Sometimes	Never	Has Not Happened in my GAL Caseload
"When my recommendations regarding the child's best interest differs from the child's preference, I request the appointment of separate counsel to represent the child's legal interests." (n=71)	14%	14%	39%	14%	18%
"When I have a case in which I represent a sibling group in the same case and my legal and best interest advocacy for one child is adverse or in conflict with the legal and best interest of a sibling in the case, I apply to the court for appointment of a separate GAL and/or legal counsel for one of the siblings."(n=32)	53%	13%	18%	16%	--

In the follow up interviews with GALs, the majority of GALs indicated that they had never sought separate counsel, although some stated that they supported this practice under the appropriate circumstances. One GAL seemed perplexed by the question of separate counsel, stating that that he had never had any conflicts among siblings. One GAL said that she requests separate counsel every time she thinks there is a conflict between her and the child. The court grants such motions as standard practice. Another GAL said that she asks for a second attorney only when a legal issue comes up that is outside the scope of her appointment, such as a child's trust fund. Another GAL said that she has never requested separate counsel but would do so if there was a conflict among siblings or a conflict with the client best interest/stated interest could not be resolved.

In about half of the interviews, GALs reported that they were the attorney appointed when another GAL sought separate counsel. One GAL said that under such circumstances, "I have to advocate for what my client wants and keep my personal opinion out of it. When I'm separate legal counsel for the child, I have to advocate for what my client wants even if I disagree, as opposed to when I'm GAL and I'm saying what I believe and think would be best for the child." This GAL explained that upon first meeting the child, she explains her role as GAL, advocating for the child's best interest and the option of asking for separate counsel if the child wants something different.

Other stakeholders were asked about whether GALs request separate counsel when the interests of one sibling conflicts with that of another sibling in the case or the child's best interest differs from the child's preferences.

Judges differed to some extent on appointment of separate counsel when children' wishes were different than the GALs' recommendations or in cases of different interests among siblings. Two judges stated that a GAL had never asked for appointment of separate counsel because of such conflicts. Five judges specifically stated that they appoint separate counsel when there is a conflict between the child's wishes and the GALs' recommendations. Among their comments:

> "I have a policy that all conflict must be brought to my attention and I will appoint a new attorney. It happens a few times a year – more with teenagers and more with girls than boys."
>
> "I can read between the lines and can glean when there is a conflict that might be getting glossed over, and will ask the GAL if separate counsel should be appointed."
>
> "I appoint separate counsel when I see a conflict regardless of whether the GAL asks for it."

One judge, however, said that when conflicts come up, he/she does not support separate counsel, but listens to the child (if the child is present) and makes a decision.

With respect to conflicts regarding the interests of siblings, one judge stated that he/she does not wait for a GAL to request a second attorney, "if I see a conflict, I appoint a second attorney." Another judge, however, said that he/she could not recall this situation ever arising and did not see why a separate attorney would be needed.

One key informant stated that GALs should ask the judge to appoint an "advocate counsel" to represent the child's position if there is a difference between what the child wants and what the GAL is recommending but observed that he/she does not "hear about this happening very much."

As Table 73 shows, 35% of CASAs and 50% of parents either disagreed or strongly disagreed with the statement that the GAL informs the court of the child's wishes when the child's wishes differ from the GAL's recommendation.

Table 73. Stakeholder Responses to Statements about GAL Requests to Appoint Separate Counsel

	Strongly Agree	**Agree**	**Disagree**	**Strongly Disagree**
CASAs: "In cases where the GAL's recommendations are not consistent with the child's preference, the GAL informs the court that the child has another preference and informs the court of the child's wishes." (n-89)	8%	57%	27%	8%
Parents: "The GAL presents the wishes of my child to the court even when my child's wishes are different than the GAL's recommendations to the court." (n=4)	--	50%	50%	--

On this issue, foster parents were asked to respond to the statement, "The GAL presents my foster child's wishes to the court even if the GAL's recommendations are different." In response, 50% said "no" and 50% said that they did not know.

Court administrators were asked to respond to the statement, "GALs appropriately apply to the court for the appointment of a separate GAL and/or legal counsel for a child when the interests of one sibling are not consistent with those of another sibling in the same case." Two court administrators said that they had never seen it happen; two others said that GALs did make this application, with one commenting that it does not happen very often but it happens when it is necessary.

The Relationship Between GALs and CASAs

In interviews, one GAL stated that having a CASA on the case allows her to take more of an attorney role when she is the GAL. Judges expressed positive views of CASAs with several commenting that when CASAs are the case, everyone probably does a better job. Judges had different views of the role of CASAs vis-à-vis the role of GALs. Among the comments:

> "The CASA becomes a substitute for the GAL, doing what the GAL isn't doing – meeting monthly with the child and talking to teachers."
>
> "CASAs are able to supplement and do some of what DHHS and GALs can't get to, like talking to schools."
>
> "Having a CASA on a case can be the GAL's 'eyes and ears'."
>
> "I wouldn't want the GALs to rely on CASAs, but I imagine that some of them do."

One judge said that CASAs help GALs do a better job, adding, "when a question or concern comes up, I talk to the CASA." Two judges said that they were unable to say whether having a CASA on the case changes or improves the work done by the GAL.

Two court administrators reported that CASAs are appointed for every child abuse, neglect and dependency case in their counties, and as a result, they were not able to say whether a child having a GAL changed the role/responsibility of the GAL in any way. Another court administrator stated that judges have appointed CASAs in the past when GAL work has not been up to standard. He/she indicated that judges appoint CASAs when the child needs someone else "who actually cares about the kiddos." A fourth court administrator said that he/she had no information on CASA appointments.

Continuances

Ten judges stated that they do not grant continuances based on reasons related to the GAL. One judge said that he/she will call the case up and find out why everyone is not present and get it on the record. This judge stated that he/she will recess or "special set" the hearing later in the day. This judge does not tolerate continuances except in totally extreme circumstances such as the child or attorney in the hospital. This judge stated, "I have built a culture of what to expect and the culture the lawyers expect is I give priority to 3(a) cases." Another judge said that he/she does not grant "a lot of continuances" and that fewer are related to GALs. Another judge said that if there are continuances, it is because of DHHS or Magellan (the mental health provider) rather than the GALs.

When asked about the frequency of and reasons for continuances, two court administrators said that the judges in their counties rarely grant continuances -- only in extraordinary circumstances or for good cause such as illness. In these cases, hearings are delayed only for a few days. Two court administrators were not certain about continuance practice. One said, however, that the number of continuances has declined since the court went to once-a-week temporary custody hearings. She added that two of the main reasons for continuances are the Indian Child Welfare Act and a parent wanting to hire his or her own attorney and not rely upon the court-appointed attorney.

Filing Appeals

Most judges stated that GALs do not file appeals. One judge, however, said that private attorneys, as opposed to contract attorneys, file appeals. Another said that GAL appeals are usually aligned with the state. One key informant stated that GALs do not file appeals. Having observed appellate practice for five years, he/she noted that almost all appeals are filed by parents' attorneys. He/she stated that because they are appointed by the judge and paid by the county, GALs will not file an appeal on behalf of the child, further commenting, "This is evidence of lack of zealousness."

Communication with Key People in the Child's Life

In the surveys, GALs were asked to respond to a series of statements regarding their communication with other key people in the child's life. Table 74 provides the results of GALs' responses to these statements. As the Table shows, GALs report in large percentages that they "always" or

"usually" talk with DHHS caseworkers, service providers, county attorneys, parents, caregivers, and CASAs, and parents' attorneys but less so with Foster Care Review Board Members.

Table 74. GAL Responses to Questions on Communication with Key People In the Child's Life (n=71)

	Always	Usually	Sometimes	Never
DHHS Caseworkers				
"I communicate with DHHS caseworkers about the child's case."	58%	42%	4%	--
"I seek all case records from DHHS."	41%	30%	27%	3%
Caregivers				
"I talk with the child's parents about how the child is doing with consent from their lawyer when applicable."	41%	42%	15%	1%
"I talk with the child's foster parents or group home staff when the child lives with a foster family or in group care." (3% stated that the statement was not applicable)	55%	32%	10%	--
Other Child Welfare Contacts				
"When the child is in foster care, I personally communicate with members of the Foster Care Review Board about the child's case."	7%	30%	49%	14%
"I communicate with the child's CASA when one is appointed."	27%	30%	21%	4%
Service Providers				
"I seek case information from treatment providers who are providing services to the child."	41%	48%	13%	--
Other Attorneys				
"I communicate with counsel for the child's parent(s) outside of court."	34%	52%	14%	--
"I communicate with counsel with the agency outside of court."	15%	32%	49%	3%

GALs who participated in follow up interviews responded to a series of questions about their relationships with key people in children's lives.

Parents' Attorneys: Most GALs stated that the same attorneys serve as GALs and parents' attorneys and, consequently, the working relationships are good. One GAL, however, expressed frustration with parents' attorneys because they advocate too much for their clients. Another GAL said that when the attorney comes from outside the juvenile system, "they are much more into litigating than problem solving." She noted that when they become more familiar with the juvenile system, they work more collaboratively.

County Attorneys: The GALs reported a mixture of experiences with county attorneys. Some said that the working relationship was "good" or "pretty good"; others said that the relationship was improving after some difficulties due to the inexperience of county attorneys in the past; and others commented on the impact of the "huge turnover" of county attorneys on working relationships. One GAL expressed concern about the "inflexibility" of county attorneys and their refusal to justify their positions. One GAL said that she has increasingly worked with county attorneys, including getting them to join her motions so that the motion is a joint one to the court. Another GAL described good working relationships but added that she is not afraid to disagree with them if she thinks that they and DHHS have taken the wrong position. Yet another GAL described county attorneys as "a good group, good common sense, and practical approaches."

Children's parents: GALs described their relationships with parents as varying depending on the parent, the parent's attorney, and the status of the case. They indicated that the relationship is sometimes good and sometimes bad. One GAL commented, "Just because of the way the tables are set up, we sit by the county attorneys and the parents think we are the enemy." Two GALs said that the pre-hearing conferences have been very helpful in supporting parents to do what they need to do. Any family member can participate in the pre-hearing conference along with DHHS staff, the parents' attorney, and the county attorney. One GAL said that he was able to obtain information from parents at these conferences. One GAL said that her contract with parents was extremely limited to knowing what the parent is doing to comply with the court's requirements. Another stated that she only works with parents' attorneys. Another GAL said the she usually works through the parents' attorney or contacts the parents with the attorneys' authorization. She commented that when the child is on trial discharge home, she does go to the home, although in a couple of cases, the parents refused to let her in.

Foster parents and group home staff: GALs were generally more positive about foster parents than group home staff, although one GAL said that there was no difference in working with them. One GAL said that she has had better experiences with group home staff, and finds foster parents more "hit or miss." She commented that the biggest challenges are with kin caregivers whom she described as suspicious of the court process. One GAL said that foster parents are often surprised when she contacts them because many have never been contacted by a GAL before. One GAL reported making unannounced home visits to see what is happening with children in foster homes.

Children's CASAs: GALs expressed a full range of opinions about CASAs. One said that it was "rough" working with them because they "overstep their bounds in making legal determinations that they're not qualified to do." Others gave them mixed reviews: some are very helpful and others do not have much contact with children and are "hands off". Others found the CASAs with whom they worked to be extremely helpful. One GAL said that CASAs are excellent and had "nothing but positive things to say" about CASAs in his county. Another GAL described CASAs as "uniquely dedicated to children and very caring and devoted people." Another commended CASAs for providing "another set of eyes and ears." Yet another said that they provide day-to-day updates on children's lives. Another GAL said that she often asks for a CASA to be appointed and reported that she works well with them. She commented that CASA volunteers do not change her role as GAL but instead "add one more person that can help the child through the process and another person to catch something that one of us didn't catch."

DHHS Caseworkers: GALS reported a range of experiences with DHHS caseworkers. Some stated that caseworkers "run the gamut" – "some are wonderful and some are horrible." One GAL said, "we've got some very great caseworkers and some that I won't even comment about." Another said that some caseworkers were well prepared for court, while others "are not as open and trustworthy or prepared." Some GALs reported very good experiences with caseworkers who provided reports that included helpful information and did so in a timely way. Another said that some caseworkers try their best but simply cannot get the work done. One GAL described DHHS caseworkers as the "hardest people to work with" who do not get reports in on time. Some GALs were concerned about the impact of privatization on the quality of caseworkers for children. One said that it will add an extra layer of people to go through to get information about the child. Some GALs expressed concern about the turnover of caseworkers, with one stating that as a result of turnover, it is "extraordinarily difficult to get anything done." One GAL attributed the high caseworker turnover in her country to an incompetent supervisor and said that the turnover meant the GAL is not able to get updates on parents' progress or line up services. Another GAL was particularly concerned about the failure of DHHS caseworkers to provide GALs with notice of placement changes.

Children's mental health therapists: Most GALs saw their relationship with children's mental health therapists as reading their reports. One said that he tries to talk with therapists but they "don't have time to talk." Another reported that she contacts therapists directly when she does not receive information from DHHS on time. She commented that as a result, her reports to the court often have more information that the social worker's report. Another GAL said that she is frustrated because she would like to have direct access to the child's therapist but the county DHHS requires that she obtain the caseworker's authorization first.

Foster Care Review Boards. Only one GAL commented on the Foster Care Review Board, referring to them as "a nosey neighbor" who is generally not to be considered.

Other stakeholders were asked about GALs' contact with them and other key people in the child's life during their representation of children. County attorneys agreed that GALs routinely contact parent's attorneys outside court to discuss the case; routinely contact DHHS attorneys outside of court to discuss the case; and are able to strongly advocate or mediate with parents' attorneys and county attorneys, depending on the fact and circumstances of the case.

DHHS caseworkers were asked to respond to questions about GALs' contact with them. As Table 75 shows, 66% of caseworkers either disagreed or strongly disagreed with the statement, "GALs routinely contact me to discuss the child's case." This finding compares to earlier findings in which 50% of the responding GALs reported "always" communicating with DHHS caseworkers about the child's case and 44% reported doing so "usually." In interviews, DHHS caseworkers generally said that GALs attempt to contact them. One said that GALs are very busy but do try to contact the caseworker and when they do so, it is productive. Another said that most GALS are in contact with him/her but that there are always "two or three that it's either impossible to get a hold of or they act like it's no big deal."

Table 75. DHHS Caseworker Responses to Statements Regarding GAL Contact (n=70)

	Strongly Agree	Agree	Disagree	Strongly Disagree
"GALs routinely contact me to discuss the child's case."	--	36%	53%	11%

In interviews, CASAs reported different experiences with the GALs on their cases. One said that the GAL communicates with him/her freely. Another rated communication as "fair to poor." This CASA said that the purpose of team meetings was to promote communication but that some GALs never attend team meetings. A third CASA said that some GALs communicate with CASAs and some do not. This CASA added, "Some GALs don't go to court and don't send anyone." Another CASA said that he/she rarely to never receive callbacks from GALs. This CASA stated that he/she had "never once had a GAL speak to me about the case." Other CASAs reported mixed experience, having worked with GALs who did communicate with CASAs and others who did not. One CASA said, "one GAL did not communicate at all – would not respond to emails. The other GAL is very good – always responded to emails and keeping CASA in the loop." Another CASA said that if the CASA initiates contact, the GAL will be open and honest.

In interviews, Foster Care Review Board Members from one county discussed GALs' communication with them. Among their responses: "[I have had] no interaction with GALs in the two and half years I have been on the board"; "only one [GAL] has come to a meeting;" and "I have had only one GAL come twice in the four years. She was really on top of things and provided good information. It was a positive exchange but once out of more than 100 reviews."

CASAs, DHHS caseworkers and Foster Care Review Board Members were asked about the nature of GALs' relationships with them. As Table 76 shows, the majority of stakeholders agreed with statements that GALs' relationships with them were respectful. However, 15% of CASAs, 20% of DHHS caseworkers, and 43% of Foster Care Review Board Members either disagreed or strongly disagreed with the statements.

Table 76. Stakeholder Responses to Statements Regarding GALs' Respect for Them

	Strongly Agree	Agree	Disagree	Strongly Disagree
CASAs: "GALs have a respectful relationship with CASAs." (n=89)	19%	65%	11%	5%
DHHS Caseworkers: "GALs have a respectful relationship with DHHS caseworkers." (n=70)	17%	63%	17%	3%
Foster Care Review Board Members: "GALs have a respectful relationship with the Foster Care Review Board." (n=19)	5%	53%	32%	11%

Access to and Use of Information

GALs were asked in surveys about their access to different types of information. As Table 77 shows, GALs indicated that they generally receive all court papers and reports.

Table 77. GAL Responses to Statements regarding Access to Information (n=71)

	Always	Usually	Sometimes	Never
"I receive all court papers (including petitions and motions) prior to each hearing."	32%	54%	14%	--
"I receive copies of the child's case plan and court reports prepared by DHHS."	34%	54%	13%	--
"I receive court reports prepared by the Nebraska Foster Care Review Board."	46%	45%	7%	1%
"I receive court reports prepared by the child's CASA."	34%	45%	14%	7%
"I read all court reports prepared by DHHS, the Foster Care Review Board, and CASA."	93%	4%	3%	--
"I receive meaningful information from the child's mental health therapist." (2 stated that the statement was not applicable)	1%	63%	32%	2%
"I receive meaningful information on the child's health status."	1%	54%	42%	1%
"I receive notice from DHHS of any placement move that they are planning for the child."	17%	51%	32%	--

In their comments following completion of the survey, three GALs expressed concerns about the lack of timeliness of DHHS reports and other reports:

> "I rarely receive information from DHHS in a timely manner, despite requesting it in advance and the court's order that reports be submitted at least 3 days prior to hearing. Often, I will arrive at court only to receive 60 to 75 pages of information from the case manager that I am expected to read and absorb in 10 minutes prior to the hearing. It also seems that there is such a large amount of turnover in DHHS that a good case manager who knows and understands the families leave after a short time and is replaced by an individual with little to no experience in these matters and inadequate knowledge of the needs of the family."

> "Too often I do not receive case plans and court reports from DHHS staff in sufficient time to be able to do any type of meaningful follow up. Many times, I won't receive the report until the day before the hearing or even the day of the hearing."

> "GALs often have to rely on DHHS to provide written authorizations for release of information to a child's medical providers, mental health professionals, school and/or other service providers and record holders before information regarding the child will be released to the GAL. The other recourse for GALs is to obtain a subpoena for the information. These avenues seem to create an unnecessary expense and/or delay in the GAL obtaining timely information about the

child as well as an additional duty for a child's DHHS case manager. Simple solution would be that the GAL's initial appointment order provide authorization for direct access to information from and contact with information holders/service providers who have information regarding the children."

Stakeholder groups were asked about the extent to which GALs utilize key information. Table 78 provides CASAs' responses to statements regarding GALs' use of the information that they provide. As the Table shows, CASAs generally reported that they provide information to GALs, but they also reported that GALs did not routinely communicate with them and often did not read their reports or consider their views.

Table 78. CASA Responses to Statements about GAL Use of CASA Information (n=89)

	Strongly Agree	**Agree**	**Disagree**	**Strongly Disagree**
"GALs routinely communicate with me as the child's CASA."	8%	27%	38%	27%
"I routinely provide information to the child's GAL."	26%	57%	15%	2%
	Always	**Usually**	**Sometimes**	**Never**
"GALs read my reports about the child."	22%	49%	26%	2%
"GALs invite or consider my information and views."	17%	35%	35%	13%

Table 79 provides the responses of DHHS caseworkers to statement regarding GALs' use of information that they provide. As the Table shows, DHHS caseworkers reported that they generally provide information to GALs and they agreed that GALs use the information that they provide. They indicated, however, that GALs do not routinely contact them, and they doubted that GALs requested information from treatment providers.

Table 79. DHHS Caseworker Responses to Statements about GAL Use of DHHS Information (n=70)

	Always	**Usually**	**Sometimes**	**Never**
"I routinely provide information to the child's GAL."	29%	61%	9%	1%
"GALs read the DHHS reports."	27%	46%	26%	1%
	Strongly Agree	**Agree**	**Disagree**	**Strongly Disagree**
"GALs routinely contact me to discuss the child's case."	--	36%	53%	11%
"GALs routinely request DHHS case plans and other case records from DHHS."	13%	50%	34%	3%
"GALs routinely request case information from treatment providers." (14% reported that they did not know)	1%	27%	41%	16%

In a comment following completion of the survey, one DHHS caseworker wrote, “GALs rarely provide me with a report after mine is submitted to them and it often duplicates my reports as if they just took my info and put it in theirs.”

Table 80 provides the response of Foster Care Review Board Members regarding information that they provide to GALs. As the Table shows, Foster Care Review Board Members reported low levels of contact and communication with GALs.

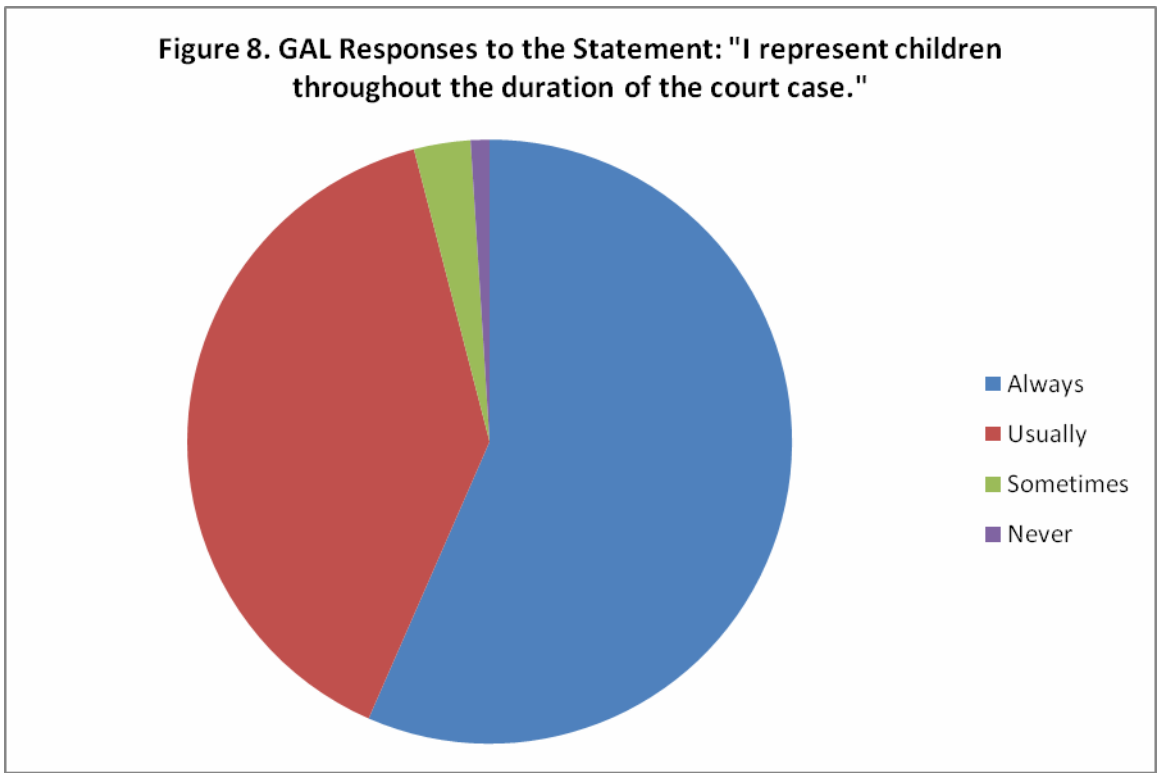
Table 80. Foster Care Review Board Member Responses to Statements about GAL Use of Information (n=19)

	Always	**Usually**	**Sometimes**	**Never**
“GALs attend meetings of the Foster Care Review Board.”	--	0	42%	58%
“GALs invite or consider information from and the views of the Foster Care Review Board.”	--	16%	74%	11%
“GALs read the Foster Care Review Board reports.”	5%	16%	74%	5%
	Strongly Agree	**Agree**	**Disagree**	**Strongly Disagree**
“GALs routinely communicate with the Foster Care Review Board.”	--	16%	52%	32%
“The Foster Care Review Board routinely provides information to children’s GALs.”	53%	37%	11%	--

Duration of GALs’ Representation of Children

In surveys, GALs were asked the average period of time over which they represent children as GALs. Most GALs reported representing children in in-home cases between 6 months and 12 months. Most GALs reported representing children in foster care between 13 and 24 months.

GALs also were asked to respond to a statement regarding the duration of their representation of children and youth. As Figure 8 shows, the majority of GALs reported “always” representing children throughout the duration of the court case (56%) with next largest percentage (39%) “usually” representing children throughout the duration of the court case.



Other stakeholders were asked about GALs' representation of children throughout the duration of their court cases. As Table 81 shows, in most cases, one third or less of the stakeholders (other than parents and foster parents) reported that GALs "always" represent children throughout the duration of the case.

Table 81. Stakeholders' Responses to the Statements Regarding GALs' Representation of their Clients Throughout the Duration of the Court Case

	Always	**Usually**	**Sometimes**	**Never**
CASAs: "The same GAL who is appointed at the beginning of a case remains on the case until court jurisdiction is terminated." (n=89)	24%	48%	22%	6%
DHHS Caseworkers: "GALs represent the child throughout the duration of the court case." (n=70)	34%	50%	14%	1%
Foster Care Review Board Members: "The same GAL who is appointed at the beginning of a case remains on the case until court jurisdiction is terminated." (n=19)	--	68%	32%	--
	Yes	**No**	**Do not Know**	
Parents: "The GAL has been the same person since the beginning of my case." (n=4)	75%	--	25%	
Foster Parents: "The GAL has been the same person since the beginning of my foster child's case." (n=6)	50%	16%	33%	

Parents and foster parents were asked about the number of GALs who had represented their child/foster child. Most of their children/foster children had had only one GAL.

GALs were asked if they had ever filed motions to withdraw as GAL and if so, to provide the reasons for moving to withdraw. One half of the GALs stated that they had moved to withdraw. Table 82 provides the responses of these GALs regarding of their reasons for moving to withdraw.

Table 82. Reasons for Moving to Withdraw as a GAL (n=36)

Reasons for Moving to Withdraw as a GAL	Percentage of GALs Indicating this Reason
Conflict of interest regarding other parties in the case	66%
Inconsistent interests among sibling in one case	19%
Too large a caseload	6%
Unable to zealously represent the child under the circumstances of the case	--
Unable to zealously represent the child with adequate legal knowledge	--
Personal reasons	8%

County attorneys were asked in surveys about the ending of GAL appointments. They believed that GALs only "sometimes" or "never" move to withdraw under appropriate circumstances. Their responses to statements about GAL removal by the court or the court's ceasing to appoint ineffective GALs suggest that neither step is regularly taken.

Judges were asked in interviews whether GALs file motions to withdraw and if so, GALs' reasons for filing these motions. Most judges said that GALs file motions to withdraw only when retiring, leaving their firm, or transferring jobs, or when an unexpected conflict develops. Some judges, however, said that a GAL had "never" filed a motion to withdraw. One judge stated that GALs never move to withdraw "even when they [the GALs] are over their heads." Another said that a GAL has never moved to withdraw for "lack of skill or knowledge."

Court administrators stated that they rarely, if ever, have observed a GAL filing a motion to withdraw. Like the judges, court administrators reported as the only situations in which a GAL has moved to withdraw: the attorney retiring, moving or leaving firm or in the case of a conflict, such as the attorney having previously represented the parent.

Judges were asked if they ever on their own removed or dismissed a GAL. Five judges said that they had never done so; seven judges said that they had done so; and one said that he/she had had one GAL replaced with a new GAL but it was not a dismissal. One judge commented that he/she could do nothing when a GAL from a contract firm fell asleep in court."

Three court administrators stated that they were not aware of a judge ever removing a GAL. One court administrator said that a GAL had been removed a couple of times because the GAL did not "like to show up to court and didn't do reports."

Judges also were asked whether they cease appointing GALs who are not performing well. Most judges said that they have ceased appointing GALs when they do not perform well. One judge said, "Judges try to serve as a control on bad practice." Some judges clarified that they cease appointing private attorneys but are not able to do so with contract attorneys. One judge, however, said that when contract attorneys are not doing a good job as GAL, he/she allows the firm to be appointed only as parents' attorneys and "never again as a GAL." One judge said that he/she stops appointing an attorney only if there is a pattern of the GAL not showing up to court. Surprisingly, one judge said, "No, not for doing a bad job, but I have stopped appointing certain attorneys to be GALs because they were billing too many hours and doing too much work on one case. I'm ever mindful of our county's budget."

Outcomes for Children

When asked if having a GAL made a difference for them, one young person was quite positive but others were not. One young person said it "made a negative difference." Another said that his/her GAL "lied about everything" that was going on in his/her life. Another commented that his/her GAL didn't know much about him.

In surveys, CASAs and Foster Care Review Board Members were asked about the impact of GAL representation on outcomes for the children they represent. Table 90 provides their responses to the statement, "Without the GAL, some cases would not have good results for the child." As Table 83 shows, the majority of both stakeholder groups agreed that without the GAL, the child would not have good results. However, 27% of the CASAs and 33% of Foster Care Review Board Members either disagreed or strongly disagreed with this statement.

Table 83. CASA and Foster Care Review Board Member Response to the Statement, ""Without the GAL, some cases would not have good results for the child."

	Strongly Agree	Agree	Disagree	Strongly Disagree
CASAs (n=89)	11%	61%	19%	9%
Foster Care Review Board Members (n=19)	5%	47%	42%	5%

In interviews, three court administrators strongly agreed with the statement, "If it were not for GAL participation, some children would have worse outcomes." One court administrator said she could not say.

National Best Practice Standards

The Role of an Attorney Appointed to be GAL

Whatever terminology is used to label the adult appointed by the dependency court to advocate for a child, if this person is a lawyer and is appointed because she is a lawyer, then she has the professional obligation to function as an attorney – beginning, first and foremost, by establishing and maintaining an attorney-client relationship (ABA, 1996; NACC, 2001). "A lawyer appointed as guardian ad litem is almost inevitably expected to perform legal functions on behalf of the child. Where local law permits, the lawyer is expected to act in the dual role of guardian ad litem and lawyer of record. The chief distinguishing factor between the roles is the manner and method to be followed in determining the legal position to be advocated" (ABA, 1996). That the attorney is called "GAL" and offers personal opinions to the court about what she believes to be in the child's best interests is not an excuse not to form an attorney-client relationship. Indeed, as explained below, if anything the formation and maintenance of such a relationship is more difficult – though no less necessary – in jurisdictions with a lawyer-directed model of representation.

"Establishing and maintaining a relationship with a child is the foundation of representation. Therefore, irrespective of age, the child's attorney should visit with the child prior to court hearings and when apprised of emergencies or significant events impacting on the child" (ABA, 1996). Stated slightly differently:

> Children need meaningful communication with their attorneys. The attorney must observe the child, and dependent upon the child's age and capabilities, interview the child. The attorney must engage in regular and meaningful communication with the child. Children need to participate in making decisions that affect their cases. The attorney has a duty to involve the child client in the process, *whether under a client directed model or advocate directed model.* The attorney has a duty to explain his/her role to the child in developmentally appropriate language.

(NACC, 2001). Many states echo this sentiment in their own written performance standards. For example, New York's standards provide:

> Establishing and maintaining a relationship with a child is the foundation of representation. Therefore, irrespective of the child's age, the attorney should meet with the child prior to court hearings and when apprised of emergencies or significant events impacting on the child, and additionally, if appropriate, should maintain telephone contact. The attorney should take steps to educate him/herself in order to be reasonably culturally competent regarding the child's ethnicity and culture.
>
> The attorney should recognize that the child's situation may be fluid. As a result, the attorney should remain in close communication with the child throughout the proceedings and apply to the court for further review, monitoring or modification of any preliminary orders, as necessary. The attorney should make reasonable efforts to visit

> the child in his or her current living situation whenever such a visit would facilitate communication with the child or enhance the attorney's ability to represent the child's legal interests.

(NYSBA, 2007).

Other states are more prescriptive, mandating the frequency of client contact. For example, Massachusetts attorneys meet their clients immediately upon being appointed; at least quarterly thereafter; and immediately upon learning of any placement move. These meetings are all to take place in the child's own environment (Massachusetts CPCS, 2007). Under a directive from the Chief Judge of Colorado, GALs there must see the child within 30 days of an initial placement and within 45 days of a placement move.

California requires attorneys to provide their contact information to the caretaker of all child clients under the age of 10. For children ten or older, the attorney is required to provide contact information directly to the client.[115]

Continuity of representation is critical for children. The same lawyer should represent the child for so long as the child is under the court's jurisdiction (NACC, 2001). One drawback to the CWLO model as compared to panels is that there is sometimes staff attorney attrition in the CWLO, whereas attorneys who are on panels tend to be more stable in their practice. Because the order of appointment names the individual panel attorney, even if a lawyer moves into a different area of practice, she may maintain her obligations to child clients during the transition period. In CWLOs, it is the organization that accepts the appointment, so staff attorneys who leave the agency's employment must turn over their files for transfer to a colleague. However, the relative advantage to a CWLO is in case coverage during vacations and attorney illnesses or personal emergencies. Because CWLO staff attorneys are supervised and some CWLOs also use a unit or team staffing model, it is often the case that multiple attorneys are familiar with the same case, at least to the degree that they can substitute when needed. Additionally, in those instances when a CWLO staff attorney does leave the organization, the child still has continuity with other CWLO employees whom she has already met and with whom she already has a relationship, such as a staff social worker or even the receptionist.

As indicated above, in those jurisdictions such as Nebraska where an attorney is appointed to be a "guardian ad litem," she is still obligated to function as a lawyer and hew the rules of professional conduct for lawyers except in the limited circumstances in which the GAL role trumps. This "hybrid" or "dual role" approach to child advocacy places the lawyer in a difficult circumstance, as she is asked to simultaneously form an attorney-client relationship but to make decisions about what position to take in the case based on her own personal views of what is best for the child, even when the client's wishes are contrary. This is an unusual approach for lawyers, who are normally charged with zealously advocating for a client's goals, so long as those goals have factual and legal foundation. Because the rules of professional conduct contain guidance for lawyers as to how to act in situations where a client (of any age) is not capable of making reasoned decisions with respect to the case, many states have

[115] California Rules of Court R. 5.660(d)(5).

moved towards a client-directed model of representation for children in dependency cases, allowing the attorney to take additional steps to protect the child in those instances where the client is too young to make reasoned decisions. These states typically base their approach on language contained in the ABA Model Rules of Professional Conduct (or similar state analogues). Model Rule 1.14 (concerning clients with diminished capacity), and Nebraska Rule of Professional Conduct 3-501.14, which is identical to the ABA Model Rule, provide:

> (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
> (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.
> (c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6 [concerning client confidentiality]. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.
>
> Commentary
>
> The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

(ABA, 1996). Under this Rule, attorneys representing children who are unable to formulate reasoned decisions regarding major issues in the representation may request the appointment of a guardian ad litem, who would be charged with advocating for the child's best interests, permitting the attorney to remain in place as the advocate for the client's wishes.

In matters concerning the "role" of the attorney for a child in a dependency case, there are three fundamental questions that states must answer. First, states must determine what the presumption or starting point in the representation will be: will the attorney be presumed to be a client-directed advocate, taking positions in court that are consistent with the client's wishes, or will the attorney be free to formulate positions based on her own personal views of what is in the client's best interests. Second, states must clarify what, if anything, will permit the attorney to overcome the starting presumption and move to a different position in the case. Third, states must provide guidance to attorneys as to what the attorney may (or must) do in those situations where the presumption is overcome.

With respect to the first question, the ABA and the NACC favor a client-directed model of representation (ABA, 1996; NACC, 1999; NACC, 2001). A child's attorney is a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client (ABA, 1996). Lawyers are trained to be advocates for their clients and the legal profession is premised on the concept of client autonomy, which is tied inextricably to our democratic norms (Freedman & Smith, 2004). Denying the child a voice in how the lawyer advocates for him reinforces the lessons – learned quite well already by abused and neglected children – that he should not expect to have any control over his fate (Taylor 2009; internal quotation marks omitted).

With respect to the second question, attorneys for children in client-directed models regularly face the dilemma of how to formulate a position on behalf of a client too young to communicate a preference. Clearly, the presumption of client-directed advocacy is overcome in these circumstances. While some commentators (see, e.g., Guggenheim, 1986) call into question the propriety of even appointing lawyers to such children, no state that regularly appoints lawyers for children in dependency cases makes an age-based exception. Rather, states permit these lawyers to "substitute judgment," meaning to formulate positions based on the advocate's view of what the client would decide for herself, were she capable of expressing a reasoned view. This is the approach favored by the NACC, which allows for a degree of advocate direction so long as it is the exception to the rule and based on objective criteria – not merely the lawyer's own personal views (NACC, 1999). Left to their own devices, many lawyers are likely to advocate for positions that are based on their own value systems, which may be contrary to what is actually best for the individual child, who is likely of a different race and/or class than the lawyer (Taylor, 2009).

Far more difficult are those circumstances involving older clients whose case goals strike their adult lawyers as bad ideas. The NACC's standards of practice in these circumstances call for the attorney to request the appointment of a separate GAL, without revealing the basis for this request – *but only in cases in which the client's expressed preferences would be seriously injurious to the client. That the lawyer and the client have a disagreement about what is "best" for the client, absent the risk of serious injury, is not sufficient to permit the attorney to request the appointment of a GAL* (NACC, 1999).

Since the NACC issued its standards in 1999, the child welfare law field has honed in on the question of when it might be appropriate for a client-directed attorney to deviate from the client's

wishes in her advocacy. The field now understands that there is a two-part inquiry in these situations. First, is the client's *reasoning process* so impaired that the goals that she is expressing may be overruled by the attorney? Second, if the goal expressed by the client were to be accomplished, would it put her at some level of risk for some level of harm? States vary as to the level of risk and level of harm required. For example, New York's standards of practice provide the following:

> A-3 Overcoming the Presumption of Adherence to the Client's Directions
>
> An attorney must not substitute judgment and advocate in a manner that is contrary to a child's articulated preferences, except in the following circumstances:
>
> 1. The attorney has concluded that the court's adoption of the child's expressed preference would expose the child to imminent danger of grave physical harm and that this danger could not be avoided by removing one or more individuals from the home, or by the provision of court-ordered services and /or supervision; or
>
> 2. The attorney is convinced that the child is not competent due to an inability to understand the factual issues involved in the case, or clearly and unequivocally lacks the capacity to perceive and comprehend the consequences of his or her decisions.
>
> In these circumstances, the attorney for the child must inform the court of the child's articulated wishes, unless the child has expressly instructed the attorney not to do so.
>
> Commentary
>
> When considering whether the child has "capacity to perceive and comprehend the consequences of his or her decisions," the lawyer should not make judgments that turn on the level of maturity, sophistication, or "good judgment" reflected in the child's decision-making. All that is required is that the child have a basic understanding of issues and consequences. The attorney may not use substituted judgment merely because the attorney believes that another course of action would be "better" for the child. Thus, most children ages seven and above, and sometimes even younger, will have the capacity to make decisions that bind the lawyer with respect to fundamental issues such as where the child should live. In certain complex cases, when evaluating whether the use of substituted judgment is permissible, the attorney may wish to consult a social worker or other mental health professional, keeping faithful to attorney-client confidentiality, for assistance in evaluating the child's developmental status and capability (see A-5). The use of the language, "imminent danger of grave physical harm" in subsection 1 above, is intended to include sexual abuse and to recognize the extraordinary circumstances that should be present before overriding a child's expressed position.

(NYSBA, 2007). In implementing this standard, New York City's JRP trains its attorneys extensively on how to determine whether a client has the capacity to make reasoned decisions and takes the view that by age 10, most children have this capacity, with many children aged seven through nine also having it. Attorneys may still substitute judgment for a child who "lacks the capacity to fully comprehend the

nature of the proceeding and the issues raised and communicate a preference and comprehensible reasons for it," or if to succeed in achieving the client's goal would expose her to a risk of "grave physical harm" (Steckler & Solomon, 2008).

With respect to the third question, in practice, few states operate in strict adherence with the suggestion of ABA Model Rule 1.14 that attorneys seek the appointment of a separate GAL when the client has diminished capacity to make reasoned decisions or with the NACC Standards' requirement that they do so when the client's wishes would lead to serious injury. Rather, in those states that a) start with the presumption of client-directed representation and b) permit the attorney to take protective action in specified circumstances, the typical course of action is for the attorney to "substitute judgment" and advocate for what she believes the client would have wanted, if the client had had the capacity to express a reasoned judgment. However, the appointment of a separate GAL to advocate for the child's best interests does occur in some states. For example, in Connecticut, about 10 percent of children have a GAL in addition to their attorney, at the approximate cost of $750,000 (CCPA, 2009.)

In essence, then, the consensus approach across the country as the role of the lawyer for children in dependency actions contains the following ingredients:

1. Lawyers appointed to represent children are attorneys first and foremost, and must form and maintain an attorney-client relationship with their clients, meeting with them frequently (regardless of client age) and communicating regularly with them about the case.
2. Lawyers should begin with the presumption that they take direction from their clients as to the major goals of the case and the advocacy to be pursued.
3. When clients are too young to express preferences, lawyers may substitute judgment as to what goal to advocate, based on objective criteria. As the client gets older, the lawyer must set aside the substituted judgment model and return to the presumption of client-directed advocacy.
4. When clients are able to express a preference, but their capacity for reasoned decision making is limited *and* their goals would put them at serious risk of injury if they were accomplished, the attorney may utilize an objective substituted judgment process. However, in these circumstances, the attorney is obligated to inform the client as to what he is doing and why; invite the client to speak directly to the judge; and inform the court as to the client's position.

Keeping GALs Accountable To Their Child Clients

Children are keen observers, and most adults who work in the child welfare system know that children are frequently passionate in their views about the level of care and treatment they experience while in state custody. Children regularly turn to their lawyers with the expectation that these professionals will help them in some concrete way – whether it is advancing their goal to be reunited with their parents, adopted by a new family, or placed in a permanent guardianship with a relative; ensuring that they have contact with siblings who are placed separately; seeing that necessary services

are put in place. These children need an outlet to express their dissatisfaction when their attorneys (in their perspective) are not doing a good job. Their need for an outlet applies even if in the end it turns out, objectively, that the attorney is doing a fine job, but other circumstances in the case or the system are contributing to the lack of progress or achievement of the child's wishes.

Thus, fundamental to a respectful and fully functioning program for providing legal services to children must be a mechanism for receiving feedback from the clients. It is only by allowing children to provide this feedback that they can be fully integrated into the process of justice. Moreover, it is rather impossible for attorneys to improve their performance if they are unaware of how their work is perceived by clients.

Two examples from California bear mention. First, California Rules of Court require all county courts to establish a complaint review and resolution process for complaints raised by parties represented by court-appointed lawyers, including children.

Second, the Children's Law Center of Los Angeles has recently instituted a client satisfaction survey process. The organization has recruited young adults who are "alumni" of the foster care system to be the interviewers. Children 10 and older who are present in court on given days are invited to be interviewed about their experience with their attorneys; interviewers use a standardized protocol. The data are reported to the state Administrative Office of the Courts for analysis. The interviews are coded in such a way to enable CLC-LA's management to track results based on individual staff attorneys but the AOC is not aware of the attorneys' identity. This enables AOC to review CLC-LA's overall performance as a CWLO, and CLC-LA in turn to review individual attorney performance. (A copy of CLC-LA's interview protocol is attached to this report as Attachment M .)

15. To what extent do children and youth participate in court proceedings?

GALS were asked to respond to statements regarding the participation of children and youth in their own court proceedings. As Table 84 shows, 78% of the GALs said that they "always" or "usually" advocate for the child's presence at court and 85% said that "always" or "usually" promote the child's opportunity to speak to the judge.

Table 84. GAL Responses to Statements about Child and Youth Participation in Court Proceedings (n=71)

	Always	Usually	Sometimes	Never
"I advocate for the child's presence at all court hearing for the child when appropriate based on the child's age and development."	41%	35%	21%	3%
"I promote the child's opportunity to speak to the judge."	39%	45%	11%	4%

In follow up interviews, GALs responded to questions about children's presence in court in different ways. Some GALs took the question to mean responsibility for transporting the child to court

and stated that the DHHS caseworker or foster parent has that responsibility. These GALs did not describe any responsibility on their part for children's presence in court. Other GALs expressed their own standards for children's participation in court hearings, including:

- Young children should not be in court; children 10 or older can attend, depending on their interest level; some children want to stay in school and not go to court
- Only if the judge specifically requests that the child be present
- Only if there is a specific reason for the child to be there

In comments following completion of the survey, one GAL wrote:

> "I do not believe that younger children should be allowed to attend court. While I understand the 'human face' argument, I think that court attendance could easily and unexpectedly expose children to matters best left to adults. In a recent hearing, the parents' serious conflict over mom's computer sex addiction became a prominent issue. Not appropriate for children of any age."

One GAL said that she talks with the child before the hearing to find out what, if any, information the child wants conveyed to the court. She tells children they can come to court and lets foster parents and group home staff know about the hearing. Other GALs stated that most or all children come to court because the judge expects them to be there. Some GALs agreed with judges about this practice, but others did not. One GAL, for example, said, "I was originally against having children in court, but [my county] did implement it and it generally goes well for kids, parents, counsel, and other parties." On the other hand, another GAL said, "Judges want the older kids there but it causes disruption. Unless the kid is a teenager, kids are too young to understand." Another GAL said that she invites all children to court and "some want to and some don't." When children want to attend their court hearings, this GAL has DHHS facilitate the child's transportation.

GALs responded differently to statements about children's actual participation in court when they are present. Some reported that children are allowed to "say their piece" and then the judge "gets them out of the hearing." Others stated that children are able to talk with the judge in a low key and non-intimidating way and remain for all or most of the hearing. One GAL said that she "makes sure that they are able to talk to the judge." One GAL reported that the number of children at hearings is increasing significantly and quickly because of practice changes. Another GAL reported that "sometimes the kids are ordered to come to the hearings but for the most part, they don't come." She added, "there are some things that they don't need to hear."

Young People's Perspectives

In contrast to the GALs' mixed views of youth participation in court, youth consistently expressed the desire to be at their own court hearings. Among the comments that youth made about attending court:

"I'd rather go to court so I know what's going on. If I didn't go to court, I would not know what they were saying about me. Not going to court hurts me; it doesn't help me."

"When I started going to court, things actually started happening."

"If you have a voice and know what's going on, you should be able to go [to court]."

"It's my life in someone else's hands and I don't like that."

"It would have been nice to actually go to court. It would have been better to hear it from the judge." [This youth received only second hand information.]

"Most GALs don't know what's going on in your life. If the kid is old enough to understand what's going on, he should be there [at court]."

"I like going to court because it gets me out of school."

Young people reported various experiences with respect to court participation. Some reported that the GAL told them what would happen in court and others said that GAL did not. Some GALs wanted the young person to attend the court hearing; others did not. One young person said that he/she went to court every six months because "it is required by the state that you go to court." Others, however, said that they did not know that they could go to court:

"I didn't even know I could have gone to court until I had aged out."

"If we knew when the court cases were, that would help a lot."

"I was never told when there was a court date. I was always told that I shouldn't be there. If I was already traumatized, it's not going to be more [traumatizing] there."

One young person was extremely satisfied with his/her GAL, laughingly calling her a "stalker" which was "actually a good thing." Other than this young person, however, the views of GALs were negative. Among the comments:

"This guy's worthless. All he said was 'your honor' and then he just sat there."

"I'd rather go to a group home instead of an all boys' school. I had to tell the judge. The GAL wouldn't do it."

Aside from one young person who said that his/her GAL brought up the right issues, the young people believed that their GALs did not raise the important issues. One young person said that GALs "didn't bring up the issues that mattered the most." Another commented, "Your GAL is supposed to step in and take care of you and they don't."

Without a real connection with his/her GAL, one young person said, "It's funny when you are sitting in court and they say my future plan is adoption/guardianship, but I already know it wasn't going to work. That's like leaving my mom and I knew that wasn't going to work. When my sister was

adopted, I knew it was never going to happen. They never asked me what I wanted for my future plan." Another commented, "They make decisions without having the child there, without having your opinion." Another young person said, "Some judges take more interest in what the adults are saying, not what the children are saying. They need to focus more on what the children are saying."

Young people agreed that GALs did not sit down with them after court to discuss what happened or they only explained what happened in legal terms.

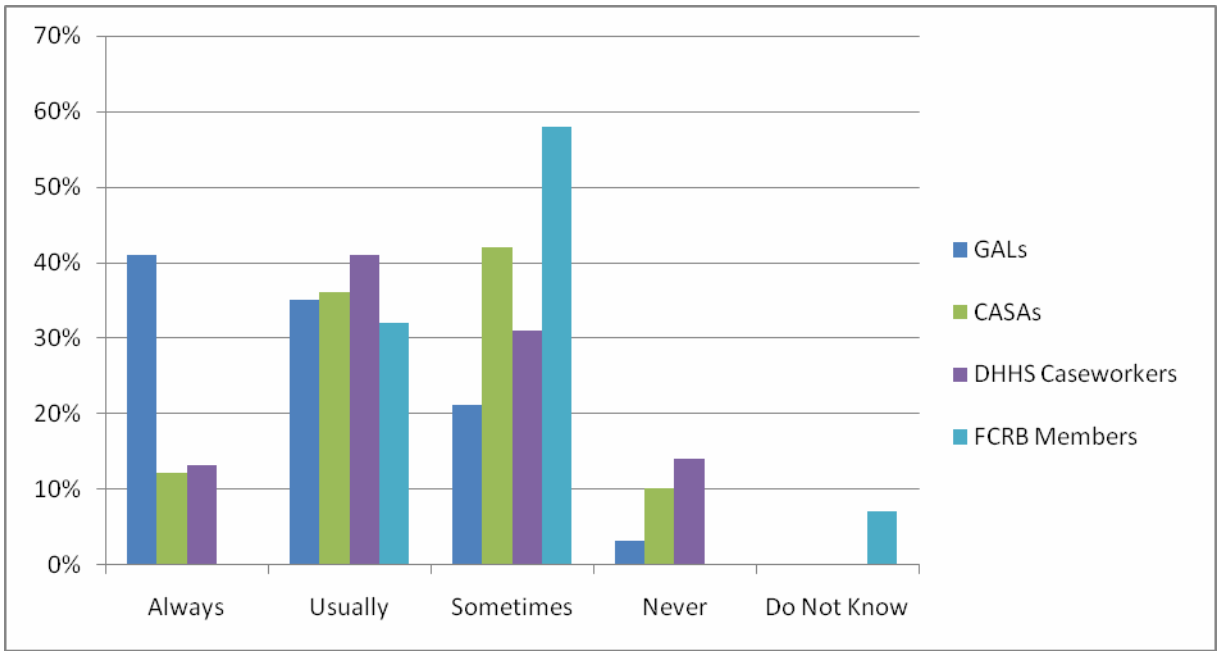
Other stakeholders were asked about GALs' advocacy for children's presence at and participation in their court proceedings. As Table 92 shows, most stakeholders said that GALS did so "usually" or "sometimes," although 10% of CASAs and 14% of DHHS caseworkers said "never."

Table 92. Stakeholders' Responses to the Statement, "GALs advocate for the child's presence at and participation in all court hearings for the child."

	Always	Usually	Sometimes	Never	Do Not Know
CASAs (n=89)	12%	36%	42%	10%	--
DHHS Caseworkers (n=70)	13%	41%	31%	14%	--
Foster Care Review Board Members (n=19)	--	32%	58%	--	47%

Figure 9 compares the responses of GALs, CASAs, DHHS Caseworkers and Foster Care Review Board (FCRB) Members to the statement that GALs advocate for the child's presence at and participation in court hearings. As Figure 9 shows, stakeholders other than GALs were more likely to say that GALs advocate only "sometimes" for children' presence at and participation in their court hearings.

Figure 9. Side By Side Comparisons of Stakeholder Responses to Statement that GAL advocates for the child's presence at and participation in court hearings for the child



Parents and foster parents were asked about the GALs' role in ensuring that their child/foster child participated in their own court hearings. Table 86 summarizes parents' responses. Table 87 summarizes foster parent responses.

Table 86. Parent Responses to Statements About the GALs' Role in Promoting the Child's Participation in Court Hearings (n=4)

	Strongly agree	Agree	Disagree	Strongly Disagree	Do Not Know
"The GAL makes certain that my child attends my child's court hearings."	--	25%	25%	25%	25%

Table 87. Foster Parent Responses to Statements About the GALs' Role in Promoting the Child's Participation in Court Hearings (n=6)

	Yes	No	Do not know
"The GAL advocates for my child's/foster child's presence at and participation in all court hearings for the child."	33%	50%	16%
"The GAL makes certain that my child/foster child attends his/her court hearings."	--	83%	16%

Foster parents and parents also were asked to respond to several statements about children's and youth's actual participation in court. Three of the four parents "strongly disagreed" with the following statements: "My child expresses positive feelings about being in court;" "My child's GAL helps my child understand what will happen in court;" "After court hearings, my child's GAL helps my child understand what happened in court;" and "My child is able to speak to the judge during court." Table 88 provides the responses of foster parents to statements about children's actual participation in their court proceedings.

Table 88. Foster Parent Responses to Statements Regarding Children's Participation in Court Proceedings (n=6)

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know/Child too Young to Go to Court
"My foster child expresses positive feelings about being in court."		--	17%	33%	50%
"My foster child's GAL helps my child understand what will happen in court."	--	16%	16%	33%	33%
"After court hearings, my child's GAL helps my foster child understand what happened in court."	--	--	16%	50%	33%
"My foster child is able to speak to the judge during court."	16%	--	16%	--	66%

Court administrators reported different practices with respect to children's participation in their own court hearings, as summarized in Table 89.

Table 89. County Practices regarding the Participation of Children and Youth in their Court Proceedings

	Practice Re: Children and Youth Participating in Court
County A	Children who are old enough attend court hearings, "as decided by the case worker and GAL whether it would be beneficial."
County B	Judges want to see children in court, regardless of age. DHHS, however, ignores the requests. It is the caseworkers' responsibility to bring children to court but they often do not do it.
County C	Children do not normally go to court hearings. GALs do not advocate for the presence of children. The few times that youth have been in court were older youth who are close to aging out.

	Practice Re: Children and Youth Participating in Court
County D	Children, including young children, usually attend all court hearings unless they are excused. Social workers and GALs transport children to hearings.
County E	Information not provided[116]

Most judges expressed strong support for all children coming to their court hearings. Among the comments they made:

> "The purpose of the hearing is the child. I want everyone to remember who we are talking about and to see the child whose life we are discussing, even if it's a child under one year old. I want the children there in my courtroom."

> "It is a great help to have children come to court. They have something to say, and they want to say it."

> "I want children at court and we're not getting them here as much as they should."

> "They are no longer names and files for us if they are standing in front of us."

> "I like having the children in court because I can ask them directly what they want and need."

Three judges, however, said that they questioned the benefit of younger children coming to court. One said that once children are 8 or 9 years, they should come to court. Others said:

> "Little children do not need to come to court but teenagers do."

> "There is a pilot project . . . to have all children come to court. Not all of the GALs like it. I am not sure about little children coming to court. Things may be getting a little too informal. We need to maintain some dignity and formality of the court room so that parents take it seriously and don't think it is a team meeting. "

Some judges believed that children's presence in court improved GAL representation:

> "It forces the GAL to have to meet with and talk to their client, even it is only for a couple of minutes – that's more than what a lot of them would otherwise do."

> "It has to by default improve GAL representation because the child is right there."

> The child's presence can improve the quality of GAL representation 'if nothing else because the child is there."

[116] Several requests were made to interview the court administrator; this individual declined to be interviewed.

Some judges, however, said that GALs do not advocate for children's presence in court:

> "One of the few motions that GALs do file is to have the child not come to court."
>
> "GALs do not advocate for children's presence in court." This judge gave an example of a foster family and children who asked to come to court but the GAL said no, they couldn't come to court. "When I heard about that, I had a fit."
>
> "Rarely do GALs advocate for children's presence in court."
>
> "I always left it to the GAL because I expect them to know. But, now I tell them that unless it would be a provable detriment to the child, I want the children at the hearings. Even little children there gives you a better feeling of how they're doing. All children should be listened to. The judicial determination is how much weight to give it."

Three judges said that they leave it up to the GAL to decide whether the child should come to court. One judge said this despite saying that the programs from The Eyes of the Child had "really opened my eyes to why it is important to have kids attend their hearings."

One judge reported that now about 50% of children come to court and added that more would come but "DHHS can't seem to transport them to their court hearings."

A key informant stated that when the GALs are trained, the most contentious issue is bringing children and youth to court.

In terms of trying to make children feel welcome and not intimidated when they are in the courtroom, one judge told us that s/he has a basket of his/her children's outgrown toys and books near the bench, so that the children can play with something if they are getting bored or nervous. S/e said that it seems to help the parents too, to see their children at court, and to see that their children are doing well. A judge in a different county has a box in the courtroom with new toys, books, and school supplies that have been collected by the local CASA program; every child who is in court can select an item to keep. Another judge whose courtroom was observed by evaluators had displayed on the walls some of the drawings and coloring that had been done by children who had come before the court. One CASA reported that some of them use therapy dogs to assist children who are coming to court in order to reduce the children's anxiety levels.

National Best Practice Standards

"Nothing about me without me." This is the rallying cry of foster youth around the nation who are galvanized by the prospect of attending court proceedings and having their voices heard (Fordham Interdisciplinary Center, 2006; Home At Last, 2006). In recent years, many jurisdictions have begun to recognize the importance of youth participation in court (Khoury, 2006.) Whether or not the court ultimately endorses their desired outcomes in specific cases, policies permitting youth to have a voice in the judicial forum are well grounded in norms of procedural justice and participatory democracy (Jenkins, 2007; Pitchal, 2008).

Even in the best-developed relationship between an attorney and the child-client, the child will likely be confused about or not fully understand the court process, largely because children lack a day-to-day mental schema for what "court" is (Buss, 1996). Children are not well served if they are excluded from direct participation in court, like any other party to the proceeding (First Star, 2009). This is true no matter how well their lawyers counsel them outside of court or how competently their lawyers represent them inside the courtroom. Indeed, as noted by a group of youth researchers in New York City, having children present in court can help their attorneys – as well as the court:

> Meaningful youth participation can bring real benefits to efforts by the Court and its partners to secure stable, supportive environments that will enable foster care youth to prosper. Lawyers will be able to represent young people more effectively and judges will be able to make better decisions if young people have the opportunity and motivation to give the Court a complete picture of their current circumstances and their wishes and opinions about who they should live with, services they should receive and the contact they would like with their parents, siblings and other family members. Participating more actively in their court cases would also help young people understand how and why key decisions about their lives are made, give them an opportunity to influence those decisions and increase their satisfaction and faith in the court process. The ultimate benefit of increased youth participation is that everyone—judges, [children's attorneys, the child welfare department], and young people themselves—will be able to make better decisions based on the best and most comprehensive information.

(Center for Court Innovation, 2007).

National organizations have long supported the concept of youth coming to dependency court and speaking to the judge, particularly in regards to dispositional matters, conditions of care, and their service plan (ABA, 1996; NACC, 2001; NCJFCJ, 1995; Nevada Law Journal, 2006; Pew Commission on Children in Foster Care, 2004). Khoury (2006) summarizes the provisions of some of the jurisdictions with statutes or court rules in this arena. The Bar-Youth Empowerment Project of the ABA seeks to ensure that all youth can meaningfully participate in their court cases and offers a package of training and technical assistance to interested jurisdictions (ABA, n.d.).

Weisz, Wingrove, & Faith-Slaker (2007) recently completed a comprehensive literature review concerning the impact of court participation on dependent youth. While noting that research in this area is still developing, they found evidence that "like adults, children view their participation in legal proceedings that affect them as an important component of their judgment of procedural fairness." They also found that children do not experience significant stress from participating in court, and that they desire to do so.

Quite clearly, changing the culture of dependency courts to permit regular and meaningful youth participation is a significant undertaking, and there are serious practical and logistical questions that frequently must be addressed when a jurisdiction moves in this direction. For example, when planning a program for youth participation, courts must consider factors such as youths' desire to

participate; distinctions that might be made based on age and developmental level; whether there is an adequate opportunity for youth to prepare for court and to debrief the experience afterwards; matters of transportation and the effects of missing school; and the impact on the court's calendar (Fordham Interdisciplinary Center, 2006; Khoury, 2006).

In Denver, there is a pilot project to have youth attend permanency hearings. The presiding judge of Denver Juvenile Court has established a rebuttable presumption that in all cases, children age 12 and over should be "actively offered" the opportunity to attend court. The GAL is required to discuss this issue with the child. The only way for the presumption to be rebutted is for the GAL to file a motion at least 10 days before the scheduled hearing. (A memorandum describing the Denver project is attached to this report as Attachment N.)

One notable success story in terms of regular and authentic youth participation is Los Angeles. California law declares that all children who are the subject of juvenile court proceedings are entitled to be present.[117] If present, the court must permit the child to address the court.[118] If a child is ten years old or older and is not present in court, the court is obligated to inquire as to why not; if the court determines that the child was not properly notified of the proceeding or if the child did in fact wish to attend, the court is further obligated to continue the proceeding to give the child an opportunity to participate, absent a specific finding that it would be contrary to the child's best interests to do so.[119]

These statutory provisions are followed with great fidelity in Los Angeles, because of the commitment to the concept of youth participation on the part of all stakeholders; because the logistical and other considerations have been thought through and resolved; and because the county's Edelman Children's Courthouse – dedicated exclusively to dependency cases – features a children sensitive building design. Among other features, it has a welcoming and well-lit lobby area, decorated with a mural of 36 self portraits made by foster children. The courtrooms are smaller in scale than in most courthouses, and public areas have specially designed child play areas. Children who are already in the custody of the child welfare system wait for their cases to be called in one of several designated areas, supervised by caseworkers, and each with age-appropriate games, books, and recreational areas. There are family visiting rooms, and multiple conference rooms for attorneys to use with their child-clients. A variety of public agencies and non-profit organizations have office space in the courthouse, enabling them to more easily provide services to the children and families who regularly attend proceedings there. (Materials describing the Edelman Court are attached collectively as Attachment O to this report.)

A detailed model for how to structure meaningful youth participation in court is found in the recommendations of the California Permanency for Youth Task Force, submitted in 2007 to California's Blue Ribbon Commission on Children in Foster Care. Additionally, the California Youth Connection – an advocacy group of current and former foster youth – identifies training, caseloads, transportation, and

[117] Calif. Welf. & Inst. Code s. 349(a).
[118] Calif. Welf. & Inst. Code s. 349(c).
[119] Calif. Welf. & Inst. Code s. 349(d).

the impact on youth's schooling as areas that should be addressed in order to effectuate youth participation. All these materials are collectively attached to this report as Attachment P.

#16. Recommendations for Changes to the GAL System

Each stakeholder group was asked if they had any recommendations for improving the GAL system in Nebraska. The following summarizes the recommendation by stakeholder group.

Young People

> "[A good GAL is a] needle in a haystack. One in a billion." [From a young person with an excellent GAL who told the interviewers s/he realized how lucky s/he was].

Qualities of a Good GAL

The young people in the focus groups developed a list of qualities that they would want in their GAL.

- Trustworthy
- Listens to what young person says
- Caring
- Relates to the young person: thinks on the young person's level, does not use big words, is not fake and does not pretend to be hip or try to act like a teenager
- Gets to know the young person and his/her personality
- Timely
- Up to date
- Actively involved in the case
- In the know at all times
- Shares every detail with client truthfully
- Takes the young person's feedback

Table 90. Young People's Recommendations

Strengthen GALs' understanding of what children and youth in foster care are going through emerged as a key theme in each focus group.	➢ "I wanted someone to listen and say what I wanted." ➢ "Come see me more often and actually listen because it's about my life, not theirs." ➢ "Try to understand what we are going through in our life." ➢ "GALs don't know how to talk to youth or children." ➢ "I am so tired of people like my GAL or my therapist saying that they know what I am going through. Unless they've been in foster care, they don't understand and they don't know what I am going through. So, they should stop saying that to me. It's insulting to me."

Require GALs to get to know their clients.	➢ "How do they know what best for us if they don't know who we are?" ➢ "They think they know what's best for you, but really they have no idea." ➢ "They need to look at us as real children, and not just a number on folder in a stack of folders." ➢ "Let me talk." ➢ "[Talking to a GAL] should be more like a conversation." ➢ "A couple of outings would help. Let the GAL actually get to know the kid. Live a little. Get to know what you are really like outside the artificial setting." ➢ "He calls me Jacqueline or Jacklyn. He doesn't even know my name." [She goes by Jackie.] [Names altered to protect identity]. ➢ "He kept calling me Jason and that's not my name. I told him over and over that it's Jarrod. I made him say my name over and over again so he wouldn't forget me." [Names altered to protect privacy.]
Require more frequent visits by the GAL with young people.	➢ "Seeing the GAL at least once every 3 months would help." ➢ "They need to make schedule adjustment in order to meet with their clients." ➢ "Check in with us more often – more than 6 months. Monthly visits." ➢ "Don't send interns or staff to meet with me." ➢ "Everyone who comes out to see me is an intern. The GAL should come with the intern to meet me." ➢ "The interns are doing the GALs' work." ➢ "[The GAL was] supposed to check on me every month and they never did." ➢ "We should be visited before court and not in the hallway. [We should meet] a few weeks before court, meet somewhere, and go through all the case plans and reports and talk about what the GAL is going to say."
Require GALs to provide contact information to their clients, including methods of contact most often used by youth	➢ "GALs should have a Facebook page and check it daily." ➢ "You should be able to text or email the GAL."
Expect GALs to fully engage their clients in the process	➢ "You shouldn't have to tell them that you want to be involved. They should already know. It's very important that you are active in the

	process." ➢ "They [GALs] need to be more consistent and more involved. They need to be able to know you – not 5 minutes before the hearing. They are getting paid to take care of the kids and they need to their job to the fullest." ➢ "Attorneys view us as lost kids and failures and wouldn't make efforts to represent us."
More GALs and reasonable caseloads	➢ "If there were more attorneys, they would have fewer cases. Maybe should have only 20 cases. They load the attorneys down. They stop caring." ➢ "They need to have less cases so the attorney can focus o each case. They can read the case file, but until you hear it yourself and get to know the person, you can't defend the person because you don't know." ➢ "Not enough people as GALs or caseworkers. The whole system is so messed up." ➢ "They need to have fewer cases so they can spend more time with us."
Great accountability on the part of GALs for the work they are charged with doing	➢ "They need to actually show up." ➢ "I don't think the GALs look after the kids, especially the young ones." ➢ "Who do you complain to?"
Stronger advocacy by GALs	➢ "Attorneys should have been more aggressive in my case. Stop waiting on parents. Make decisions."
Require GALs to get their clients to court	➢ "It sucks going to school knowing that decision regarding placement are being made about you [in court that day when you are not there]."
Maintain the same GAL for the young person so that he/she doesn't have to repeat his/her story.	➢ "I get sick of telling my story over and over. It's frustrating. Read the papers, it will tell you everything." ➢ "I cry every time I tell my story."

Guardians Ad Litem

"I take responsibility for my own profession and I wish the lawyers that work as GALs were more focused on providing the kind of services and representation that these children deserve. I wish we had a more dedicated group of GALs in Nebraska but I am not sure how you instill that sense of obligation to your client and caring about this work."

"My attitude is that if someone is messing with my kids, they're messing with me. I take being a GAL seriously. And most of the GALs here do want to do a good job and be right by the kid."

"We believe in the work we do and most people who do GAL work are motivated by the children, but I don't know how we can do this correctly with our current caseloads and still ensure best representation of the children who are our clients."

"I feel what we do is very important and people outside the juvenile court, within the Bar do not recognize it as important. The reaction that we're not real attorneys is disappointing to me because I think that we are acting as attorneys, we are filing motions, preparing and cross examining witnesses, presenting evidence, and so on, and that attitude is something that upsets me when people, especially other attorneys, say that."

"Ultimately, I believe the most important aspect of being a GAL is to care about what happens to the child. It is possible to be a good technical lawyer and still do a horrible job."

"I have been [recognized] for outstanding work as a GAL. However, I do not feel that my efforts are so extraordinary that every child could not receive the same level of representation. I am most concerned about the ambivalence of judges and counsel toward those who fail to meet even the minimum requirements of the Guidelines. I frequently get calls from foster parents who have had a placement for 3 or more months needing to know the name of the GAL from the court computer system. . . . I believe that there is at least an 80% failure of GALs to conduct home visits with children. . . . The Juvenile system in our state can work for juveniles and families but only if they have active informed counsel who are willing to work."

"I think we need to examine the concept that a GAL must be a lawyer. I think that there are others who have more training and expertise in the needs of children and who would have more time to address these issues."

"There shouldn't be GALs for kids because the kid already has too many people who come and see them."

The recommendations of GALs are summarized in Table 91.

Table 91. GALs' Recommendations

Accountability	➢ More sanctions and accountability for GALs who are not doing their jobs. "GALs need to be held accountable for what they do and don't do." ➢ Take poorly performing GALs off the panel list ➢ Greater accountability on the part of firms that assign new lawyers GAL cases to give them courtroom experience
Training	➢ Require that GALs fresh out of law school have a mentor or supervisory person to help them with cases
Payment /The Appointment Process	➢ Reimburse GALs at an hourly rate. Paying a flat rate or a contract rate results in firms doing the "least amount of work they can do" ➢ Pay GALs more so that they do not have to carry as many other cases ➢ More money for the contracting system; the rates on the contracts have not changed since 2001. ➢ Student loan forgiveness program for GALs
Caseloads	➢ Fair caseloads and salaries, commensurate with workload
More Information	➢ More case information to GALs at the beginning of the case ➢ Clear information to GALs about what is expected of them in the court room ➢ Regular notification of GALs by DHHS when there is a placement change ➢ Ability to have direct access to service providers without having to go through DHHS and wait on a release or a subpoena to the Department
Changes in GAL Criteria	➢ Change in county policies that allow Public Defenders to be GALs
Court Practices	➢ More fully utilize pre-hearing conferences
Legal Changes	➢ A law that sets appropriate caseloads and the number of children whom a GAL can represent at any one time

Attention to the Impact of Privatization	➢ Pay careful attention to the impact of privatization on the quality of child welfare and legal services that are provided to children

Judges

"A good GAL can turn a case around for a child. It concerns me when I see people working in a role and not doing their role. I've been in all of the positions in the courtroom, I know what it takes to do the work, and they should be doing the work."

"GALs need to independently focus on permanency from day one, and ensure that it's being done on time according to the statutory guidelines for permanency. . . GALs need to make sure that DHHS is making reasonable efforts or else kids languish in care."

Table 92. Judges' Recommendations

Accountability	➢ Educate judges that it is their responsibility to oversee the GALs and hold the GALs accountable. "Judges have a responsibility to keep track of things and supervise the GALs." ➢ "Judges should be trained and encouraged to hold people's feet to the fire, whether it's the GAL or caseworker. The judges should be allowed to do this without fear of retribution."
Payment /The Appointment Process	➢ "We need to examine priorities and not do things on the cheap. The flat rate system is penny-wise and pound foolish. Why are we willing as a society to pay prison costs but we're not willing to invest in our children and their futures and maybe keep them from going to prison as adults? We need to think about what it's going to cost us all if we don't invest in these kids." ➢ Better pay ➢ "GET RID OF THE CONTRACTS!" Move to an all judicial appointment system with hourly pay for GALs (multiple judges made this recommendation, with one saying "the county wants to save money but children are feeling the brunt of the cost-savings, which may or may not exist"). ➢ The state should pay for the GALs, not the counties. ➢ Set a baseline minimum pay across the state –

	"the less you pay them, the more unnecessary hours they may work"
Caseloads	➢ Statutory limits on caseloads (recommended by multiple judges). One judge reported that several contract attorneys in another county have approached judges to say that their caseloads were so high that they were violating the code of ethics.
Strengthen the law	➢ "The Juvenile Code is a mess. It's been amended piecemeal and there are now conflicts within it. There are places that say that a hearing needs to be at 48 hours, 24 hours, or 14 days." This judge said that it needs to be organized so that everything dealing with child abuse and neglect is in one place. "I tried to flow chart the Code for the people who were developing the case management software and it's impossible." ➢ Make the Supreme Court Guidelines have the force of statute ➢ Change the law to require monthly contacts with the child (recommended by several judges)
More GALs	➢ Need to reach out and get more people involved in doing GAL work ➢ "My ideal is a private practitioner who's been practicing law for 20 years. You train him or her to do the work and they only have a few cases, so that they get to know the children and also would approach the work with professionalism." ➢ Appoint private attorneys with reasonable compensation who live in the community and care about the child
Training	➢ The legislature should consider legislation that requires more training ➢ Teach more on advocacy and trial skills, substantive issues, how to talk to children ➢ Consider a mentoring program with law school participation ➢ Have more mandatory continuing training

CASAs

"There are some excellent GALs in our county, but they cannot make up for the GALs that do not take their work with children seriously enough to do the job that they have been assigned to do."

"Some do an excellent job; others seem bewildered by what they are expected to do."

"The GAL for my case was wonderful but she left for private practice. Since then, I have not had any communication with the GAL. In fact, I am not sure who it is. The children have not had communication with anyone either."

"The CASAs are truly the GALs' right arm – we do all the work and they get all the glory! This is fine as long as these kids get what they need! The GALs need either less cases or someone to do all their paperwork so that they can really get to know 'each' child face to face that they represent."

"The caseloads per GAL limits the time to advocate effectively for the children. Often times, the children are a docket number and nothing more."

"I understand the need for a GAL, but sometimes I don't think they do enough for the kids."

"GALs need to be more open to CASAs and look at CASAs as a resource and asset."

Table 93. CASAs' Recommendations

Accountability	➢ "The one thing that I think would help most at this point would be to develop some accountability for the GAL system in that the requirements of the position would be mandatory and there would be an easily accessible action that could be taken to make sure that the children were being represented by GALS that were fulfilling these requirements and responsibilities." ➢ "The GALS who are not going to court, not providing reports and not visiting with their clients are still getting paid. The county is paying them so you'd think that the county would want to know what they are doing with the money. People are afraid to tell on anyone because they are afraid of the repercussions." ➢ "GALS need to be REQUIRED to see children and do the EXPECTED WORK of the assignment or not be compensated for the case assignment. The stakes are too high for these

	children that lanquish in the system – partly because a GAL is not fully on board with the children and the case and the team working on the case."
Greater GAL contact with their child clients	➢ "Increase mandatory face-to-face contact to once a month. To accomplish this, GAL caseloads would have to be reduced." ➢ "GALs need to visit [children] more and advocate more." ➢ "GALs need to attend team meetings or send someone to take notes for them. GALs need to witness the meetings first hand and they attend only 50% of the time. They show upon time and leave early, show up late or don't show up at all. They should be required to be there. It's the only chance they get to talk with everyone involved: the birth parent, foster parent, attorneys, caseworker." ➢ Children 5 and older need to meet their GALs, explain their role in the child's life. "Months go by and kids don't know the function of their lawyer."
Reasonable caseloads	➢ Reasonable caseloads to give more individualized attention to each child. ➢ "The GALS are usually so swamped with tons of cases they don't know who they are, much less who the kids are. Most of these state wards only know their CASAs and the judges because we are the only ones they see on a regular basis if at all."
Closer collaboration with the schools	➢ GALs should partner more with the school system.
Training	➢ "There needs to be more training in the aspect of the Indian Child Welfare Act (ICWA) for all."

DHHS Caseworkers

"Some GALs are invested in the youth. Others give them 15 minutes before court. It depends on the person."

"There are some GALs that go beyond the call of duty by meeting with their youth, attending team meeting and being strong advocates for the youth they represent. However, the majority are on the opposite side where they don't meet with their children until they are at court and even then, sometimes, they will not even talk with their clients."

"Some GALs do a great job at providing the services to the child, but some don't even know what the child on my caseload looks like or what is going on. I do admit though that the good GALs outweigh the bad."

"I often have parents and foster care providers ask me what the role of the GAL is and they often wonder why they never see or hear from the GAL, yet the GAL is able to make recommendations for the child in court."

"Some GALs are very good but I often hear from them that they do not get paid very much and that is why some are not so good (not that it's an excuse because look at how much caseworkers are paid)."

Table 94. DHHS Caseworkers' Recommendations

Accountability	➢ "Judges need to hold GALs accountable. GALs are not held accountable in court or not seeing the kids or having reports."
Required visits for children	➢ "I have some great ones [GALs) and some really horrible ones who do the absolute minimum. My children who are placed out of town have requested visits from their GALs but have not received them." ➢ "My main complaint is that they [GALs- or someone in their office do not regularly see the children." ➢ "The GALs rarely meet with the children except at court right before the hearings."
Greater advocacy for children	➢ "[GALs] do not meet with their children. They do not participate in meetings, activities, etc. regarding their children. They do not advocate for what their children want or even what appears to be in their best interests but rather, what they think the court will adopt. They do not independently get records or speak with treatment providers – despite having that

	option presented to them."
Training	➢ "GALs need a better understanding of what is the best interests of children. . . . [they] need training on minimal standards. . . . Some GALs substitute their own value system."

County Attorneys:

> "GALs in our district are well prepared, competent, and seem genuinely interested in their wards."

County attorneys offered no recommendations for improving the GAL system.

Parents

> "I have never met the GAL for my child. I don't know what they are doing for her."

Table 95. Parents' Recommendations

Required meetings with children	➢ "I think that the GAL should have to personally meet with his/her client at least once a month and not send an assistant." ➢ "The GAL was a waste of money. Her staff met with the family once every 6 months because she was required to. She would not have known who her clients were if they had not been brought to court. "

Foster Parents

Table 96. Foster Parents' Recommendations

Required meetings with children	➢ "We went for over 6 months before we knew our GAL. He came and visited our son for about 10 minutes – never heard from him for another 5 months or so. Then I saw him in court." ➢ "My foster daughter's GAL is not involved. He did not show up at court or team meetings. In the last 2 and a half years, he has been to one [team meeting] and not spoken to my foster daughter since."

Foster Care Review Board Members

"There are some incredibly involved and dedicated GALs that do a fantastic job of advocating for the children; but, on the other hand, there are those that simply show up in court and occupy a chair."

"GALs never attend a Foster Care Review Board meeting, rarely give any input to our reviews, rarely see the children, and the foster parents we see have rarely if ever seen the GAL in their home to visit the children. If they are too busy, then they should not take on this very crucial role."

"I really don't know what they're doing. I don't think that these GALs are doing their jobs. If they're too busy, then they shouldn't be taking on these cases."

"They [GALs] take a paycheck and they don't see the kids. . . . These children are suffering because the GALs aren't doing their jobs. I couldn't get way with being paid and not doing my job. These children are moved around to 15 or 20 different placements and the GAL isn't doing a thing for them. They are not speaking up for the child."

"Attorneys think that they are higher in the social hierarchy than teachers or social workers. But if they are going to do this work, they need to have the background in child welfare and they need to really listen to others."

"It is my belief that the majority of GALS collect their checks but do not serve as advocates for children. . . . Many appear to be going through the motions. I do not paint all GALs with the same brush of negligence, but do believe many fail to live up to the commitment they have made."

Table 97. Foster Care Review Board Members' Recommendations

Accountability	➢ "I would like someone to ride herd on them and make them do their jobs." ➢ "Who is supervising them? Who is holding them accountable?" ➢ "They [GALs] need to be more accountable. The guidelines should have real force and should be stronger."
Stronger Credentials	➢ Require a background in child development
Visits with Children	➢ "[We need] enforcement of the current requirement that they [GALs] do the visit every six months, that they file their reports, and visit the child, period, before making the standards more stringent."

Key Informants

"Every kid deserves a lawyer who is zealously advocating for them and telling them what is going on. Not one is responsible to do this other than the GAL. The GAL is a critical role and in Nebraska, the GALs are a weak link."

"The ones that are good are really good; the ones that are bad are really bad."

"They need to get off their butt and do the work."

"Some of the best GALs in the state are in the rural parts of the state. They are good lawyers who have developed a passion to do this work, and they are smart and committed."

Table 98. Key Informants' Recommendations

Accountability	➢ "There is no oversight or accountability, even with the hourly system. [There is a] temptation to pad the hours." ➢ "When the judge says GAL work is important, holds the GALs accountable, asks the GALs questions, the performance improves." This key informant theorized that judges do not hold GALs accountable as a result of the State Bar's practice of rating judges before every election. Local media highly publicize these ratings. GALs who are unhappy with a judge can torpedo a judge's rating, with negative repercussion for the judges. "Some of the best juvenile judges, the one holding GALs' feet to the fire, have the lowest ratings." He/she added that the State Bar's rating project has a "huge chilling effect on the judges sticking their necks out."
The Appointment System	➢ "If you're a good attorney, you are better off with court appointment and it allows judges to appoint people who are doing a good job and people get paid for their work. On the other hand, it's hard for the GALs to challenge the judges appointing them."
Develop Court Rules	➢ Change the current guidelines for GALs to court rules
Judicial Education	➢ Train the judges about what they are entitled to expect from GALs

Training for GALs	➢ Provide GAL training on practical skills and trial work ➢ Develop mentoring or supervision programs with senior attorneys who are skilled at being a GAL and supervising
The Impact of Privatization	➢ Carefully evaluate the impact of privatization of child welfare services in the state. One key informant said that to the extent that privatization has occurred, it "has been dismal for children." Services have been cut for children and families. Others expressed concerns about this process. One key informant expressed worry that each child will have two caseworkers –a state caseworker and a private agency caseworker with unclear roles between the two. He/she believed that the confusion will carry over into the court.

Discussion

Structure and Resource Allocation (Areas of Inquiry #1 and #5)

Nebraska does not have a system for providing legal services to children in 3(a) cases. Nebraska has 93 such systems, because of its choice to delegate responsibility for these services to the counties. This current administrative structure and funding mechanism for GAL services is failing Nebraska's children. The findings documented in this report make clear that the county-based system results in uneven performance and lack of accountability. A child's fate – whether she is reunited with her birth family in a timely manner, is shuffled through dozens of foster homes and institutions, or is promptly adopted – should not hinge upon the luck of the draw as to who is her GAL. Because children cannot be expected to routinely complain about the services adults provide them – and because they do not have sufficient political power to be listened to even when they do complain – appropriate structures must be put in place to ensure excellence in services provided and accountability in those instances where quality is poor.

The responsibility for abused and neglected children is properly placed with the state. It is state law that provides a cause of action for a 3(a) case to be initiated; it is the state Department of Health and Human Services that investigates and files these cases; it is DHHS that takes custody of children pursuant to court order to protect them; and it is state judges who hear these cases. Similarly, it must also be the state which provides for the advocacy services for individual children, to protect their rights and interests as wards of the state that is now their guardian. There is too much variation and unpredictability in the counties' budgeting systems, and too much political influence within the county contracting systems, to provide a guarantee that the resulting legal services will be strong enough to be a powerful voice for children, let alone meet the ethical obligations of the attorneys pursuant to the Nebraska Rules of Professional Conduct.

On the surface, and to those unfamiliar with the details of child welfare, the Nebraska GAL system would seem to function fairly well: children have a statutory right to a GAL in dependency matters; a GAL is appointed in every case; all GALs are licensed attorneys; the appointment happens very soon after the case is filed; and the GAL is present for almost all court appearances. However, scrutinizing below this surface, our findings reveal wide agreement within stakeholder groups that despite having good intentions, as a whole, GALs in Nebraska are simply unable to perform in compliance with national practice standards. They are not visiting their clients; they are not zealously advocating for appropriate permanency for their clients; they are not making their clients' position known to the court; they are not using independent experts to assist them in understanding their clients and in presenting alternative service plans to the court; they are waiving their clients' constitutional right to counsel in law violation cases; they are not actively investigating their clients' education needs; and they are not receiving sufficient training or supervision. As one judge told us, "They just sit there." At its heart, the Nebraska GAL system is one in which the one person meant to be an independent check on the power of the state typically serves as a rubber-stamp to the state's proposals and plans. (In the words of one youth, having a GAL is "like having another caseworker.") Thus, the system as it is

currently structured perpetuates a particularly cruel fraud on all citizens of Nebraska: it makes it look like there is a voice for Nebraska's children in the court process, but in fact, that voice is mute.

Not only does the county-based system create this environment of poor practice, but it also guarantees that there is no one person or entity able to hold GALs accountable for their alarming failure to provide competent legal services to their child clients. As our findings indicate, judges are not able to provide supervision or oversight – nor is it appropriate to rely solely on judges to ensure that attorneys are performing adequately. Children's attorneys must be independent from the judges before whom they appear, so that they can provide zealous advocacy that is unchilled by worry that to irritate the judge means an end to appointments. Moreover, it can be difficult for a judge to know whether an attorney's failure to file a particular motion is the result of careful deliberation and the exercise of professional judgment or plain incompetence. Additionally, judges have their own political considerations on which to focus, including retention elections and their reliance on county officials to adequately fund courthouse facilities and staff. Some judges worry that demanding greater effort from GALs would cost the county purse and alienate powerful political officials. Clearly, some other mechanism for ensuring attorneys are practicing in accordance with accepted standards must be put in place. Feedback from judges can be one component to this structure, but it cannot be the only or the primary one.

By permitting all 93 counties to develop their own systems of providing GAL services, the State has enabled an environment in which the community bids down on its most vulnerable children. Counties are responsible for many important services that have loud and organized constituencies to advocate for them. County commissions vary widely in the transparency with which they deliberate and make contracting decisions. There is no rational way to explain why a child in one county should be provided a GAL who works for a law firm that is paid a fixed fee, resulting in the GAL having a caseload of over 130 cases (meaning well over 200 children), whereas a child in another county has a GAL paid $100 per hour and a manageable caseload. Nor is there a rational way to explain why a child in one county should have a GAL who has been trained in accordance with state law but a child in another county does not. The quality of GAL services that abused and neglected children in Nebraska receive should not be predicated on the luck of geography or which attorney answers the phone first and takes an appointment.

Those states that rely on counties to provide legal services to children have a history of litigation, and they struggle to ensure even and quality performance. Fulton and DeKalb Counties in Georgia were sued for providing ineffective assistance of counsel to children in their equivalent of 3(a) cases. Sacramento County, California, is the subject of current litigation for the same reason. Even when the state court system took over the responsibility for funding legal services for dependent children in California, it left administrative responsibility with the counties. It has only been able to work closely with a handful of the counties on improving their systems (in the DRAFT program), though great improvements have been made in those counties as compared to the ones that continue to administer their own programs without partnering with the state.

Being smaller in geography, much smaller in the number of abuse/neglect cases, and having almost twice as many counties as California, it would make little sense for Nebraska to replicate California's DRAFT program. Instead, Nebraska should implement a statewide program to fund and administer legal services for dependent children. The entity that is made responsible for this program could be housed within the judiciary's administrative arm (as is done in New York and Massachusetts), or it could be an independent executive branch agency (as is the case in Colorado and Connecticut). Adopting a statewide model would enable Nebraska to ensure that all children who come before the court because of allegations that they have been abused or neglected receive excellent legal representation.

Colorado, Connecticut, and Massachusetts all offer good models for Nebraska to consider; each of these three states relies primarily on a panel system, but each also uses the CWLO model to some degree. By blending these two nationally recognized approaches – but housing the ultimate responsibility in one statewide entity – Nebraska would be able to meet children's needs while also being responsive to its blend of urban and rural variation. Connecticut created its Commission on Child Protection and began focusing keen attention on the legal needs of dependent children in 2005 in response to a lawsuit. Nebraska has an opportunity to adopt necessary reforms now without litigation.

Caseloads (Area of Inquiry #2)

Our findings document that there are two classes of foster children in Nebraska. In one group are those children who are lucky enough to have an attorney who is able to control her caseload. These attorneys appear to have reasonable caseloads that in theory would permit them to practice in accordance with national standards. (Whether they actually do so is another issue.) Most GALs and judges and all the county attorneys who responded to our inquiries agreed that GAL caseloads are reasonable.

However, there is a second class of foster children who are unlucky enough to be appointed an attorney from a for-profit law firm with a flat-fee county contract. Even the most well-intentioned GALs assigned to these unfortunate children are unable to provide them with minimally acceptable services because their caseloads are crushing. An attorney who has 130 "cases" typically has over 200 child-clients for whom she is responsible, considering that the typical case involves multiple siblings. NACC caseload standards set 100 children as the absolute maximum that an attorney should be expected to handle.

The caseload issue is inextricably intertwined with compensation issues and the overall structure for delivering legal services. Simply put, the reason that some GALs have enormous and debilitating caseloads is that the county in which they practice has elected to contract with private, for-profit law firms and these contracts are structured to provide child advocacy on the cheap. For example, one law firm's contract provides that it will be paid $28,440 a month to handle up to 360 cases. If the firm carries a full caseload of 360, the firm's revenue amounts to $79 per case per month, or $948 per case per year. The NACC caseload standard of 100 is predicated on the average child's case requiring 20 hours of work per year (and the attorney putting in 2,000 hours of work per year). Thus,

this law firm, with a caseload of 360 (which, of course, actually means far more than 360 children), will be grossing $47 per hour for its GAL work. Considering that this gross must be used to pay for attorneys and overhead, it is no wonder that the firm would choose to have as few lawyers as possible handling the work—resulting in a large caseload for those who are on board (or substantially less work than 20 hours per sibling group's case).[120]

The Nebraska Supreme Court's GAL Guidelines provide that:

> A guardian ad litem should not accept workloads or caseloads that by reason of their excessive size or demands, including but not limited to the number of children represented at any given time, interfere with or lead to the breach of the professional obligations or standards required to be met by a guardian ad litem by statute or by court rules.

(Guideline V.E.2.)

The Nebraska Rules of Professional Conduct provide that "A lawyer shall act with reasonable diligence and promptness in representing a client." (Rule §3-501.3). The comment to the Rule states, "A lawyer's work load must be controlled so that each matter can be handled competently." (Comment 2 to Rule §3-501.3). The attorneys who are employed by the contracted, for-profit law firms are put in an untenable situation due to their caseloads resulting from the flat-fee-per-case system: they are forced to choose between violating the Supreme Court guideline and the Rules of Professional Conduct or quitting their job.

Attorneys in the for-profit firms are violating the Guidelines and Rules of Professional Conduct every day. Our findings show that these attorneys are not meeting with their clients. Meeting with clients is the most fundamental aspect of the GAL role and is absolutely critical to providing quality representation (Guidelines V.A; V.E.2.; R.R.S. Neb § 43-272.01(2)(d)(i)). They come to court unprepared, as they fail to conduct an independent investigation of each case (Guideline V.B.).

Eliminating the profit motive and transferring to a system based on non-profit CWLOs would ease the pressure on caseloads, but might not resolve it entirely. CWLOs sometimes struggle with high caseloads. CWLO contracts must include caseload standards for the attorneys who are employed by the office. The CWLO should be required to provide periodic caseload data to the government entity responsible for monitoring the contract. The contract must permit renegotiation of compensation if caseloads spike and the firm needs to hire more staff to comply with the caseload standards. However, it should be noted that CWLOs may be able to use their monopoly-like advantage, their political skills, and their organizing capacity to advocate for lower caseloads. Alternatively, the system could have a hybrid model of CWLO-plus-panel; in this model, the CWLO would have its overall caseload limited (and would be required to maintain enough staff so that individual attorneys' caseloads are in compliance

[120] Needless to say, this payment structure also leads to choices by firms to minimize expenses in other ways, such as by not retaining experts or filing appeals or motions to terminate parental rights, which is addressed in Area of Inquiry 9 on pp. 72-77

with agreed-upon standards), and any excess cases would go to panel attorneys. This is the model in Massachusetts.

Because of the fundamental link between caseloads and compensation, the ultimate question that must be answered in order to limit caseloads is who should bear the risk if the overall census of children needing a GAL rises unexpectedly. Under the current structure of contracts with for-profit firms, it is children who bear most of the risk. The county knows exactly how much it must pay each month, regardless of the number of cases coming in (up to a certain very high maximum number under the contracts). As more and more cases are assigned by the firm to the same number of associates, the children bear the risk of decreased quality in services because the attorneys' caseloads get higher. In an alternative system where caseloads are strictly limited, an increase in the universe of children needing a GAL would result in the county having to pay more money; the children would be guaranteed more even performance across GALs, because caseload standards could be complied with by all. The question for Nebraska is whether it wishes to impose the risk on its most vulnerable citizens – abused and neglected children – or spread the risk more equitably, by creating a legal services delivery model that ensures no GAL will have too many cases to provide quality representation to each and every child.

Timing of Appointment (Area of Inquiry #3)

Our findings show that the timing of GAL's appointment in 3(a) cases is by and large consistent with national standards. GALs appear to be appointed very quickly after the case is filed, permitting them – in theory – to begin working on the matter right away and to be prepared for the initial hearing.

Whether GALs are actually prepared for the hearing and whether they actually meet with their clients within two weeks of their appointment, as is required by Nebraska law, are separate questions. Youth who participated in focus groups indicated that in some cases they only met their GAL for the first time *years* after the case began. This is a clear violation of both Nebraska law and national standards for how to represent children in dependency cases.

It can be extraordinarily difficult to be prepared for a temporary custody hearing in a 3(a) case. However, due process requires these hearings to occur relatively soon after a petition is filed (even though Nebraska law does not specify a time period), and it appears from our inquiries that they do. Attorneys who elect to practice as GALs need to be ready, upon receiving an appointment, to drop all other matters, meet their client, obtain basic discovery from DHHS, and be ready for a contested custody hearing. If they cannot be ready on short notice for a hearing of this nature, then they should decline an offered appointment. It is unthinkable that an attorney in any other context would appear at a hearing on behalf of a client without having met the client or without having a well reasoned basis for the position the attorney intends to take on the record which is informed by a client interview.

Supervision (Area of Inquiry #4)

The purpose of supervision in any professional context is to assist the supervisee in his professional growth while ensuring quality control for the individual client. Robust individual-level

supervision also permits a system to have a measure of aggregate level accountability, as supervisors spot patterns of poor performance and intervene before matters devolve too deeply.

Nebraska's system of child representation does not have any noteworthy mechanisms for individual supervision of attorneys or overall accountability for their performance. Respondents to surveys and interviews indicated that there is some unmet need for supervision in the individual context, particularly for younger attorneys or those new to the practice of child welfare law.

Perhaps more disturbingly, however, is the finding that many of the lawyers and judges we spoke with do not believe that GALs need supervision, purportedly because they are licensed attorneys. What is especially problematic about this belief in the context of child welfare law is that unlike adult clients in almost every other field of law, dependent children have no meaningful mechanism for complaining about the legal services they receive. It might be acceptable to claim that a licensed attorney needs no supervision if there were a well planned and responsive system for clients to complain about their services in cases where the licensed attorney, unfortunately, does not provide representation in accordance with practice norms. (Such a system might include a "customer service" department within the court as well as the ability to file a malpractice or ineffective assistance of counsel suit in the extreme case.) But given that there is no such system, children in Nebraska are essentially at the mercy of whatever GAL they happen to be appointed. The only relief they could possibly achieve is if the judge notices a problem with the representation and revokes the order of appointment; however, this is rare in most states as it is in Nebraska. Even if a child in Nebraska could somehow initiate a malpractice action against a GAL, it would be barred by *Billups v. Scott*, 253 Neb. 287, 291-92 (Neb. 1997).

Child welfare law is too complex, the stakes are too high, and the client population is too disempowered to permit a scheme in which front line attorneys have no supervision and no oversight. Attorneys who work in firms or CWLOs must have a regularized system of supervision; panel attorneys must have a formal system of mentoring or apprenticeship; and the system as a whole must provide a mechanism for client feedback.

Youth Participation and Courthouse Facilities (Areas of Inquiry #6 and #15)

As noted earlier, half or more of all stakeholder groups do not see the courthouse environment as a comfortable place for youth and children to be. In light of the compelling need for youth to be more active participants in their own cases, significant attention should be paid to upgrading facilities to make courts more welcoming for their most important "customer," the children they protect and serve.

However, less than ideal courthouse space should not be an excuse used to keep youth out of court. While it may be true that "if you build it, they will come," it is also true that more youth should come whether it is built or not.

As noted in the findings, there was significant disparity among the stakeholder groups as to whether children should come to court and as to whether the GALs are making significant efforts to ensure that the children do so. Interestingly, the judges were practically unanimous as to the benefits of

having children, particularly those over the age of eight or nine, come to court. Unsurprisingly, youth themselves were adamant about the importance of having some voice in the critical decisions about their lives being made by adults.

The Nebraska Supreme Court Guidelines for GALs provide that the GAL "should advocate for the juvenile to be present at all court hearings as appropriate and take steps where necessary to ensure such attendance on the part of the juvenile." Many GALs, however, were quite adamant that youth should not be in court, because they have to miss school or because it would be harmful or somehow traumatizing to the child, and it appears that they are permitting the "as appropriate" exception in the Guidelines to swallow the rule, often in contravention of what their clients would like to occur and contrary to the court's desire. Interestingly, while some GALs claimed to be strong proponents of children's presence in court at least in theory, other stakeholders disagreed with this assessment, and the GALs' beliefs about the propriety of youth in court belie, to some extent, their claims to taking action to have their clients present.

In recent years, many jurisdictions have moved to increase the presence and participation of young people in court. Changing the culture and practice of Juvenile Court to facilitate this participation is not an easy task, but it is well worth the effort. Rather than preaching futility, all stakeholders must come together to identify the challenges and brainstorm creative solutions to overcoming them. For example, some GALs complained that court is for adults to discuss adult problems and that children would be harmed by being exposed to these issues. Setting aside the obvious reality that the children have already been exposed to the issues by having lived through them, there is a simple solution to this purported problem: allow the children to participate for a portion of the proceeding, and then explain to them in a developmentally appropriate fashion that they will have to be excused for the duration. Similarly, every other impediment to youth participation, if analyzed closely and creatively enough, will yield a solution.[121]

GALs, as advocates for youth, should be leading the charge on children's and youth's participation in their court hearings. The positive impact on children of these participatory rights has been documented in a growing body of research (see Weisz, Wingrove, & Faith-Slaker, 2007). GALs may significantly benefit from opportunities to better understand principles of child and adolescent development, specifically how they relate to children and youth who have experienced abuse/neglect and are in foster care where decisions are being made for them by the agency and the court. In addition, GALs may need assistance in examining their personal views of what is in children's best interest with respect to court participation.

Compensation (Area of Inquiry #7)

As indicated in response to Area of Inquiry #4 (Caseloads), one county's structure of providing GAL contracts to for-profit firms on a flat-fee basis redounds to the detriment of the children in that

[121] It is ironic that some GALs would voice opposition to youth coming to court because they would miss school, when as a whole the GALs are doing such a poor job in staying informed about their clients' educational progress and needs.

county, as their GALs do not provide them the quality representation that they deserve. The financial incentives, quite simply, do not permit attorneys to spend enough time on each case. Worse, because the contracts provide a flat gross regardless of the number of cases, these for-profit law firms have a direct conflict with their clients when it comes to decisions about spending money on experts. Every dollar spent on behalf of a client is one less dollar in the law firm's pocket. To its credit – and to the credit of its judges who advocated for a change – another of the selected counties is moving away from this model.

The GALs in counties that contract with solo practitioners are mixed in their response to whether they are paid adequately. Some appear to have adequate compensation, with an acceptable hourly rate of pay and no caps on the number of hours they may spend on a particular case. Others may be paid too little, especially considering that they are solo practitioners and need to have their overhead expenses as well as their fee built into the hourly rate.

Worse, counties that do not reimburse for travel or time outside of court place GALs in a difficult ethical quandary. The Supreme Court Guidelines call for GALs to meet with their clients in the clients' placement (Guideline V.A.3.d), and to participate in staffings, conferences, meetings, and ancillary proceedings (Guideline IV.A.3). When mileage costs or travel time are not reimbursable, providing the best possible representation costs the GAL financially.

In areas of law where the clients pay their attorneys for services rendered, lawyers are not expected to pay for expenses out of pocket. Lawyers charge a fee for their services and they separately invoice clients for travel, copying, and necessary disbursements. GALs who provide such critical advocacy to Nebraska's neediest children should not be expected to donate, *gratis* to the county, the costs they incur to do their work.

As it is currently structured, the Nebraska system for delivering legal services to children has significant barriers to entry for new and enthusiastic lawyers who might be willing to consider making a career in this field. That is because neither the attorneys employed by the for-profit law firms nor the solo practitioners with individual contracts are eligible for federal loan forgiveness under the College Cost Reduction and Access Act. Thus, in addition to all their other expenses, attorneys doing GAL work in Nebraska have to make their student loan payments. So long as compensation levels remain low and/or exclude reimbursement of out-of-pocket expenses, newer attorneys may not be able to make ends meet while doing GAL work.

Having a centralized entity to administer the panel system and/or having one or more CWLOs throughout the state has an additional benefit: the creation of an organized advocacy campaign to lobby political leaders for appropriate resources to support legal representation of children. Currently, the only way for GALs to get a pay raise is for those who do the work in each county to separately lobby the commissioners. The for-profit firms have a different model entirely; their leaders have an incentive to low-bid on contracts and then hire associates desperate for employment who will take on too many cases for not enough pay. Either way, children lose out by having undercompensated attorneys. Those states that have shifted the administration of children's legal services to a statewide entity have seen an

increase in resources to support this crucial work. (See discussion of National Best Practice Standards in the area of GAL compensation on pp. 61-62.)

Finally, better lawyers should be paid more. In the private-pay world, this happens all the time; the market identifies who the best lawyers are and clients are willing to pay them a premium. The public-pay world of court appointed lawyers should take a cue from the private sector and offer a standard enhancement to the pay of children's attorneys who are recognized as providing superior service. The best proxy for this determination is child welfare law certification. As is the practice in Connecticut, Nebraska should pay children's lawyers who achieve Child Welfare Law Specialist certification more than those who do not.

Training (Area of Inquiry #8)

There is a clear need for increased training for GALs in Nebraska. The strong efforts of the Through the Eyes of the Child Initiative to develop and deliver trainings are a good beginning, but the state is lacking the will to impose more rigorous training requirements. Six hours of initial training and three hours of mandatory annual CLE in a complex and multifaceted field like child welfare are simply not enough.

It is disturbing that Through the Eyes of the Child had to cancel its April 2009 initial training course for lack of registration. In our surveys, we found that over half of the GALs reported having received no GAL-specific training prior to taking their first appointment. The Nebraska Supreme Court rule mandating six hours of initial training is recent and was not made retroactive; nevertheless, the training offered by Through the Eyes of the Child covers important information and one might expect even experienced GALs to enroll in the course to ensure that there are no gaps in their knowledge. Evidently, that is not the case. Over one-third of the GALs who responded to our survey stated that they do not think they need more training, and many with whom we spoke were personally offended that they had to have any training at all. This perhaps explains why, despite the Nebraska Supreme Court's rule that all GALs receive three hours of annual CLE on an ongoing basis, almost one-quarter of the GALs responding to our survey indicated that they had attended *no ongoing training* in the last 12 months.

All attorneys, no matter their field of practice or their years of experience, need to keep their skills and knowledge fresh and up to date. Because child welfare law is a dynamic one, intersecting with other fields of law as well as social science, the knowledge base is ever expanding. That more than one-third of the GALs who responded to our survey claimed that they do not need more training is mind boggling. We understand that mandatory CLE for all Nebraska attorneys is a relatively new development in the state and might explain some of the resistance to ongoing training that we found. However, that there may be reluctance does not obviate the need for the CLE for GALs. In Massachusetts, there is still no mandatory CLE for licensed attorneys, but those lawyers who accept appointments in abuse and neglect cases must attend at least eight hours of relevant CLE courses. The state entity responsible for the administration of legal services to children enforces this requirement – attorneys who do not submit CLE certificates are removed from the panel.

We found a variety of complaints about the substance of the training offered by the Through the Eyes of the Child Initiative, ranging from assertions that the material is too basic to laments that it does not adequately cover trial skills or information about how to be a GAL. By and large, these appear to be complaints about quantity, not quality. Any initial training program is going to overwhelm certain lawyers and underwhelm others. The key is to design a program that is comprehensive enough in content and diverse enough in delivery methodology to both cover the necessary material and convey it in a way that works for adult learners. Through the Eyes of the Child is on the right track by using a nationally recognized treatise as its content foundation, Ventrell and Duquette's *Child Welfare Law and Practice.* Indeed, this is the textbook used for the NACC's certification exam; attorneys sitting for the exam are tested on the contents of this *entire* book.

Currently, because the Nebraska Supreme Court rule only requires six hours of initial training, the Through the Eyes of the Child syllabus only assigns excerpts of the Ventrell and Duquette book, while recommending that GALs use the rest of it in their practice. If Nebraska wishes to upgrade its GAL system to be in line with national examples of excellence, it would require aspiring GALs to attend a multi-day training program that would cover many more substantive areas as well as a trial skills component. This requirement would also be made retroactive. Absent this serious commitment to enhancing the knowledge base and skill level of GALs statewide, little progress will be made in improving the quality of legal services for children.

Access to Experts (Area of Inquiry #9)

The gap between national standards for the use by GALs of independent social workers and other experts and actual practice in Nebraska is as large as the distance between Omaha and Scottsbluff. National standards call for children's attorneys to engage in multidisciplinary advocacy on a regular basis. Our findings show that Nebraska GALs hardly ever do so.

For those GALs employed by for-profit law firms with a flat-fee contract with the county, using independent experts would present an insurmountable financial obstacle. The way these contracts are structured, all of the firm's expenses – as well as its profit – are built into the flat rate. A dollar spent on an expert is one dollar less in profit. It is no wonder that the associates and subcontractors at these firms never retain experts.

The process for solo practitioner GALs to retain and pay experts is unclear because we found that in most counties we studied, experts are never hired. One judge indicated that he would entertain motions for funds to hire experts. If such a motion were to be granted, in theory it seems that the expert could then file a copy of the court order with her bill to the court administrator for payment. One county will pay up to $100 per hour for testimony time, but it is unclear whether any county will pay experts for time spent out of court engaging in any of the many other activities listed on p. 76.

To increase the use of independent social workers and other non-lawyer professionals to assist GALs in their advocacy will require a change in structure and a change in attitude. Structurally, the GAL system needs to be far more organized and transparent in terms of how and when experts may be used.

There needs to be a clearly defined program involving set rates of pay. GALs will also need assistance in finding experts in appropriate disciplines who are willing to accept the approved rate of pay.

Attitudes will shift with knowledge. Currently, GALs in Nebraska lack of a vision for multidisciplinary advocacy. In part this may be due to a fundamental misapprehension on the part of some GALs of what it means to be an advocate for children independent of DHHS. But more narrowly, the lack of vision is due to a knowledge gap in terms of what social workers and other professionals can do to help a GAL. Part of the required training suggested above must focus on multidisciplinary advocacy. It is recommended that Through the Eyes of the Child bring in guest trainers from other jurisdictions with experience in collaborative advocacy for children to demonstrate and teach this 21st century model of lawyering.

Education Issues (Areas of Inquiry #10 and #11)

The Nebraska Supreme Court's Guidelines for GALs includes a provision encouraging the dependency court to include language in its order of appointment that specifically grants the GAL access education information (among other types of information) (Guideline IV.6). To the extent that courts actually do so, this court order would appear to satisfy FERPA and should be acknowledged and followed by school districts. If a GAL is turned down by a school despite possessing a valid court order authorizing disclosure of education information, it is incumbent on the GAL to pursue the matter further, by litigation if necessary.

However, our findings show that GALs rarely seek out school information or blend education advocacy into their work on behalf of dependent children. Instead, they seem to be satisfied to rely on the information gathered by others, notably DHHS itself. Most troubling are the results of our focus groups with youth, which reveal an incredible lack of knowledge on the part of GALs regarding their clients' education progress, interests, struggles, and needs. Furthermore, the youth we met with reported a number of school changes due to placement changes that clearly affects their ability to learn, to participate in normal school activities, and to bond with a peer group, let alone to graduate.

GALs do appear to be involved to a certain degree when their clients face truancy issues – this is evidence of good practice, but in light of the failure of GALs to be involved with education matters otherwise, it suggests earlier advocacy by GALs would head off later truancy. Judges we surveyed reported that to the extent possible, they try to handle truancy matters in the context of the existing 3(a) matter, as truancy reflects problems with the DHHS placement for the child. In County B, however, the practice of prosecuting truancies as a separate status offense has a net-widening affect that increases the likelihood that abused and neglected children will "cross-over" into the delinquency/law violation system.

The lack of GAL attention to education issues is an area where Nebraska's system could greatly improve. GALs need to view themselves, first and foremost, as advocates for the clients' education needs; they also need to have knowledge and information about how to do this part of their job well.

Permanency (Area of Inquiry #12)

Recent research indicates that quality lawyering on behalf of children can improve their outcomes by expediting safe permanency (Zinn & Slowriver, 2008.) Thus, it is incumbent on GALs to be champions for their clients' permanency. Assuming the GAL supports the permanency goal approved by the court – whether it is reunification, adoption, or guardianship – the GAL should take active steps to ensure that the child welfare agency's service plan is targeted to achieve that goal in a reasonable time period. It is not appropriate for a GAL to "be on the fence" about what the proper permanency goal should be, even in a difficult case. It is not acceptable for the GAL to "wait and see" if the parent complies with the service plan; if the GAL genuinely supports reunification, then she should be an active participant in giving the family a fair shot at making it happen (Gottlieb & Pitchal, 2007).

Overlap Between Dependency and Delinquency (Area of Inquiry #13)

Based on our findings, both the level and nature of the involvement of GALs in law violation cases involving their 3(a) youth is problematic and serve to undermine youths' rights to zealous advocacy in both the dependency and delinquency matters.

Firstly, the practice of the court issuing a *capeas* regarding youth who run from their foster placements has the potential of gravely interfering with youths' constitutional rights. It is one thing for the 3(a) court to take steps to bring a child back to DHHS custody; acting alone, DHHS is powerless to find and return its wards and often needs the assistance of the court. However, it is neither a violation of law nor of a "court order" for a child to run away from foster care. Children are not parties to 3(a) actions and are not served with the court's placement order; they are the *subjects* of the 3(a) case – for their own protection. To treat them as delinquents, and to lock them in detention centers for running away (even if they are placed in the "staff secure" section of the detention center) is degrading and inhumane treatment. Children who are not in foster care who run away from home are not treated this way. While such children may face a 3(b) petition for this behavior, federal law prohibits states from putting "status offender" children in secure settings. Foster children abscond from placement for a host of complicated reasons; locking them up for it or ostensibly for their own protection is unconscionable, and it violates federal law.[122] GALs must be zealous guardians of their clients' basic rights; they should insist that the language in each *capeas* specify that the child is not to be held in a detention center or hardware secure facility under any circumstance.

Secondly, we did not find evidence that GALs are coordinating closely with public or private court-appointed defenders regarding their shared clients. In contrast to best practices, it does not appear that the GALs provide critical information to public defenders about the children or zealously participate in dispositional planning. GALs may be present for the delinquency proceedings – a critical part of best practice – but it is not clear that they are especially helpful once there.

Third and to the contrary, there is some evidence that GALs' presence at delinquency proceedings actually works to their clients' detriment. Under no circumstances should a child's attorney

[122] 42 U.S.C. § 5633 (a)(11)(B).

(or a judge) view a delinquency proceeding as an "opportunity" for good outcomes for the child. No matter how paternalistic or rehabilitative a juvenile delinquency proceeding might seem in the eyes of the adults, exposing children to the risk of secure commitment, the collateral consequences of a delinquency adjudication, or a lifetime criminal record in exchange for "better services" is a Faustian bargain; the better course is to redouble efforts to obtain needed services through the child welfare system.

And it is completely unfathomable that a GAL would purport to waive a child's right to counsel in the delinquency proceeding – or that the delinquency judge would permit such a waiver. We endorse and incorporate the analysis of the NJDC assessment of Nebraska's delinquency representation system on this point: waiver of counsel in delinquency cases is dangerous to children and should not be permitted without a thorough consultation with the defender, and no child advocate – regardless of role or title – should ever do it. Nebraska must develop mandatory, enforceable practice standards for 3(a) attorneys that require them to cooperate and coordinate with delinquency defenders and that prohibit them from waiving their clients' rights. In those counties where it is possible for the 3(a) attorney to also be appointed to represent the child in a delinquency case, the attorneys should seek to do so wherever possible – provided they are absolutely committed to the ethical requirement of being a zealous defender of their client.

Relationship Between GALs and Their Clients (Area of Inquiry #14)

Whether because of their large caseloads, or they do not think it is important, or they fundamentally misunderstand their role, GALs are failing their clients by not establishing and maintaining a relationship. GALs are the only stakeholder group who believe that GALs always or sometimes meet with clients at critical, defined junctures in the case. Every other group surveyed, and, most damningly, youth themselves report the opposite. "I was in foster care for 18 years," said one young person, "and I didn't even know that I had a GAL until the very last year."

It would be an error to conclude that there are no strong GALs in Nebraska. There appear to be many. Stories such as the GAL fighting for a child's pets to be safely cared for when the child entered foster care, and to ensure the child was able to visit his pets, are quite moving and indicative of a lawyer who takes her job incredibly seriously and uses the power of her position to vindicate her client's rights and interests.

However, on the whole it is evident that GALs are not following Nebraska law regarding mandatory visits (within two weeks of appointment and once every six months thereafter). Some courts appear to be making efforts to monitor compliance with this law and increase performance. For example, one county has devised a checklist that GALs must complete as part of their reports, which includes a statement about visits with the child. Some judges also point-blank ask GALs to report, on the record, about their visits. But these efforts are unavailing, as GALs continue to do their work without visiting their clients. When a CASA is on the case, the GAL does even less work. (This was also found by Weisz &Thai, 2003.)

There may not be a consequence to the GAL for not visiting clients, but there are huge consequences to the children. When they do not meet with their clients, GALs are unable to gain a grasp of the children's needs. Relying on information provided by DHHS alone is an abject abandonment of one's professional obligations and cannot under any circumstances be thought of as "quality representation" within the meaning of the Supreme Court Guidelines (V.E.1.) or under the Nebraska Rules of Professional Conduct (§§ 3-501.1, 3-501.3, 3-501.4). It is also a violation of the directive to be an "advocate" who has a "duty to investigate facts and circumstances" (Guideline III.A.1). One cannot formulate a concept of what is in a child's "best interests" – let alone determine what a client's own goals and wishes are – by sending an intern or a law clerk or by not visiting at all.

The lack of understanding of clients' needs and the complacency in formulating a position independent of DHHS play out in stark relief in the courtroom, where once again GAL's self-reporting grades them higher and better than the way others view their performance. Judges in particular were quite critical of GALs' courtroom skills, declaring that they do not know the word "subpoena" and that few of them view their role as a check on DHHS. In the words of one CASA, "It is hard to advocate for someone who they've never met or spent any time with." Or as a young person put it: "How can the GAL or the court know what I need when nobody has spoken to me?"

Our findings lead us to the conclusion that more than anything else, the source of the problem in the relationship between the GAL and the child is the lack of direction to GALs as to what it means to be an attorney for a child and the associated lack of accountability. Following Nebraska code, the Supreme Court Guidelines provide that the GAL should be both an advocate for the child's "best interests" as well as the child's legal counsel. However, the Guidelines provide absolutely no information about what it means to be "legal counsel." Though some guidance is offered to GALs as to what to do if the GAL's determination of the child's "best interests" conflicts with the child's wishes, nowhere do the Guidelines actually call for the GAL to ask the child what her wishes are – or to convey these wishes to the court (even if the GAL disagrees with them).

Thus, it is very easy for a GAL in Nebraska to slip out of the "dual role" into the more pure "best interests" advocate role. Without a mandate to ask their client what their wishes are, to gather information and evidence that might support those wishes, or even to present the client's position to the court, it is all too simple for a GAL to read the DHHS report, possibly talk to the CASA if there is one, decide that what these other players have in mind is "best," and call it a day. Particularly when caseloads are crushing, if there is no mandate to solicit a client's position and convey it to the court, it is not surprising that GALs would simply skip the step of developing a meaningful relationship with their clients.

One important piece of evidence that reveals the depths of the slippage away from the role of legal counsel is the fact that over half of the GAL survey respondents reported that they have never seen a case in which their best interest advocacy for one child was adverse or in conflict with the best interests of a sibling. Another is the report of a GAL that he would continue to press for his view of a client's "best interests" for a child even when the client became a parent and had clearly different

interests as a mother. At a minimum, GALs in Nebraska need to have a more nuanced and informed approach to determining the "best interests" question and to view each client as an individual.

There is also widespread confusion about what the GAL role really is. Several GALs and even some judges denied that there is a "dual role" in Nebraska law. How such confusion could be present on such a fundamental issue is most likely due to the decentralized nature of the Nebraska GAL system and the utter lack of accountability within it.

Viewing GAL behavior more charitably, it could be that GALs don't seek out their clients because they believe that their clients will want something that the GAL cannot support, and to prevent the cognitive dissonance – and potential ethical conflict – in this situation, the attorney decides to avoid the interaction altogether. A GAL would not be wrong to have this concern. Several youth reported feeling disrespected when the GAL would solicit their views but then do nothing about it. GALs, in the word of one young person, are "full of poop."

GALs who fear the negative consequences of soliciting their clients' views grossly underestimate youths' resilience and sophistication. It is not the case that children will demand certain outcomes and then be scarred if adults cannot deliver. To the contrary, foster children frequently understand when their wishes are unrealistic – they have seen more harshness in their reality than any child ought to. Mostly, they want to be heard – to participate – to be seen as a full human being whose life is being affected in a deep and lasting way by the decisions made by adults. Adults who fear this longing should probably not work with children.

Indeed, the failure to meet with clients or understand their needs, and the slavish endorsement of DHHS plans, reflect a professional practice that is not child-focused but rather meets the needs of the adults in the system. We found that many GALs view the children who are subjects of 3(a) petitions as delicate flowers needing protection – not rights-bearing, sentient beings, many of whom have unmet needs and all of whom are getting older and wiser by the minute, and are well aware of the problems in their birth families, having lived through it. A GAL should not be a "grandpa," as one GAL told us he saw his role. A GAL should be a zealous advocate.

Much meaningful reform can occur within the current Nebraska structure. At a minimum, the GAL role must be rededicated to the purpose of serving children, not adults. GALs must be required to visit their clients on a quarterly basis (at least) and to give them and their caretakers the GAL's contact information. Nebraska needs to develop a client feedback system and a method for clients to find out who their GAL is and/or to lodge a complaint.

However, current practice in Nebraska is exactly *opposite* what the Rules of Professional Conduct mandate. Under the Supreme Court Guidelines, attorneys are meant to advocate for the client's best interests, and if there is a conflict between the lawyer's position on the case and the client's, then the lawyer should ask for a "real" lawyer to be appointed, to actually represent the client. Rule 3-501.14 states that lawyers should always be "real" lawyers, even if their client has diminished capacity; if the lawyer believes the client's wishes, if granted, would expose the client to a risk of substantial harm, then the lawyer may ask for a separate GAL to be appointed.

We believe that lasting and positive changes in the GAL-client relationship are most likely to occur if Nebraska reconceptualizes the GAL role. Nebraska law should be amended to make clear that the lawyer appointed to represent children in 3(a) cases is just that – a lawyer. First and foremost, attorneys should follow the Nebraska Rules of Professional Conduct. Regarding clients with a disability, the Rules state:

> § 3-501.14. Client with diminished capacity.
>
> (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
>
> (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.
>
> (c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

By converting the GAL role into a traditional attorney who zealously advocates for clients and stands as an independent voice for children, Nebraska is likely to see better outcomes. With this change, there will be a system in which attorneys meet with their clients; form meaningful relationships with them; investigate their cases; fight for their goals; and answer to them. In turn, the child's lawyer will be better positioned to hold DHHS accountable for the care it provides. Ensuring that foster children are safe, find permanency, and are well cared for must be the goal of all players in the system. GALs need to step up and do their part.

Recommendations

Based on the foregoing findings and discussion, the NACC recommends that Nebraska take a number of steps to improve its system of child representation in 3(a) cases. In our view, Nebraska needs to undertake significant reform in order to bring its child representation system into line with national standards.

Though serious reform efforts are necessary, they need not be difficult or expensive to implement. With an eye towards helping Nebraska begin the critical work of improving the child representation system quickly, we offer two sets of recommendations.

In the first set of recommendations, we identify changes that can be undertaken in a short time frame with minimal or moderate financial cost that nevertheless will have an immediate impact.

In the second set of recommendations, we identify strategies that are no less critical to implementing true reform in Nebraska than the first set. However, we recognize that these recommendations, unlike those in the first group, will likely require a change in culture, political will, and/or financial investment. Because they will take longer to put in place, we urge that work on them begin immediately.

Short Term Reforms

Recommendation 1: *Because attorneys for children should have clearly defined case responsibilities*, *Nebraska should clearly enumerate the powers and duties of the GAL in 3(a) cases through statute or mandatory, enforceable practice standards promulgated by the Supreme Court.*

a. The standards should be well publicized among courts, foster parents, CASAs, foster youth networks, and other stakeholders, so that the entire community can assist in holding children's attorneys accountable for the quality of their practice.
b. Practice standards should be modeled on the ABA and NACC standards; the vague directive to provide "quality representation" in the current Guidelines is insufficient. Additionally, they should include these specific provisions:
    i. The child's attorney should ordinarily procure a new client's complete school records upon being appointed; remain in contact with appropriate school officials as well as the foster parents, so as to keep updated with the child's school progress; and take necessary steps to ensure that the child is receiving appropriate education services, including engaging in special education advocacy where necessary.
    ii. If a 3(a) child client is charged with a law violation, the 3(a) attorney should remain closely involved in the new matter. If the attorney is qualified to provide delinquency representation, ordinarily the attorney should seek to be appointed in that case as well. If the attorney is not qualified to be a juvenile defender, then the attorney at a minimum should attend the delinquency proceedings and actively communicate with (with client consent) the defender. Under no

circumstances should a child's 3(a) attorney waive the child's right to counsel in the delinquency proceeding.

iii. The child's attorney should be a champion for the child's permanency. Assuming the attorney supports the permanency goal that is approved by the court, the attorney should be a zealous advocate for services to any party that furthers that goal – whether it is reunification, adoption, or guardianship.

c. State law should be changed to require that attorneys meet in person with the child:
   i. Before the temporary custody hearing;
   ii. on a quarterly basis, in the client's environment; and
   iii. whenever the child experiences a placement move.
   iv. Exceptions for children placed more than 100 miles from the court with jurisdiction over the case should be permitted, but should be rare and should be reviewed on a case-by-case basis by the appointing judge, on the GAL's motion. (If Nebraska implements Recommendation 7 below, then the entity created to administer the system of child representation should be charged with granting this permission.) In these cases, private and confidential contact should be made on the same timeframes by telephone or video conferencing.
   v. GALs should be compensated (even if at a reduced rate) for travel time and for work outside of court.
d. Attorneys for children should be held accountable to satisfy their mandatory duties. Ideas for how this may be accomplished are detailed in Recommendations 7 and 8(c) below.

Recommendation 1 is supported by our findings on pp. 17-18; 27-31; 55-59; 78-82; 85-88; 103-06; 170-74; our description of national best practice standards on pp. 31-40; 59-62; 83-85; 98-100; and 145-51; and our discussion on pp. 175-77 and 185-87.

Recommendation 2: *Training for GALs in Nebraska must be significantly increased and enhanced, and there must be organized opportunities for GALs to network with and learn from each other.*

a. Judges should enforce current training requirements. Judges should not be permitted to appoint a lawyer to be the a child's attorney in a 3(a) case who does not have a contract, unless it is established on the basis of the court's certification that no such attorney is available in the county or region.
b. All contract attorneys should be required to attend a multi-day training program that is a combination of substantive knowledge building and trial skills development. (Attorneys with significant trial experience in other fields of law could be excused from the trial skills modules.) Attorneys should be required to attend this program before receiving their first appointment in a 3(a) case.
   i. Among other areas that must be covered, the training should include modules on adolescent development; client interviewing; client counseling; identifying

issues for which expert assistance could be helpful; working with experts; and preparing a client to participate in court hearings.

c. Once an attorney has a contract to provide GAL representation, he or she should be required to attend at least eight hours of CLE relevant to the field of child welfare law each year. Documentation should be a requirement of maintaining and renewing one's contract. (Should Nebraska implement Recommendation 7 below, attorneys should be charged with the affirmative duty of submitting CLE certificates to the entity created to administer the system of child representation, in order to maintain their status on the panel.)
d. An organized "training needs assessment" should be conducted annually, with consideration given to the differing needs in each judicial district as well as uniform statewide needs. Additional training programs should be designed to meet these identified needs.
e. Nebraska should create an informal system for information sharing between guardian ad litems state-wide.
    i. Attorneys should have a mechanism to communicate with each other, such as a listserv, which can be set up for free and does not require any administrative support. This would help provide GALs access to non-legal professional resources, leading cases, and issues arising in immediate cases.
    ii. At training events there should be opportunities for attorneys to discuss challenges and success and a formal exchange of contact information for all attorneys in the state who have Guardian ad Litem contracts.

Recommendation 2 is supported by our findings on pp. 62-67; 72-74; 165; and 167; our description of national best practice standards on pp. 67-72; and 74-77; and our discussion on pp. 183-85.

Recommendation 3: *The relationship between the GAL and the child must be changed to become client-focused, not adult-focused.*

a. A robust client feedback system should be established, to solicit the views of current and former clients as to the quality of services received from attorneys. This information should be provided to judges and used to guide decisions regarding future training needs.
b. Practice standards (see Recommendation 1(c)) should require quarterly meetings with the client and whenever there is a placement change. Attorneys should be required to provide their contact information (telephone and e-mail address) to clients age 10 and older, and to caretakers for all of their clients.
c. The state should establish a hotline for children, foster parents, and others to call to determine the name of a child's attorney or to lodge a complaint.

Recommendation 3 is supported by our findings on pp. 100-45; 151-58; 161-64; 168-69; and 170-71; our description of national best practice standards on pp. 145-51 and 158-61; and our discussion on pp. 180-81 and 186-90.

Recommendation 4: *Nebraska should establish mandatory caseload standards for GALs in 3(a) cases.*

a. A "case" should be defined as being an individual child's matter, as distinct from one family or one sibling group.
b. Caseload standards should be written into contracts with individual GALs and law firms.
c. The caseload standards should take into account the possibility that attorneys will do non-3(a) work.

Recommendation 4 is supported by our findings on pp. 40-42; 163; 165; 167; and 169; our description of national best practice standards on pp. 42-44; and our discussion on pp. 177-79.

Recommendation 5: *All counties that still use the law firm / flat-fee system should phase this system out, given the evidence that attorneys working on an hourly basis have more reasonable caseloads and adequate compensation.*

Recommendation 5 is supported by our findings on pp. 55-59; 165; and 166; our description of national best practice standards on pp. 59-62; and our discussion on pp. 175-77 and 181-83.

Recommendation 6: *Youth should participate in 3(a) proceedings in court.*

a. There should be a presumption that all children over a certain age (such as 10) should be present in court. The burden should be on the child's attorney to demonstrate good cause for why the child should not participate; the attorney should be required to present a written motion to excuse the child at least a week before the court hearing is scheduled.
b. Nebraska should contract with the ABA Bar-Youth Empowerment Project to receive technical assistance on improving practice in this area.

Recommendation 6 is supported by our findings on pp. 151-58 and 161-63; our description of national best practice standards on pp. 158-61; and our discussion on pp. 180-82 and 187-90.

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

Recommendation 7: *Nebraska should establish a centralized system for oversight of GAL services.* Responsibility for administering and funding the system of legal services to children in 3(a) cases should be shifted to an independent state entity, whether within the state Administrative Office of the Courts or the executive branch. This entity should be an autonomous unit responsible for this function, what we will call here an "Office of Child Advocacy," or OCA.

The OCA would:

a. Contract with non-profit legal services organizations in counties with a sufficiently large 3(a) docket to support them; consideration should also be given to establishing a child welfare law office (CWLO) in more rural areas to cover multiple counties. These contracts should not create a flat per case system. The contracts with CWLOs must be structured in such a way to provide automatic payment increases as certain caseload levels are reached.
    i. The contracts must include provisions requiring the CWLOs to have a multidisciplinary practice model; to provide appellate representation; to ensure that all attorneys practice in accordance with mandatory practice standards (as described further in Recommendation 1) reasonable caseloads per attorney (see Recommendation 4); structured supervision of attorneys; and to guarantee the training requirements in Recommendation 2.
b. Create a centrally administered panel system to cover those counties not covered by a CWLO and/or to provide conflict and overflow attorneys in those areas where there is a CWLO.
    i. Attorneys should be required to apply for admission to the panel, pursuant to published admission requirements.
    ii. Attorneys should have to apply to renew their status as panel members on a regular basis, pursuant to published renewal standards.
    iii. The pay structure for panel attorneys should be an hourly rate of pay, including travel and court time, with no per-case caps. (i.e., attorneys should be permitted to spend as much time per case as they deem necessary.) Different rates for different regions of the state may be appropriate, based on cost of living considerations. Mileage expenses for visiting clients and attending out-of-court meetings should be reimbursed.
    iv. The OCA should create a panel of experts in various fields; these experts would agree to a set rate of pay for any 3(a) case. A staff member should be responsible for recruiting and screening members of the expert panel and assisting panel attorneys in finding appropriate experts as requested. The budget for experts should also be funded by the state.
    v. The OCA should hire a part-time county coordinator in each county (or region, where appropriate); this coordinator would be a member of the panel in that county who receives an extra stipend from the OCA to help administer training

and mentoring programs; to serve as the panel's ambassador to the court(s) and other stakeholders in the community; and otherwise coordinate activities of the panel attorneys in that geographic area.

vi. The OCA should implement a mentorship program:
    1. All attorneys in their first year on the panel should be required to work with an experienced attorney mentor as assigned by the OCA. Mentors should be paid for the time they spend with mentees at their hourly panel rate, plus a premium.
    2. At the end of the first year, the mentor and mentee should discuss the mentee's need for continuation in the mentorship program. If either party believes that continued mentoring would be advisable, then the mentoring should continue for a second year. The OCA should also be involved in some manner in the decision to continue or terminate mentorship.

Recommendation 7 is supported by our findings on pp. 16-17; 28-32; 48-56; 72-74; 161-65; 168-69; 170-71; and 172-74; our description of national best practice standards on pp. 32-40; 50-51; and 74-77; and our discussion on pp. 175-77; 179-80; and 183-85.

Recommendation 8: *Nebraska should adopt, by statute, a client-directed model of representation.* Building on Recommendation 3 above, the child's attorney should follow the Nebraska Rules of Professional Conduct just like all attorneys.

a. The terminology should be changed from "GAL" to "child's attorney," to emphasize the nature and role of the position.
b. The "dual role" should be eliminated; the child's attorney should be charged with representing the client's goals and "maintaining a normal attorney-client relationship" in accordance with the Nebraska Rules of Professional Conduct. For clients who are pre-verbal, and for clients whose reasoning capacity is diminished AND whose directives would place them at substantial risk of serious harm, the child's attorney should follow Nebraska Rule of Professional Conduct § 3-501.14.
c. Legislation should be enacted to overturn the Nebraska Supreme Court's decision in *Billups* to clarify that the role of "child's attorney" is distinct from the role of GAL and that, prospectively, children's attorneys should not be immune from malpractice claims.
d. To preserve the court's option of appointing someone to investigate the child's best interests, the state should provide funding to the CASA program. However, consistent with the Nebraska Rules of Professional Conduct, the child's attorney is still permitted to take protective action for young clients. If children's attorneys are successful at client counseling, it will be the rare case that will require the court to appoint a paid GAL in addition to the lawyer.

Recommendation 8 is supported by our findings on pp. 99-144; 151-58; and 161-63; our description of national best practice standards on pp. 145-51 and 158-61; and our discussion on pp. 179-81 and 186-90.

Recommendation 9: *Nebraska should renovate court facilities to make them adequate for the needs of children and youth.*

Every courthouse where 3(a) cases are heard should alter its physical plant so that:

a. There is a designated space for children and youth to wait for their case to be called; the space should be age appropriate and properly staffed;
b. There is appropriate space for children and youth to meet with their attorney or CASA; this space should be child-friendly in furnishing and design; and
c. Seating arrangements in courtrooms where 3(a) cases are heard should be adjusted so that children's attorneys have their own table separate from the other parties.

Recommendation 9 is supported by our findings on pp. 52-54; 161-69; and 171-74; our description of national best practice standards on pp. 54-55; and our discussion on pp. 180-81.

Works Cited

Aleck, P.A. & Settle, R.B. (1985). *The survey research handbook*. Homewood, IL.

American Bar Association, Standing Committee on Ethics and Professional Responsibility. (2006). *Formal Opinion 06-441: Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*. Chicago, IL: Author.

American Bar Association. (____). *Model Rules of Professional Conduct.* Chicago, IL: Author. Available at: http://www.abanet.org/cpr/mrpc/mrpc_toc.html

_____. (2009) Legal Center for Foster Care and Education. Website; available at http://www.abanet.org/child/education/.

_____. (2009). Bar-Youth Empowerment Project. Website; available at http://www.abanet.org/child/empowerment/home.html.

_____. (1996). *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases.* Chicago, IL: Author.

Center for Court Innovation, Youth Justice Board (2007). "Stand Up Stand Out: Recommendation to Improve Youth Participation in New York City's Permanency Planning Process." New York, NY: Author. Retrieved October 26, 2009 from http://www.courtinnovation.org/_uploads/documents/YJBreport%20final_2007.pdf.

Children's Aid Society. (n.d.). *Queens Family Court Teen Space*. Retrieved October 26, 2009 from http://www.childrensaidsociety.org/legaladvocacy/oppca/programs/queens-family-court-teen-space.

Connecticut Chief Child Protection Attorney (CCPA). (2009). *Second Annual Report of the Chief Child Protection Attorney.* Hartford, CT: Author. Available at www.ct.gov/ccpa.

Conger, D. & Ross, T. (2001). *Reducing the Foster Care Bias in Juvenile Detention Decisions: The Impact of Project Confirm*. New York, NY: Vera Institute of Justice. Available at http://www.vera.org/download?file=177/Foster%2Bcare%2Bbias.pdf.

Courtney, M.E., Dworsky, A., Cusick, G.R., Havlicek, J., Perez, A. & Keller, T., (2007). *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes as Age 21*. Retrieved October 20, 2009 from http://www.jimcaseyyouth.org/docs/ch_midwest_study121207.pdf

Davidson, H. & Pitchal, E.S. (2006). *Caseloads Must Be Controlled So All Child Clients May Receive Competent Lawyering*. Available at epitchal.googlepages.com/prof.eriks.pitchal.

Duey, B. & Abrams, S. (2006). *241.1 Guidebook.* Los Angeles, CA: Authors.

Ells, M., et al. (2004). Unraveling the Labyrinth: A Proposed Revision of the Nebraska Juvenile Code, *Nebraska Law Review, 8*, 1126 - 1165.

English, D.J., Widom, C.S., & Branford, C. (2002). *Childhood Victimization and Delinquency, Adult Criminality, and Violent Criminal Behavior: A Replication and Extension*. Washington, D.C.: Department of Justice, National Institute of Justice. Available at http://www.ncjrs.gov/pdffiles1/nij/grants/192291.pdf

First Star. (2009.) *A Child's Right to Counsel: A National Report Card On Legal Representation for Abused and Neglected Children (2d Ed.)*. Washington, D.C.: Author. Available at http://www.firststar.org/documents/Final_RTC_2nd_Edition.pdf.

Fordham Interdisciplinary Center for Family and Child Advocacy. (2006). *New York City Youth Summit: Engaging Youth in Family Court Proceedings.* New York, NY: Author. Available at http://epitchal.googlepages.com/prof.eriks.pitchal.

Freedman, D. & Smith, A. (2004). *Understanding Lawyers' Ethics.* Newark, NJ: LexisNexis.

Gottlieb, C. & Pitchal, E.S. (2007). Family values: How children's lawyers can help their clients by advocating for parents. *Juvenile and Family Court Journal, 58(*1), 17-36.

Guggenheim, M. (2005). "How Children's Lawyers Serve State Interests," *Nevada Law Journal* , 6, 805.

_____ (1984). "The Right to Be Represented But Not Heard: Reflections on Legal Representation for Children," *N.Y.U. Law Review,* 59, 76-95.

Hertz, R., et al. (2008). *Trial Manual for Defense Attorneys in Juvenile Court.* Philadelphia, PA: American Law Institute.

Herz, D.C., Ryan, J.P., & Bilchik, S. (2010). "Challenges Facing Crossover Youth: An Examination of Juvenile Justice Decision Making and Recidivism," *Family Court Review* (forthcoming).

In re Gault. (1967). 387 U.S. 1.

Javier, R.A., Baden, A.L., Biafora, F.A. & Camacho-Gingerich, A. (Ed.) (2007). *Handbook of Adoption*. Thousands Oak, CA: Sage.

Jenkins, J.J. (2007). Listen to Me! Empowering Youth and Courts Through Increased Youth Participation in Dependency Hearings, *Family Court Review, 46,* 163-79.

Jerome Frank Legal Services Organization (2007). *Giving families a chance: Necessary reforms for the adequate representation of Connecticut's children and families in child abuse and neglect cases.* New Haven, CT: Yale Law School.

Jonson-Reid, M. & Barth, R. (2000). From placement to prison: The path to adolescent incarceration from child welfare supervised foster or group care. *Child and Youth Services Review*, 22(7), 493-516.

Judicial Council of California. (2008). *Dependency Counsel Caseload Standards: A Report to the California Legislature*. San Francisco, CA: Author.

Kahn, W.A. (2005). *Holding Fast: The Struggle To Create Resilient Caregiving Organizations*. New York, NY: Brunner-Routledge.

Kerman, B., Freundlich, M. & Maluccio, A. (Eds.) (2009). *Achieving Permanence for Older Children and Youth.* New York: Columbia University Press;

Khoury, A. (2006). Seen *and* Heard: Involving Children in Dependency Court. *Child Law Practice*,*25*(10), 145-155.

Koh Peters, J. (2007). *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions*. Newark, NJ: LexisNexis.

Krinsky, M.A. & Rodriguez, J. (2006). *Giving a Voice to the Voiceless: Enhancing Youth Participation in Court Proceedings*, Nevada Law Journal, 6, 1302-1312.

Legal Center for Foster Care and Education. (2008). *Blueprint for Change: Education Success for Children in Foster Care (Second Edition).* Washington, DC: American Bar Association.

Mallon, G.P. & Hess, P.M. (2005). (Eds.) *Child welfare for the twenty-first century : A handbook of practices, policies, and programs.* New York: Columbia University Press.

Markey, E. (2007). Foster Teen Grab Reins of Plans for Their Lives. *City Limits*, 593. Available at http://www.citylimits.org/content/articles/viewarticle.cfm?articlenumber=3357.

Massachusetts Committee for Public Counsel Services. (2008). *Qualifications and Rates for Investigators, Social Science Providers, and Expert Witnesses.* Boston, MA: Author. Available at http://www.publiccounsel.net/billing_information/non_attorney_professional_services_billing/pdf/ExpertQualificationsandRates.pdf.

_____. (2007). *Assigned Counsel Manual: Policies and Procedures.* Boston, MA: Author. Available at http://www.publiccounsel.net/private_counsel_manual/private_counsel_manual_pdf/chapters/manual_chapter_5.pdf.

_____. (2006). *Children and Family Law Program Mentoring Program Manual*. Boston, MA: Author.

_____. (n.d.) *Trial Panel: Child and Family Law*. Available at http://www.publiccounsel.net/certification_requirements/civil_cases/trial_panel.html.

_____. (n.d.) *Performance Standards Governing the Representation of Children and Parents in Child Welfare Cases.* Boston, MA: Author. Available at http://www.publiccounsel.net/Private_Counsel_Manual/private_counsel_manual_pdf/chapters/chapter_4_sections/civil/trial_panel_standards.pdf.

McNaught, K. (2005). *Mythbusting: Breaking Down Confidentiality and Decision-Making Barriers to Meet the Education Needs of Children in Foster Care.* Washington, D.C.: ABA Center on Children and the Law. Available at http://www.abanet.org//child/education/mythbusting2.pdf.

Morris, L. & Freundlich, M. (2004). *Youth Involvement in the Child Welfare and Juvenile Justice Systems: A Case of Double Jeopardy?* Washington, D.C.: CWLA Press.

Munson, S. & Freundlich, M. (2005). Double Jeopardy: Youth in Foster Care Who Commit Delinquent Acts. *Children's Legal Rights Journal*, 25(9).

National Association of Counsel for Children. (2006). *Child Welfare Law Office Guidebook: Best Practices for Organizational Legal Representation of Children in Abuse, Neglect, and Dependency Cases*. Denver, CO: Author.

_____. (2001). *Recommendations for Representation of Children in Abuse and Neglect Cases*. Denver, CO: Author.

_____. (1999). *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (NACC Revised Version).* Denver, CO: Author. Available at http://www.naccchildlaw.org/?page=PracticeStandards.

National Council of Juvenile and Family Court Judges. (2008). *Technical Assistance Brief: Asking the Right Questions II: Judicial Checklists to Meet the Educational Needs of Children and Youth in Foster Care.* Reno, NV: Author. Available at http://www.ncjfcj.org/images/stories/dept/ppcd/pdf/EducationalOutcomes/education%20checklist%202009.pdf.

National Council of Family and Juvenile Court Judges.(1995). *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases.* Reno, NV: Author.

National Juvenile Defender Council .(2009). *Role of Juvenile Defense Counsel in Delinquency Court*. Washington, D.C.: Author.

Nebraska State Court Improvement Project: Child Abuse and Neglect Cases (Oct. 1996) and *Nebraska Court Improvement Project: 2005 Reassessment of Court and Legal System for Child Abuse and Neglect and Foster Care* (Jan. 2006). (*CIP 2005 Reassessment*).

Neeley, L. (2006). *Report to the Nebraska Supreme Court on Indigent Defense Systems and Fee Structures*, Nebraska Minority Justice Committee.

New York State Bar Association (2007). *Standards for Attorneys Representing Children in Child Protective, Foster Care, and Termination of Parental Rights Proceedings.* New York, NY: Author. Available at http://www.nysba.org/AM/Template.cfm?Section=Law_Guardian_Representation_Standards&Template=/CM/ContentDisplay.cfm&ContentID=11559.

New York State Rules of the Chief Judge. (2007). *Function of the Attorney for the Child*, Rule 7.2. 22 N.Y.C.R.R. § 7.2.

Newman I. & McNeil, K. (1998). *Conducting survey research in the social sciences*. Lanham, MD: University Press of America.

Nevada Law Journal. (2006). *Special Issue on Legal Representation of Children,* 6(3), 571-1424.

Patton, M.Q. (2002). Social sciences: Evaluation research. Thousand Oaks, CA: Sage.

Pecora, P.J., Kessler, R.C., O'Brien, K., White, C.R., Williams, J., Hiripi, E., English, D., White, J. & Herrick, M.A. (2006). Educational and employment outcomes of adults formerly placed in foster care: Results from the Northwest Foster Care Alumni Study. Children *and Youth Services Review, 28,*1459-1481.

Pew Commission on Children in Foster Care. (2004). *Fostering the Future: Safety, Permanence, and Well-Being For Children In Foster Care.* Washington, D.C.: Author.

Piazza, D.A. (2008). *Dual-Status Children: Protocols for Implementing Assembly Bill 129.* San Francisco, CA: Administrative Office of the Courts.

Pitchal, E.S. (2008). Where Are All the Children? Increasing Youth Participation in Dependency Proceedings. *U.C.-Davis Journal of Juvenile Law and Policy*, 12, 233- ___.

_____. (2005). What Every Public Defender Needs to Know About Foster Care. *ABA Children's Rights Litigation Committee Newsletter,* 7(2).

Ross, T. & Conger, D. (2009). Bridging Child Welfare and Juvenile Justice: Preventing the Unnecessary Detention of Foster Children. In T. Ross (Ed.), *Child Welfare: The Challenges of Collaboration* (pp. 471-499). Washington, D.C.: Urban Institute Press.

Ryan, J.P. & Testa, M. (2005). Child Maltreatment and Juvenile Delinquency: Investigating the Role of Placement and Placement Instability. *Child and Youth Services Review*, 27(3), 227-249.

Schwandt, T. (2001). *Dictionary of qualitative inquiry*. Thousand Oaks, CA: Sage.

Smith, C. & Thornberry, T.P. (1995). The Relationship Between Childhood Maltreatment and Adolescent Involvement in Delinquency. *Criminology*, 33(4), 451-477.

Steckler, T. & Solomon, G. (2008). New Era In Representing Children. *New York Law Journal*, Oct. 22, 2008, available at http://www.legal-aid.org/en/mediaandpublicinformation/inthenews/newerainrepresentingchildren.aspx.

Taylor, L. (2009). "A Lawyer for *Every* Child: Client-Directed Representation in Dependency Cases." *Family Court Review*, 47 (4), 605-633.

Ventrell, M. & Duquette, D.N. (Eds.) (2005). *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases.* Denver, CO: Bradford Publishing Co.

Carl Vinson Institute of Government. (2007). *Child Advocate Attorney Representation and Workload Study.* Athens, GA: University of Georgia. Available at http://www.childrensrights.org/wp-content/uploads/2008/06/2007-06-25_ga_fulton_workload_study.pdf.

Washington Department of Social and Health Services. (2004). *Helping Foster Children Achieve Educational Stability and Success: A Field Guide for Information Sharing.* Olympia, WA: Author. Available at http://www.mockingbirdsociety.org/files/reference/Educational_Resources/Foster_Care_Field_Guide_together.pdf

Weisz, V. & Thai, N. (2003). The Court Appointed Special Advocate (CASA) Program: Bringing Information to Child Abuse & Neglect Cases. *Child Maltreatment, 8,* 204 - 216.

Weisz, V., Wingrove, T., & Faith-Slaker, A. (2007). "Children and Procedural Justice." *Court Review*, 44, 36-43.

Zinn, A.E. & Slowriver, J. (2008). *Evaluation of the Legal Aid Society of Palm Beach County's Foster Children Project*: *Final Report.* Chicago: Chapin Hall at the University of Chicago.

About the Evaluators

The National Association of Counsel for Children and the Youth Law Center

The University of Nebraska-Lincoln awarded the grant to conduct the evaluation of the GAL system to the National Association of Counsel for Children. The National Association of Counsel for Children (NACC) is a non-profit child advocacy and professional membership association. The NACC is dedicated to providing high quality legal representation for children. Our mission is to improve the lives of children and families through legal advocacy. Founded in 1977, the NACC is located in the Kempe Children's Center on the campus of The Children's Hospital outside Denver, Colorado. The NACC is a multidisciplinary organization with approximately 2,500 members representing all 50 states and several foreign countries. NACC membership is comprised primarily of attorneys and judges, although the fields of medicine, social work, mental health, education, and law enforcement are also represented. The NACC also maintains a policy representative in Washington, DC.

The NACC provides training and technical assistance to attorneys and other professionals, serves as a public and professional information referral center, and engages in public policy and legislative advocacy and works to improve the child welfare, juvenile justice and private custody systems. Child Welfare Attorney Specialization is a program whereby the NACC certifies qualified attorneys as Child Welfare Law Specialists (CWLS). The NACC works to serve the legal needs of children and youth by creating this area of specialization. Attorneys receive the CWLS credential by showing their proficiency in child welfare law through a comprehensive child welfare law competency process. Attorneys in 14 states are eligible for CWLS.

NACC programs include publications such as the quarterly newsletter *The Guardian*; *The Children's Legal Rights Journal* and annual children's law manuals. The NACC sponsors an annual national children's law conference each fall as well as a trial skills training each spring. It participates as amicus curiae in cases of national significance to children and maintains a policy agenda, a national child advocate awards program, and a speakers bureau. NACC state and local affiliates also exist to promote the mission of the NACC on a local level. The NACC national office in Colorado serves the needs of members as a children's law resource center.

For this evaluation project, the NACC partnered with the Youth Law Center, a public interest law firm that works to protect children in the nation's foster care and juvenile justice systems from abuse and neglect, and to ensure that they receive the necessary support and services to become healthy and productive adults. Since 1978, its lawyers have worked across the United States to reduce the use of out-of-home care and incarceration; ensure safe and humane conditions in out-of home placements; keep children out of adult jails; and secure equitable treatment for children in both systems. YLC's efforts have focused on strengthening families, and advocating for education, medical and mental health, legal support, and transition services needed to assure children's success in care and in the community. Its mission focuses on increased accountability of the juvenile justice and child welfare systems, and champion professional and public education.

Project Leadership

Erik Pitchal is the Project Director. A board member of the NACC, Erik Pitchal is Assistant Clinical Professor of Law at Suffolk University in Boston, where he founded the Child Advocacy Clinic. He also teaches Family Law and the Juvenile Defender Clinic. Prof. Pitchal received his J.D. from Yale and his B.A. in public policy from Brown. Prof. Pitchal's expertise as a practicing lawyer is in the representation of children, primarily in dependency and delinquency cases. Before entering academia, he was an attorney at the Legal Aid Society and Children's Rights, both in New York. He is a former law clerk to Judge Robert Patterson of the U.S. District Court for the Southern District of New York. In 2005, he was named Child Advocate of the Year by the American Bar Association's Young Lawyers Division. Prof. Pitchal's research interests are in family law, children and the law, and legal ethics. He is particularly interested in the relationships among lawyers for children, their clients, and the state. His recent publications include *Thickening the Safety Net: Key Elements to Successful Independent Living Programs For Young Adults Aging Out of Foster Care*, 23 ST. JOHN'S J. LEGAL COMMENT. 447 (2008); *Where Are All the Children? Increasing Youth Participation in Dependency Proceedings*, 12 J. U.C. DAVIS J. JUV. L. & POL. 233 (2008); and *Children's Constitutional Right to Counsel in Dependency Cases*, 15 TEMPLE POL. & CIV. RTS. L. REV. 663 (2007). In addition to his service to the NACC, Prof. Pitchal serves on the Massachusetts Task Force on Youth Aging Out of DCF Care and the advisory board of the ABA Center on Children and the Law's Bar-Youth Empowerment Project.

Madelyn Freundlich is the Principal Investigator for the GAL Study and serves as a consultant to YLC. Ms. Freundlich is the Founder and Senior Child Welfare Consultant at Excal Consulting Partners, LLC, based in New York. Ms. Freundlich is a senior child welfare consultant who works with national, regional and state child welfare organizations as they develop and implement practice, program, policy and research initiatives. She formerly served as General Counsel and Director of Child Welfare Services for the Child Welfare League of America, Associate Director of Planning for the Massachusetts Society for the Prevention of Cruelty to Children, Executive Director for the Evan B. Donaldson Adoption Institute, and Policy Director for Children's Rights. Ms. Freundlich holds master degrees in social work (M.S.W., Louisiana State University) and public health (M.P.H., University of North Carolina at Chapel Hill) and two degrees in law (J.D., University of Houston and LL.M., Georgetown University). Her work has focused on a broad array of child welfare services and outcomes, including the prevention of child abuse and neglect, family preservation, and safety, permanency and well being outcomes for children and youth in foster care. Her research has focused on safety and well being outcomes for foster youth in congregate care settings and permanency outcomes for older children and youth in foster care. Her work also has involved analyses of federal and state child welfare financing and service contracting. Most recently, she co-edited a volume of contributed chapters by leading researchers in the field of child welfare.

Corene Kendrick is the Lead Interviewer and the liaison between the NACC and YLC, where she is a Staff Attorney. At YLC, Ms. Kendrick has worked on a variety of YLC's reform projects and impact litigation on issues such as the use of institutions for small children in foster care, due process for California juveniles in parole proceedings, benefits for youth aging out of foster care, education and mental health services

for youth in juvenile justice and foster care, and basic conditions of care in foster care and juvenile justice. Ms. Kendrick recently co-wrote an article assessing California county probation departments' ability to manage youth who are incompetent to stand trial. She is part of the YLC technical assistance team on conditions of confinement for the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative, and is co-leader of the California team participating in the John D. & Catherine T. MacArthur Foundation's Juvenile Indigent Defense Action Network, designed to improve the quality of juvenile defense in the state. Prior to coming to YLC in 2005, Ms. Kendrick was a Skadden Fellow Staff Attorney at Children's Rights, where among other duties she was part of the New Cases team that conducted comprehensive assessments and reviews of the foster care systems in various states. One of the states that she assessed was Nebraska, and she travelled across the state in 2004 meeting with GALs, foster parents, social workers, judges, adoptive families, CASAs, and biological parents to learn about the strengths and weaknesses of the Nebraska foster care system. She also conducted field research in April 2009 in Lancaster County, Nebraska, as part of the team of the National Juvenile Detention Center's assessment of the state's system of juvenile delinquency representation. Ms. Kendrick received her J.D. from Stanford Law School, and also holds a Masters of Public Affairs from the University of Texas and a B.A. from George Washington University.

Demographic Information About Evaluation Participants by Method

Guardians ad Litem

Seventy one GALs responded to the survey. The counties in which these GALs practice are provided in Table A.

Table A. Counties of Responding GALs

County	Number of GALs Identifying as Primary County Where GAL Practices Law	Number of GALs Identifying as Primary County for Practice as a GAL
County A	28	24
County B	25	24
County C	5	5
County D	4	4
County E	6	7
Other County	1	4
Varies	1	--
Unusable Response	--	2

As Table B shows, the responding GALs as a group reported substantial experience as attorneys and as GALs specifically.

Table B. Responding GALs: Years of Experience as Attorneys and GALs

	Minimum Years Reported Experience	Maximum Years Reported Experience	Average Years of Experience
Number of years as an attorney	1 year	44 years	19.2 years
Number of years as a GAL	6 months	30 years	12.8 years

The responding GALs reported a wide range of experience in the total number of cases that they had ever handled as a GAL (see Table C).

Table C. Responding GALs: Total Number of Cases Ever Handled as a GAL

Total Number of Cases Ever Handled	Number of GALs Reporting this Total Number of Cases as a GAL
1	3
2-5	3
10-15	4
20-35	16
50	4
60-80	6
100 -150	6
Over 170	1
200-300	7
300+	3
"Hundreds"	2
417	1
500	1
5000+	1
Too many to estimate/do not know	6

County Attorneys

Four county attorneys completed the survey: one from County A, one from County B, one from County C, and one from County E. Their years of experience as an attorney ranged from one year to 27 years, and their years of experience as a county attorney ranged from one year to 20 years. When asked how many cases in total (including 3(a cases) they had ever handled as a county attorney, their answers ranged from 100+ to 500+. County attorneys were asked about the percentage of their caseloads that were 3(a) cases and specifically, the percentage of different types of 3(a) cases that they

handled. County attorneys who were able to provide information estimated that between 30% to 50% of their 3(a) cases involved families whose children remained at home; between 20% and 50% involved families whose children were placed in foster care. County attorneys' total caseloads ranged from 100+ to 300 cases.

CASA Volunteers

Eighty-nine CASA volunteers completed the survey. Table D provides the counties in which the responding CASAs serve as CASAs, and Table E shows the number of years of experience as CASAs that the responding CASAs reported.

Table D. Counties of Responding CASAs

County	Number of Responding CASAs
County A	24
County B	30
County C	7
County D	15
County E	10
Other County	3

Table E. Responding CASAs: Number of Years of CASA Experience

Number of Years	Number of Responding CASAs
0-12 months	27
13 – 24 months	19
25-36 months	7
37-48 months	11
49-60 months	6
61+ months	19

Most of the responding CASA reported that they had handled one case as a CASA (see Table F). The great majority of CASAs (87%) reported carrying only one case as a CASA at any one time. Nine

percent said that they care one or two cases at any one time. One CASA reported supervising between 14 and 20 cases at any one time; two CASAs did not provide a response.

Table F. Responding CASAs: Totaled Number of Cases Ever Involved in as a CASA

Total Number of Cases	Number of CASAs
0	1
1	42
2	20
3	9
4	3
5	5
6+	8
Only supervises cases	1

As Table G shows, CASAs varied in their responses to questions about the percentages of their cases that involved children in 3(a) cases who remained at home with their families and children who entered foster care.

Table G. Responding CASAs: Percentage of Cases that Are In Home Cases and Foster Care Cases

In Home Cases		Foster Care Cases	
Percentage of CASA cases	**Percentage of CASAs reporting this percentage of cases**	**Percentage of CASA cases**	**Percentage of CASAs reporting this percentage of cases**
0%	66%	0%	8%
5-20%	6%	46-66%	7%
25-66%	17%	70-85%	10%
100%	11%	95-100%	71%
Unusable response	--	Unusable response	3%

Foster Parents

Six foster parents completed the survey. Two foster parents were from County B; one was from County E; and three were from other counties. Responding foster parents reported having been foster parents from 7 years to 20 years. The number of children they had fostered ranged from 10 to 70. The responding foster parents reported currently having between 2 and 6 children in their homes (between 0 and 4 children by birth or adoption and between 1 and 3 children in foster care). Foster parents were asked to complete the survey for the foster child who had been in their homes the longest. These children ranged in age from 26 months to 16 years and had been in their homes an average of 11 months.

Parents

Four parents completed the survey. One parent resided in County A; two parents resided in County B; and one parent resided in another county. Parents reported having between 1 and 5 children. Half of the parents had an open case with DHHS and half did not.

For parents with open cases reported where their children were currently living:

- One parent reported that his/her children were living with him/her
- One reported that his/her children were in foster care
- One said that some children were living with him/her and some were either in foster care or living with a relative

For parents with closed cases provided information on their previous involvement with DHHS:

- One parent reported that his/her children were placed in foster care
- One said that some children had remained him/her and other children were either placed in foster care or had lived with a relative

Department of Health and Human Services (DHHS) Caseworkers

Seventy DHHS caseworkers completed the survey. Table I provides the counties where these caseworkers work.

Table H. Counties of Responding DHHS Caseworkers

County	Number of Caseworkers
County A	22
County B	12
County C	1
County D	1

County	Number of Caseworkers
County E	4
Other County	28
No Answer	1

Table I provides the years of DHHS casework experience reported by the responding caseworkers.

Table I. Years of DHHS Casework Experience of Responding Caseworkers

Number of Years as a DHHS Caseworker	Percentage of Caseworkers
Less than one year	15%
1 to 2 years	36%
3 to 5 years	23%
6 to 8 years	7%
9 to 12 years	3%
13+ years	17%

Of the responding caseworkers, 96 percent ported carrying both in home and foster care cases. Tables J and K provide information on the caseloads of the responding DHHS caseworkers (children and families).

Table J. Responding DHHS Caseworkers: Total Number of Children in their Current Caseloads

Number of Children	Percentage of Caseworkers
0-10	10%
11-20	34%
21-30	20%
31-40	19%
41-50	7%

Number of Children	Percentage of Caseworkers
51-60	4%
85	1%
159	1%
Varies	1%
Supervise Cases	1%

Table K. Responding DHHS Caseworkers: Total Number of Families in their Current Caseloads

Number of Families	Percentage of Caseworkers
0-10	36%
11-20	39%
21-30	16%
31-40	4%
41-50	1%
145	1%
Varies	1%
Supervise Cases	1%

DHHS caseworkers were asked with how many GALS they had had contact over the past two years. As Table L shows, more than half have had contact with between 6 and 20 GALs.

Table L. Responding DHHS Caseworkers: Number of GALs with Whom They Have Had Contact Over the Past Two Years

Number of GALs	Percentage of Caseworkers
1-5	27%
6-10	31%

Number of GALs	Percentage of Caseworkers
11-20	26%
21-30	10%
41-50	1%
51-60	1%
"Too many to count"	1%

Foster Care Review Board Members

Nineteen members of Foster Care Review Boards completed the survey. Ten were from County A; seven were from County B; one was from County C; one was from County E; and one was from another county. Their experience as a Foster Care Review Board member ranged from one year to 22 years, with an average of 7 years of experience. When asked about the total number of cases that they had reviewed as a Foster Care Review Board member, their responses ranged from 90+ cases to more than 700.

Interviewees

Thirteen judges participated in interviews, as shown in Table M.

Table M. Counties of Judges Who Were Interviewed

County	Number of Judges
County A	5
County B	4
County C	1
County D	1
County E	2

The judges reported a range of 3 to 23 years experience as a judge and a range of 9 years to 35 years of experience with 3(a) dependency and child welfare cases. Table N summarizes the judges' reports regarding the 3(a) cases in their dockets.

Table N. Judges Reports on 3(a) Cases

County	Judge	# of open 3(a) pending before the court	% of docket comprised of 3(a) cases	% of time spent in hearing 3(a) cases
County A	#1	Probably at least a couple of hundred	About one-fourth	Definitely more than one-half
	#2	Around 300	25%	40-50%
	#3	Doesn't exactly know	About or a little above half of the docket	Definitely more than half of court's time
	#4	Approximately 200	One-third	Close to half, if not more
	#5	300-350	50-60%	Two-thirds
County B	#1	About 100	50%	60%
	#2	At least 150 to 200	One-third	More than half to two-thirds
	#3`	265	18%	"Way, way, way more than 18%"
County C	#1	150 (for three counties including County C)	25 cases in County C	50%
County D	#1	450	5%	5% to 10%
County E	#1	Does not know	Roughly 10%	Probably close to 25%
	#2	Between 65 and 100	At least 20% which includes delinquency cases	Much more on dependency than its proportion of the docket

Key Informants

Four key informants were interviewed, including legal, foster care and child welfare experts in the state of Nebraska.

Young People who Participated in Focus Groups

Background information was collected from young people who participated in each focus group. Tables 0 and P summarize some of the background information collected from young people who participated in each focus group.

Table O. Summary of Focus Group Participants' Backgrounds

Foster care status	Gender	Age at time of focus group	Age at time of entering foster care	Average time in care	Number of siblings	Race and Ethnicity	Education
9 currently in foster care; 7 previously in foster care	9 males; 7 females	15 to 23 years	6-17 years	5.9 years	0 to 8	1 African American 2 African American and Latino 1 African American and White 1 African American and American Indian 7 White 1 White, American Indian and Other 1 White and Other 3 Latino	5 in high school 1 Has high school diploma 1 Has high school diploma, not in school right now 5 In college 1 Not in school right now

Table T. All Focus Group Participants' Past and Current Living Arrangements

	Past Living Arrangements (participants identified all that applied)	Current Living Arrangements
With parents	--	1

With another relative	6	2
With an unrelated foster family	15	7
Group home/residential	7	1
Independent living	2	
On his/her own	--	1
With friends	--	3
Other	1 – with a guardian	1