

ALASKA LEGISLATURE COMMITTEE FILES 1900-1900 00/2

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HJUD

HB 474

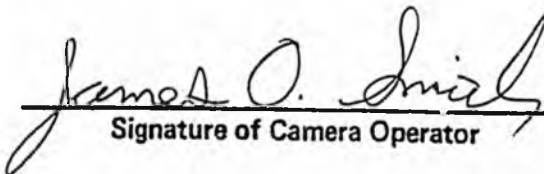
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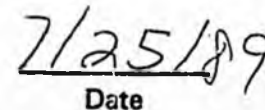


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Signature of Camera Operator


Date

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STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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J. NEALE, ALASKA 99811
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary

2/20/86

1:30 pm

COMMITTEE REPORT

(7)

Date referred: 2/7/86

FURTHER REFERRALS: FINANCE

DATE: _____

The JUDICIARY Committee has considered HB 474

"An Act relating to volunteer guardians ad litem in the Office of Public Advocacy."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
- replace with _____ new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman

Original sponsors: Sund, Gruenberg,
Cotten, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 474 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to volunteer guardians ad litem in,
7 and grants to, the Office of Public Advocacy."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 44.21.410 is repealed and reenacted to read:

10 Sec. 44.21.410. POWERS AND DUTIES OF PUBLIC ADVOCACY OFFICE.

11 (a) The office of public advocacy shall

12 (1) perform the duties of the public guardian under AS 13.-
13 26.360 - 13.26.410;

14 (2) provide visitors and experts in guardianship proceed-
15 ings under AS 13.26.131;

16 (3) provide guardian ad litem services to children in child
17 protection actions under AS 47.17.030(e) and to wards and respondents
18 in guardianship proceedings who will suffer financial hardship or
19 become dependent upon a government agency or a private person or
20 agency if the services are not provided at state expense under AS 13.-
21 26.112;

22 (4) provide legal representation in guardianship proceed-
23 ings to respondents who are financially unable to employ attorneys
24 under AS 13.26.106(b), to indigent parties in cases involving child
25 custody in which the opposing party is represented by counsel provided
26 by a public agency, and to indigent parents or guardians of a minor
27 respondent in a commitment proceeding concerning the minor under
28 AS 47.30.775;

29 (5) provide legal representation and guardian ad litem

1 services under AS 25.24.310; in cases arising under the Uniform Inter-
2 state Compact on Juveniles (AS 47.15); in cases involving petitions to
3 adopt a minor under AS 25.23.100(j); in cases involving petitions to
4 remove the disabilities of a minor under AS 09.55.590; in children's
5 proceedings under AS 47.10.050(a); and in cases involving indigent
6 persons who are entitled to representation under AS 18.85.100 and who
7 cannot be represented by the public defender agency because of a
8 conflict of interests.

9 (b) The office of public advocacy may develop and coordinate a
10 program to recruit, select, train, assign, and supervise volunteer
11 guardians ad litem from local communities to aid in delivering
12 services in cases in which the office of public advocacy is appointed
13 as guardian ad litem.

14 (c) The commissioner of administration may

15 (1) adopt regulations that the commissioner considers
16 necessary to implement AS 44.21.400 - 44.21.460;

17 (2) report on the operation of the office of public advoca-
18 cacy when requested by the governor or legislature or when required by
19 law;

20 (3) solicit and accept grants of funds from the federal
21 government, local governments, persons, and private foundations, and
22 allocate or restrict the use of those funds as required by the
23 grantor.

24 * Sec. 2. AS 44.21 is amended by adding new sections to read:

25 Sec. 44.21.450. NON-ATTORNEY VOLUNTEER GUARDIANS AD LITEM. A
26 non-attorney volunteer guardian ad litem may not give legal advice or
27 act in the capacity of legal counsel or attorney for a minor before a
28 court or administrative agency.

29 Sec. 44.21.460. CIVIL LIABILITY. (a) A volunteer guardian ad

1 litem under the supervision of the office of public advocacy may not
2 be held personally liable in a civil action for acts or omissions
3 during the good faith performance of duties as a guardian unless the
4 volunteer was guilty of gross negligence or reckless or intentional
5 misconduct.

6 (b) This section does not affect the civil liability of the
7 office of public advocacy.
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POSITION PAPER

HOUSE BILL NO. 474

For an Act entitled: "An Act relating to volunteer guardians ad litem in the Office of Public Advocacy."

The purpose of this bill is to amend AS 44.21.410 to the Office of Public Advocacy to develop and coordinate a program to recruit, select, train, assign, and supervise volunteer guardians ad litem from local communities to aid in delivering services in cases in which the Office of Public Advocacy is appointed as guardian ad litem.

The provision of a guardian ad litem is widely supported by the division as an essential means of ensuring the protection of abused or neglected children. The division's policy states that if the court finds probable cause and orders the child committed to the department for temporary placement, the worker shall request the appointment of a guardian ad litem to represent the child in future proceedings in accordance with AS 47.17.030(e) which states that "in all actions taken by the Department or a Health and Social Services agency of a local government under this chapter that result in a judicial proceeding the child shall be represented by a guardian ad litem in that proceeding."

The court is given authority by statute to appoint an attorney or a guardian ad litem for the child in a proceeding which is concerned with the child's custody, support, visitation or in any other legal proceedings involving his welfare. A guardian ad litem appointed pursuant to the Alaska Statutes is an advocate for the best interests of the child, with not only the power but the responsibility to represent the child zealously and to the best of his ability. While the child's attorney advocates the child's wishes, these are not always in his best interest. In 1974, Congress enacted the "Child Abuse Prevention and Treatment Act". According to the Act, the guardian ad litem was to be more than a simple advocate for the child, but rather a guardian to protect the child's long range interests.

Because the duties of a guardian ad litem are varied and numerous, it is important that the guardians ad litem receive appropriate training in their roles, duties, and responsibilities. It is important to maintain an adequate pool of trained guardians ad litem to meet children's needs. The division strongly believes that a trained, knowledgeable pool of guardians ad litem would assist the division to ensure that children receive appropriate services and that the case plan for each child is

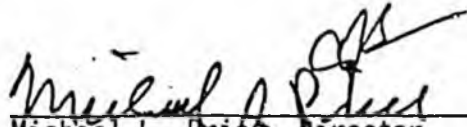
POSITION PAPER/Department of Health & Social Services

Position Paper
House Bill 474
Page 2

being appropriately administered. The division will offer technical assistance and coordination in any training program developed by the Office of Public Advocacy.

The department strongly supports this bill.

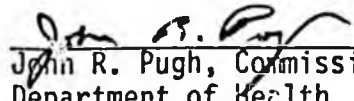
RECOMMENDED:



Michael L. Price, Director
Division of Family
and Youth Services

DATE: February 4, 1986

APPROVED:



John R. Pugh, Commissioner
Department of Health
and Social Services

DATE: 2/5/86

Hein
2/24/86✓

Original sponsors: Sund, Gruenberg,
Cotten, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 474 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

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5 proceedings under AS 47.10.050(a); and in cases involving indigent
6 persons who are entitled to representation under AS 18.85.100 and who
7 cannot be represented by the public defender agency because of a
8 conflict of interests;

9 (6) develop and coordinate a program to recruit, select,
10 train, assign, and supervise volunteer guardians ad litem from local
11 communities to aid in delivering services in cases in which the office
12 of public advocacy is appointed as guardian ad litem.

13 (b) The commissioner of administration may

14 (1) adopt regulations that the commissioner considers
15 necessary to implement AS 44.21.400 - 44.21.440;

16 (2) report on the operation of the office of public advo-
17 cacy when requested by the governor or legislature or when required by
18 law;

19 (3) solicit and accept grants of funds from the federal
20 government, local governments, persons, and [FROM] private found-
21 ations, and allocate or restrict the use of those funds as required by
22 the grantor.

23 * Sec. 2. AS 44.21 is amended by adding new sections to read:

24 Sec. 44.21.450. NON-ATTORNEY VOLUNTEER GUARDIANS AD LITEM. A
25 non-attorney volunteer guardian ad litem may not give legal advice or
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27 court or administrative agency.

28 Sec. 44.21.460. CIVIL LIABILITY. (a) A volunteer guardian ad
29 litem under the supervision of the office of public advocacy may not

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be held personally civilly liable for acts or omissions during the good faith performance of duties as a guardian unless the volunteer was guilty of gross negligence or reckless or intentional misconduct.

(b) This section does not affect the civil liability of the office of public advocacy.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL AMENDMENT REPORT

DEPARTMENT Health & Soc. Services	DIVISION Family & Youth Services	BILL NUMBER CS HB 474	SPONSOR
DEPARTMENT POSITION Support the CS			
PREPARED BY <i>Michael L Price</i>	DATE 2/12/86	COMMISSIONER'S SIGNATURE <i>J. R. King</i>	DATE 2/19/86

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Office of Public Advocacy	CONSTITUENT GROUP(S) AFFECTED BY BILL Children Parent Groups, Children's rights groups, etc.
ORGANIZATIONAL SUPPORT FOR BILL General Support	ORGANIZATIONAL OPPOSITION TO BILL None identified

CHANGE IN FISCAL IMPACT: NO YES — NEW FISCAL NOTE ATTACHED

COMPARISON TO LAST VERSION/PROGRAM EFFECTS

The amendment adds persons to the list of organizations from whom the Office of Public Advocacy may solicit and accept grants. The bill, then would allow for a variety of funding sources including corporations (as one legal definition of persons). The addition of court appointed special advocate names the specific program for Volunteer Guardian Ad Litem.

These amendments do not change the intent of the original bill to establish a Volunteer Guardian Ad Litem Program.

AMENDMENTS PROPOSED

None

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL AMENDMENT REPORT

DEPARTMENT Health & Soc. Services	DIVISION Family & Youth Services	BILL NUMBER CS HB 485	SPONSOR Sund & Gruenberg
DEPARTMENT POSITION Support amendment			
PREPARED BY <i>Michael Z. Brice</i>	DATE 2/12/86	COMMISSIONER'S SIGNATURE <i>J. R. Oy</i>	DATE 2/19/86

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Court, Office of Public Advocacy	CONSTITUENT GROUP(S) AFFECTED BY BILL Guardian
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

CHANGE IN FISCAL IMPACT: NO YES — NEW FISCAL NOTE ATTACHED

COMPARISON TO LAST VERSION/PROGRAM EFFECTS

Amendment would provide that a guardian is not civilly liable for acts or omissions under the paragraph unless the act or omission constitutes gross negligence or reckless or intentional misconduct. The guardian ad Litem, then, would not be held civilly liable for not opposing cessation or withholding of life saving medical procedures when those procedures offer no reasonable expectation of effecting a temporary or permanent cure or relief from the illness or condition being treated.

AMENDMENTS PROPOSED

None.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

REQUEST Page 1 of 4 # 1

Revision Date: _____

Bill/Resolution No.: HB 474
 Title: "An Act relating to volunteer guardians ad litem..."

Agency Affected: Administration
 BRU: Office of Public Advocacy

Sponsor: Rep. Sund
 Requestor: Finance
 Date of Request: January 27, 1985

Components: Office of Public Advocacy

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	-0-	83.6	88.6	93.9	99.5	105.4
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		4.0	4.2	4.5	4.7	5.0
EQUIPMENT		14.3	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	101.9	92.8	98.4	104.2	110.4

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	101.9	92.8	98.4	104.2	110.4
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	101.9	92.8	98.4	104.2	110.4

POSITIONS :

FULL-TIME	-0-	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Philip McGee, Jr.
Brant McGee, Public Advocate
 Division: Office of Public Advocacy

Phone: 274-1684
 Date: 2/3/86

Approved by Commissioner: Eleanor Andrews
 Agency: Department of Administration

Date: 2/4/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 474

Page 2 of 4 #1

This bill relates to the establishment of a volunteer guardian ad litem program within the Office of Public Advocacy. This bill would substantially improve the ability of the Office of Public Advocacy to provide guardian ad litem representation to children in abuse and neglect cases as well as contested custody cases.

Since the Anchorage Office of Public Advocacy began accepting guardian ad litem cases in January of 1985, approximately 658 cases have been opened from the period of January, 1985 through December, 1985. The Anchorage office presently has two attorneys and two associate attorney positions who handle guardian ad litem responsibilities.

It is anticipated that the Office of Public Advocacy would need a program coordinator position and a clerk typist III position in order to implement a volunteer guardian ad litem program.

BUDGET ANALYSIS

Personal Services

Program Coordinator - Range 20	56.2	
Clerk Typist III - Range 08	27.4	
	<u>83.6</u>	83.6

Supplies

4.0

Equipment

Program Coordinator	2.4	
Clerk Typist III	11.9	
	<u>14.3</u>	<u>14.3</u>

TOTAL: 101.9

Position Title Clerk Typist III			No. of Positions 1	Range/Step 08/A	Barg. Unit G	Gov.	Applov.	Disapt
Time Status PPT	Start Months 12	RP Number	Location EBA	Election District 8				
Type of Expenditure			Amount					
	1	2	3					
Salary		19,572						
Benefits		7,804						
Premium Pay								
Other								
Total Personal Services			27,376					
Travel			-0-					
Contractual			-0-					
Commodities			2,000					
Equipment			11,838					
Other								
Total Cost			41,214					
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004 11,838					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
<div style="border: 1px solid black; padding: 5px; width: fit-content;"> For B&M Use Only Key Number _____ </div>								

Justification

A Clerk Typist III position will be necessary to provide clerical support to the volunteer guardian ad litem program coordinator. At present, Office of Public Advocacy has only 3 clerical positions who provide clerical support to a professional staff of 12 in the Anchorage office. It is not possible for the present secretarial positions to absorb the additional clerical support generated by the program coordinator and the volunteer program.

**Request For
New Position**

Agency Department of Administration
BRU Office of Public Advocacy
Component Office of Public Advocacy

HB 474 ~~##~~

FY 87

Page 4 of 4
Revised Date

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 474 #2
 Title: An Act relating to volunteer guardians ad litem
 Sponsor: Sund, Gruenberg, et al
 Requestor: _____
 Date of Request: 2/3/86

FISCAL DETAIL

Agency Affected: Health & Social Services
 BRU: Social Services
Youth Services
 Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Michael L. Prabel *Michael L. Prabel*
 Division: Family & Youth Services

Phone: 465-3170
 Date: February 4, 1986 *JCC*

Approved by Commissioner: John R. Pugh *John R. Pugh*
 Agency: Health and Social Services

Date: 2/15/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

POSITION PAPER
BILL # HB 474

An Act relating to volunteer Guardians ad Litem in the Office of Public Advocacy.

HISTORY AND DUTIES OF OPA:

The Office of Public Advocacy was created and placed within the Department of Administration in the Spring of 1984. The Office of Public advocacy is required by Statute (A.S. 44.21.410) to provide services in the following three areas.

(1) Guardian ad Litem representation to abused children in Child in Need of Aid proceedings, guardian ad litem representation of children in custody disputes, legal representation of parents in Child in Need of Aid proceedings where there is a conflict with the Public Defender's Office, guardian ad litem activities in contested adoptions, guardian ad litem activities in guardianships for minors, and a host of other civil functions, legal representation of parents involved in custody disputes where the other party is represented by a public agency i.e. Alaska Legal Services, as well as any other case involving a minor which may require the services of a guardian ad litem;

(2) Legal representation of indigent persons charged with crimes where the Alaska Public Defender Agency has a conflict of interest;

(3) Public Guardian services as well as payment to visitors, experts and attorneys for the respondent.

Prior to 1984, the Alaska Court System had provided these services primarily through a system of court appointed attorneys. The Public Guardian function was within the Alaska Court System.

In October or 1984, the Public Advocate and an administrative assistant were hired to create the OPA and initiate the transition to this new system of providing legal representation. In November of 1984, an Anchorage office was opened and began taking criminal cases. In January of 1985, OPA began taking civil cases in Anchorage. In February of 1985, a Fairbanks office was established and assumed responsibilities for both criminal and civil cases.

Until July 1, 1985, the Alaska Court System continued to appoint attorneys and other professionals to cases within the

OPA statutory mandate. In July of 1985, a contract structure covering the small population areas and second level conflict cases in Anchorage and Fairbanks went into effect.

RESPONSIBILITIES OF A GUARDIAN AD LITEM/CASA:

A guardian ad litem (GAL) is an individual who is a legal advocate for a child in court proceedings. A guardian ad litem's duty is to advocate to the court what he or she believes to be in the child's best interest. A guardian ad litem does not have the legal authority to make decisions effecting the child's person or property i.e., medical decisions or financial investments. A guardian ad litem's obligation is to objectively insure that the court receives all pertinent information necessary to make a decision which is in the child's best interest. A major difference between an attorney appointed to represent a child and a guardian ad litem for a child is that the guardian ad litem may disagree with the position of the child. A Guardian ad litem is appointed for every child the State of Alaska, Department of Health and Social Services petitions to be a child in need of aid due to abuse or neglect. A child may also have a GAL in contested divorce custody proceedings, contested adoptions, and guardianships.

HISTORY OF CASA

In 1976 King County, Seattle, Washington, Superior Court presiding Judge, David W. Soukop, began exploring ways to insure abused and neglected children's best interest were consistently presented to the court. Traditionally, the court appointed attorneys to serve as guardian ad litem's (Gal's) for these children. However, due to the high number of cases involving children and the lack of adequate training by many attorneys, as well as cost considerations, Judge Soukop decided to recruit and train community volunteers who would be asked to make a long term commitment to each child for whom they serve as GAL. The term CASA, was coined by the National Council of Juvenile and Family Court Judges in 1982, at a meeting held in Reno, Nevada. A CASA has the same function as a volunteer GAL. The term CASA was developed by the National Council of Juvenile and Family Court Judges to better explain to the public the duties of the GAL. CASA is Spanish for home and it was felt that this was an appropriate and symbolic name for the efforts of the volunteers.

In May of 1985, the Office of Public Advocacy became a member of the National Court Appointed Special Advocate Association and began exploring the feasibility of a volunteer GAL/CASA program in the State of Alaska. The Office of Public

Advocacy began having round table meetings in Anchorage, Alaska with judges, family and children's court masters, the Division of Family and Youth Services, Alaska Youth Advocates, the District Attorney's Office, Attorney General's Office, Public Defender's Office, community mental health providers, and the Alaska Bar Association for their input and recommendations as to whether or not a volunteer guardian ad litem/CASA program would be acceptable in the Anchorage area. Due to the overwhelming support of the concept of a volunteer GAL/CASA program, the Office of Public Advocacy recruited and trained five volunteers in the summer of 1985. The five volunteers were screened by an advisory board. This advisory board continues to monitor the progress of the Office of Public Advocacy's five volunteer guardians ad litem on a continuing basis.

THE OFFICE OF PUBLIC ADVOCACY'S SUPPORT FOR HB 474:

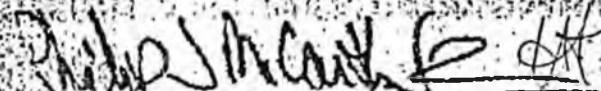
The Office of Public Advocacy strongly supports passage of HB 474. The Office of Public Advocacy would request that the statute be amended to state volunteer guardian ad litem/CASA so as to be able to utilize the national efforts of the National Court Appointed Special Advocate Association. The passage of HB 474 would require that the Office of Public Advocacy recruit and develop a permanent volunteer guardian ad litem/CASA program. Passage of HB 474 would require creating the position of CASA coordinator and a clerical support person. It is believed that a non-attorney coordinator should be hired in order to implement the CASA/volunteer guardian ad litem program first in Anchorage, Fairbanks and Juneau and then study the feasibility to develop a plan to implement such a program in the rural areas of Alaska.


A national survey of all CASA/GAL programs in the nation was undertaken by the National Court Appointed Special Advocacy Program in July, 1985. Attached is a letter from Charles Miller, Ph.D., research director of the National Court Appointed Special Advocate Program. Dr. Miller states that the nationwide survey found that the average volunteer handled 2.56 cases. It is the belief of the Office of Public Advocacy that a CASA/GAL program in Anchorage would result in the recruitment of 50 volunteers in its first year. It is believed that a system could be developed to eventually have in excess of 150 volunteers in the Anchorage area providing advocacy for children. The existence of four OPA staff and a coordinator's position would provide adequate supervision for the volunteer guardian ad litem/CASA program.

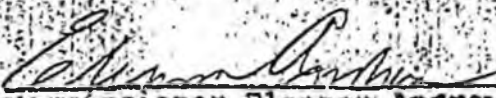
Passage of HB 474 would substantially improve the ability of the Office of Public Advocacy to provide guardian ad litem representation to children. Since the Anchorage Office of Public Advocacy began accepting guardian ad litem cases in January of 1985 approximately 658 cases have been opened from the period of

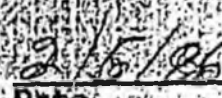
January, 1985 through December, 1985 by the staff of the Anchorage Office of Public Advocacy. The Office of Public Advocacy currently has two attorneys and two associate attorney positions who handle guardian ad litem responsibilities. Under Alaska law a guardian ad litem does not need to be an attorney. The Office of Public Advocacy is attempting to use non-attorneys with training in the needs of children to provide the effective delivery of guardian ad litem services. It is essential that non-attorney guardian ad litem have the backup support of an attorney to ensure that the guardian ad litem's position and the best interest of the child are adequately litigated in contested court cases.

It is anticipated that the continued trend of dramatic increases in child abuse and neglect cases will continue. Additionally, the State of Alaska, Department of Health and Social Services' decision in October of 1985 to be in compliance with the Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272, will result in the involvement of the guardian ad litem past the dispositional stage of a Child in Need of Aid proceeding. The effect of Public Law 92-272 will be higher caseloads for the Office of Public Advocacy due to the continued monitoring of cases by a guardian ad litem.


Philip Jay McCarthy, Jr.
Acting Public Advocate


Date


Commissioner Eleanor Andrews
Department of Administration


Date



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
STAFF COUNSEL

333 K Street
Anchorage, Alaska 99501

(907) 264-8228

February 20, 1986

Rep. Mike Miller
Chair, House Judiciary Committee
P. O. Box V
Juneau AK 99811

Dear Representative Miller:

I am writing to bring to your attention a concern with CS for House Bill No. 474 (HESS) relating to volunteer guardians ad litem and court-appointed special advocates in the Office of Public Advocacy (identical to SB 434). The concern arises from the use of the term "court-appointed special advocates" (CASA) which is a term new to the Alaska Statutes.

It is my understanding from Jay McCarthy with the Office of Public Advocacy that CASA is the acronym used by a national movement which seeks to improve the quality of services provided through the function traditionally known as "guardian ad litem." The term CASA is preferred in part because it will have more meaning to the public than the Latin term "guardian ad litem".

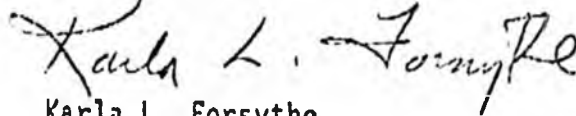
I reviewed the committee substitute with Judge Carlson, who is the presiding judge for the family division in Anchorage. He indicated that the term "court-appointed special advocates" is confusing and should be deleted from this legislation, because there is no such separately-denominated function. In his view the wording of proposed paragraph (6) creates the impression that the court will make case-by-case appointments for special advocates as a new function separate from the role of the guardian ad litem.

If the committee does not wish to delete the term, it would be helpful if this legislation could be further amended to define "court appointed special advocate". The legislation should clarify that although such a program can be established through the Office of Public Advocacy, the court will not make appointments on a case-by-case basis nor compensate persons serving in this role.

Rep. Mike Miller
Re: HB 474
February 20, 1986, Page 2

If the committee has any questions regarding the court system's position, I will be glad to provide further information.

Sincerely,



Karla L. Forsythe
Staff Counsel

KF/k1

cc: Rep. Sund
Rep. Gruenburg
Jay McCarthy, Office of Public Advocacy
Judge Carison

Court Appointed Special Advocate Association

909 N.E. 43rd, Suite 202; Seattle, Washington 98105. (206)547-1059

January 22, 1986

Jay McCarthy
Project Director
Volunteer Guardian Ad Litem Program
Office of Public Advocacy
900 West 5th Avenue, Suite 525
Anchorage, Alaska 99501

FEB 3 1986

Dear Mr. McCarthy:

A national survey of all CASA/GAL programs in the nation was undertaken in July, 1985. Preliminary tabulations are now being made. A presentation of the results will be made at the National Conference in May, 1986 and a final report will be issued due June 30, 1986.

The preliminary calculations have been reported to the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. They may be of interest to you and others concerned with the CASA program in Alaska.

From the national survey we found that an average volunteer handles 2.56 cases. In turn each staff member supervises a number of volunteers. Nationally, there is a wide range in the ratio of volunteers to staff from a low of 0.6 volunteers per staff to a high of 210. The "mode", i.e., statistically the most frequent ratio, is 25 volunteers per staff. Some of the older programs have 50 to 70 volunteers per worker and a few have 75 to 110.

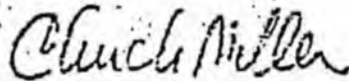
As I understand it, you will have two staff, a coordinator and clerical person in your program and recruit 50 volunteers. From the volunteer response in one program in the national survey, we found that an average of 52 hours of a volunteer's time was required for each case.

One method of assessing the cost effectiveness of your proposed program is the following. Using your 50 volunteers and the national ratio of 2.56 cases per volunteer your program can be expected to handle 128 cases in a year. This translates into a total of 6656 hours per year of volunteers' time. If attorneys were paid say \$25 per hour, (an arbitrary estimate), then a projected total cost would be \$166,400.

Jay McCarthy
January 22, 1986
Page 2

You should do this calculation using Alaska lawyer rates, but I think the conclusion will stand that a paid program coordinator with clerical assistance will provide more trained volunteer time for children than would a system of paying attorneys to do the same job.

Sincerely,



L. Charles Miller, Ph.D.
Research Director

LCH/CH

Court Appointed Special Advocate Association

909 N.E. 43rd, Suite 202; Seattle, Washington 98105 (206)547-1059

December 5, 1985

DEC 10 1985

Philip J. McCarthy, Jr.
Volunteer GAL Program
Office of Public Advocacy
900 West 5th Avenue, Suite 525
Anchorage, AK 99501

Dear Mr. McCarthy:

Concerns about legal liability for CASA Programs are beginning to surface. Programs are finding the cost of insuring their programs to be exorbitant. Others have been denied coverage because no statistics exist for underwriters to determine the risk involved. Therefore, many programs either suffer from high premiums or are taking a risk by going without insurance.

The following analysis was done to aid Program Directors and Advisory Boards in deciding whether it is feasible to insure their programs, and how to go about doing so. In some states, CASAs appointed by judges become agents of the court covered by local or state law. Section I, Program Coverage, shows how state and local laws either eliminate or limit the legal liability of CASAs and CASA Programs. Keep in mind that a general liability policy covers only the organization named, and executive officers and directors if the organization is incorporated. Employees, volunteers and other "additional insureds" must be specifically endorsed before they are covered. Special "Directors and Officers Errors and Omissions" insurance is also available to protect individual board members and directors for making an allegedly damaging decision, or for failing to make a prudent decision. Section I also explains about workers' compensation coverage.

If a program finds no relief, or only limited relief, under Section I, Section II explains how to determine whether a separate volunteer policy is advisable by assessing the legal liability of the individual program. Section II includes companies which offer special volunteer insurance, the cost, coverage, liability limit and area of business. This is intended as a reference list only, and should not be construed as a recommendation of the companies listed.

December 5, 1985
Page 2

Lastly, Section III offers some "Risk Management" guidelines which could help in reducing risks, or at least premiums.

In order to better facilitate information on this issue, we ask that you complete the attached questionnaire and return it to the Association in the envelope provided by December 20. To our knowledge, no lawsuit has been filed against a CASA Program in the past eight years. So if you are without coverage, do not panic! Assess your status, your needs, and your options. The Association will gladly provide your program or your insurance carrier with the results of this survey should you desire more information. Please do not hesitate to call or write if you have any questions on the enclosed or if we can be of assistance.

Sincerely,



Cathy Moray, J.D.
Research Assistant

CJM/CM
Enclosures

LIABILITY ISSUES FOR CASA PROGRAMS

I. PROGRAM COVERAGE

A. State Law:

1. Delaware. Title 31. Chapter 36. Court Appointed Special Advocate
§ 3612 CIVIL LIABILITY OF PARTICIPANTS IN THE COURT APPOINTED
SPECIAL ADVOCATE PROGRAM
The Director, Coordinators, Attorneys, and Court
Appointed Special Advocates participating in the Court
Appointed Special Advocate Program shall not be
civilly liable for acts or omissions committed in
connection with duties which are part of the program
if they have acted in good faith and are not guilty
of gross negligence.
2. Florida. § 415.508(1) . . . Any person participating in a
civil or criminal judicial proceeding resulting from
such appointment shall be presumed prima facie to be
acting in good faith and in so doing shall be immune
from any liability, civil or criminal, that otherwise
might be incurred or imposed.
3. Indiana. IC 31-6-3-4(4)(f) Except for gross misconduct, if
the guardian ad litem or court appointed special
advocate performs (his) duties in good faith, (he) is
immune from any civil liability that may occur as a
result of (his) performance.
4. North Carolina. § 7A-493. Civil liability of volunteers.
Any volunteer participating in a judicial proceeding
pursuant to the program authorized by this Article
shall not be civilly liable for acts or omissions
committed in connection with the proceeding if (he)
acted in good faith and was not guilty of gross
negligence. (1983, c. 761, s. 160.)

B. Local/County Ordinances:

According to a legal opinion given by Norm Maleng, Prosecuting Attorney, January 13, 1981, the volunteer Guardian Ad Litem in King County, Washington, will be covered by the King County Risk Management Ordinance, KCC 4.12.090, if the activities which give rise to the claim are within the scope of their official county duties. Since the court appoints the volunteers, the volunteers become agents of the court. The GAL is in no different position than any other county employee or official.

C. Workers' Compensation Coverage:

The workers' compensation laws of most states do not include volunteers under the definition of employee. Many states do, however, allow employers to include volunteers by special endorsement. In Washington, volunteers can be added by action of the Board of the Corporation, but coverage is limited to medical benefits.

D. Additional Insureds in an Existing Policy:

Some general liability carriers will extend their policy to cover the volunteers as insureds, if they are requested to do so. They will issue a specific endorsement, usually known as "Volunteers As Insureds". The named insured endorsement may also be negotiated to include employees and funding sources.

II. ASSESSING LEGAL LIABILITY

A. Factors in determining whether to provide insurance coverage for your volunteers:

1. Is there a clear risk present, either to the volunteer or other individuals, which would justify the expenditure for insurance?
2. Could the risk be better handled by other methods (i.e. better selection of volunteers, improved training and supervision) that would reduce it to a level where insurance would not be necessary?
3. Is the volunteer already adequately protected by personal insurance coverage, existing law or court appointment?
4. Is the program a "public agency" which would come under a Tort Claims Act?

B. Potential Legal Liability Areas:

1. Unfair Employment Practices
 - a. Discrimination
 - b. Wrongful Employee Dismissal
2. Acts beyond granted authority.
3. Failure to manage money properly; financial decline.
4. Insufficient administration or supervision resulting in losses.
5. Waste of organizational assets.
6. Continual absence from board meetings; negligent attention.
7. False or misleading reports.
8. Failure to verify facts in official documents.
9. Causing the organization to incur unnecessary tax liabilities.
10. Failure to deliver services or make prudent decisions.
11. Libel, slander, defamation of character, or invasion of privacy.

C. Who can sue and collect under an insurance policy (assuming negligence is proven):

1. Children, Parents, Guardians
2. Guests
3. Members of the General Public
4. Volunteers, Employees

D. Special Volunteer Liability Insurance:

1. Volunteer Insurance Service Association, Inc.
Corporate Insurance Management
4200 Wisconsin Ave., N.W.
Washington, D.C.
Toll Free Number 1-800-468-4200
In Alaska or Hawaii: Phone (202) 244-5678

Provides Accident Insurance (85¢ per volunteer/\$10,000 medical & \$2500 life liability limits), Personal Liability Insurance (50¢ per volunteer/\$1,000,000 liability limit, \$45 minimum premium), and Excess Automobile Liability Insurance (\$3 per volunteer/\$500,000 liability limit). Other programs include a Comprehensive Directors & Officers/Professional Liability (Errors & Omissions) Insurance with a 3/year minimum premium of \$1250 and a \$1,000,000 liability limit.

Service Area: United States

2. California Planners & Consultants, Inc.

Volunteer Insurance Plan

P.O. Box 1183

559 N. San Pedro

San Jose, CA 95108-1183

(408) 297-0755

Provides Accident Insurance (85¢ per volunteer/\$10,000 medical & \$2500 life liability limits), Personal Liability Insurance (50¢ per volunteer/\$1,000,000 liability limit, \$45 minimum premium), and Excess Automobile Liability Insurance (\$3 per volunteer/\$500,000 liability limit).

Service Area: California, Washington & Hawaii

3. Huntington T. Block Insurance

2101 L Street N.W.

Washington, D.C. 20037

Toll Free Number 1-800-424-8830

(202) 223-0673

Provides Legal Liability Insurance for United Way agencies only. Any amount of United Way funds makes a program eligible. Premiums are based on the program's annual revenues, with liability limits ranging from \$1,000,000 to \$10,000,000.

Service Area: United States

III. RISK MANAGEMENT

A. Risk Management for Volunteer Programs:

1. Identify risks associated with GAL/CASA duties to the volunteer, the child and to third parties.
2. Write volunteer job descriptions matched to the complexity of the role of GAL/CASA which includes special knowledge or skills, physical requirements and the capability to accept responsibility.
3. Screen volunteers for the above requirements.
4. Train volunteers in the duties to be performed, acts not to be performed, the risks involved, ways to minimize the risks, in record keeping, confidentiality and ethics.
5. Train supervisors to make sure the above is being done.

B. Risk Management Techniques to Reduce your Claim Threat & Premiums:

1. Regularly perform safety inspections of your premises.
2. Establish safety guidelines for handling situations common to GAL/CASA Programs.

3. Provide safety training to your employees and volunteers.
4. Report all incidents which might give rise to suit to your insurance broker and document carefully the circumstances.
5. Review each accident that occurs to ascertain what changes should be made in your procedures to avoid future similar claims.
6. Keep your own statistics on claims, premiums, etc. This will help you to obtain premium discounts in future years.

Do not state
in official
reports
to

Office of
the
Attorney
General
of
the
State

HB 474- Volunteer Guardian Ad Litem Program

Letters of Support for the program are from:

Deborah O'Regan, Executive Director
Alaska Bar Association

Frank Dalley, Regional Social Services Manager
Division of Family and Youth Services

Dana Fabe, Public Defender

Veronica Duke, Chief of Clinical Social Work Services
Division of Mental Health and Developmental Disabilities

Elizabeth Sheley, Assistant District Attorney

Ann Stockman, Director of Crisis Services
S.T.A.R.

Gordon Lantrip, Director
Alaska Baptist Family Services

Milli Andreini, Executive Director
The Center for Children and Parents

William D. Hitchcock
Master, Childrens Court, Third Judicial District

Pamela Kirk and Phillip Kaufman
Human Relations Center

Corrine Radergraham, Coordinator
Close Encounters and Alaska Permanency Planning Task Force

Douglas J. Serdahely, Presiding Judge
Third Judicial District

ALASKA BAR
ASSOCIATION

JAN 10 1986

December 16, 1985

John Reese, Co-Chair
Volunteer Guardian ad litem Program
Alaska Bar Association
P. O. Box 100279
Anchorage, AK 99510

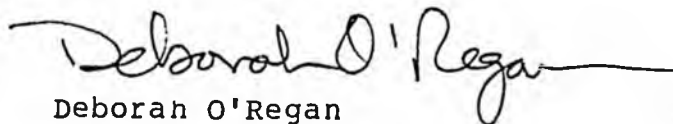
Dear Mr. Reese:

I am writing in support of the committee's efforts to develop a volunteer guardian ad litem program.

Such a program would provide much needed representation for children in our community. The utilization of trained volunteers will make it possible to adequately represent children without substantially increased state funding.

I endorse the enabling legislation which would establish a volunteer guardian ad litem program within the Office of Public Advocacy.

Sincerely,



Deborah O'Regan
Executive Director

vu

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH & SOCIAL SERVICES

DIVISION OF FAMILY & YOUTH SERVICES

REGIONAL OFFICE
3601 C STREET #520
POUCH 6333
ANCHORAGE, ALASKA 99502-0333
PHONE: (907) 551-4240

November 20, 1985

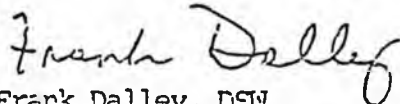
Dorcas Hardy
Assistant Secretary
Department of Health & Human Services
Washington, D.C. 20201

Dear Ms. Hardy:

The State of Alaska has, over the past several years, experienced a dramatic increase in the incidence of reported child abuse and neglect. There are indicators which point to a continuation of this trend as the economy of Alaska begins a downward spiral. One consequence of this phenomenon is that sufficient resources are not available to properly advocate for this rapidly increasing target population.

As a member of the Interagency Task Force charged with responsibility for developing and implementing a volunteer guardian ad litem program in the Anchorage area, I have become acutely aware of the pressing need to expand this program. I strongly urge favorable consideration of Alaska's proposal. These funds will be used to recruit and train volunteers to serve as court appointed special advocates for children and youth throughout the state.

Sincerely,



Frank Dalley, DSW
Regional Social Services Manager

FD/tm

BILL SHEFFIELD, GOVERNOR

PUBLIC DEFENDER AGENCY

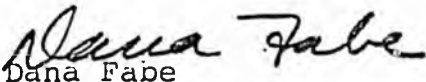
900 W. 5TH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 279-7541

M E M O R A N D U M

DATE: December 20, 1985

TO: John Reese, Co-Chair
Volunteer Guardian ad litem Program .

Jay McCarthy
Office of Public Advocacy

FROM: 
Dana Fabe
Public Defender



I am writing to add my support for proposed legislation establishing a volunteer guardian ad litem program within the Office of Public Advocacy. This program would save money for the State of Alaska by avoiding the necessity of adding guardian ad litem positions to meet rising caseloads. Careful recruitment and training of qualified community volunteers should increase the level of service to children needing guardians ad litem to represent their best interests.

I fully support establishment of a volunteer guardian ad litem program within the Office of Public Advocacy. Please let me know if there is anything I can do to aid passage of enabling legislation for such a program.

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF MENTAL HEALTH & DEVELOPMENTAL DISABILITIES
ALASKA PSYCHIATRIC INSTITUTE

2900 PROVIDENCE AVENUE
ANCHORAGE, ALASKA 99508-4677

(907) 561-1633

December 20, 1985

John Reese, Co-Chairman
Volunteer Guardian Ad Litem Program
Alaska Bar Association
Family Law Section
P.O. Box 100279
Anchorage, Alaska 99510



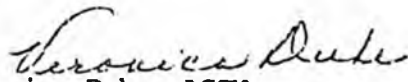
Dear Mr. Reese:

Dr. Bruce Livingstone, our Acting Medical Director, and I have reviewed your letter of December 3, 1985.

We would both endorse the creation of a Volunteer Guardian Ad Litem Program in the community. We would see them as being persons who would be most useful to our patients. Please feel free to contact us if we can in any way help train your volunteers.

We look forward to working with you when this new program is available.

Sincerely,


Veronica Duke, ACSW
Chief, Clinical Social Work Services

VD/eb EB4 1781

d. 12/20/85
t. 12/20/85

BILL SHEFFIELD, GOVERNOR

REPLY TO

1031 WEST 4th AVENUE, SUITE 520
ANCHORAGE, ALASKA 99501
PHONE: (907) 277-8622

DRAWER 1180
KENAI, ALASKA 99611
PHONE: (907) 283-3131

326 CENTER AVE. 2ND FLOOR
KODIAK, ALASKA 99615
PHONE: (907) 486-5744

P.O. BOX 1070
PALMER, ALASKA 99645
PHONE: (907) 745-5027

P.O. BOX 671
VALDEZ, ALASKA 99686
PHONE: (907) 835-2462

DEPARTMENT OF LAW

CRIMINAL DIVISION/THIRD JUDICIAL DISTRICT
OFFICE OF THE DISTRICT ATTORNEY

December 17, 1985

Mr. John Reese, Co-Chair
Volunter Guardian ad litem Program
Alaska Bar Association
P.O. Box 100279
Anchorage, Alaska 99510

Dear Mr. Reese:

I endorse the proposal to establish a volunteer guardian ad litem program. I am the prosecutor who handles most of the child sexual abuse cases in Anchorage and have done so for the last three years.

Sexually abused children need an effective advocate to prevent damage to them from their involvment with the criminal justice system. In the past our prosecutors were able to spend much more time with victims to help ease their way through the system. Due to budget cuts and the increasing number of these cases we can no longer provide these services.

I believe a volunteer guardian ad litem would be very useful in child sexual abuse cases to fill the gap caused by our lack of resources. Advocating for the child's best interest takes a lot of time. I see no need for that advocate to be an attorney. In fact, there is an advantage to the guardian being outside the system because the guardian can encourage the system better to act in the best interest of the child. Lucy Berliner of the Harborview Sexual Assault Center in Seattle, who is a nationally known expert on child sexual abuse, endorses this concept of each sexually abused child having a non attorney advocate like the ones proposed in the volunteer ad litem program.

Very truly yours,

HAROLD M. BROWN
ATTORNEY GENERAL

VICTOR C. KRUMM
DISTRICT ATTORNEY

Elizabeth H. Sheley
Elizabeth H. Sheley
Assistant District Attorney

DEC 30 1985



Bus. 276-7279
24-hr.
Crisis 276-RAPE

December 20, 1985



Mr. John Reese
Volunteer Guardian ad litem Program
P.O. Box 100279
Anchorage, Alaska 99510

Dear John:

On behalf of STAR I am writing to express our support of the proposed Volunteer Guardian ad litem Program. We are well aware of the need for such a program. Some of our clients have recently worked closely with staff from the Office of Public Advocacy. Additionally, I have visited this agency and am aware of the high quality of work that the staff perform.

As with any small agency it is important to maximize the use of volunteers. It sounds like your program will provide services to clients who could otherwise have been left unserved, and these services will be provided at a low cost. Children who are victims of sexual assault are unfortunately often revictimized by the length of and complexities in the court process. Further, children may not have the kind of support they deserve to receive from their parents. In the interest of serving and protecting the interests of children a program such as yours should provide a kind of advocacy that is the right of any victim.

Please feel free to contact me at STAR if we can be of assistance.

Sincerely,

Ann W. Stockman, MSW
Director of Crisis Services

AWS/sjj

STANDING TOGETHER AGAINST RAPE
PO BOX 103356 ANCHORAGE, ALASKA 99510





Alaska Baptist Family Services

1600 O'Malley Rd. • Anchorage, Ak. 99516 • Phone (907) 349-2222

December 5, 1985

John Reese, Co-Chair
Volunteer Guardian ad litem Program
AK BAR ASSOCIATION
P O Box 100279
City 99510



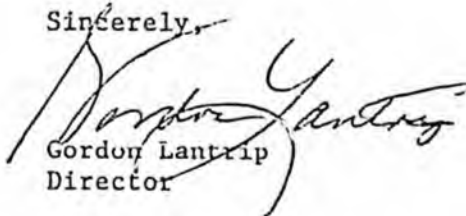
Dear Mr. Reese:

Thank you for your recent letter re the development of a Volunteer Guardian ad litem program here in Alaska.

It has been my experience over these past 25 years in child care work that better things happened to youth who had a guardian ad litem working in their behalf. I know the financial cost of such a program for every child would be staggering and so I think a volunteer program that utilized well chosen and trained citizens has great potential.

I heartily endorse the development of enabling legislation to begin such a program.

Sincerely,


Gordon Lantrip
Director



THE CENTER FOR CHILDREN AND PARENTS

December 13, 1985

John Reese, Co-Chair
Volunteer Guardian ad litem Program
Alaska Bar Association
P.O. Box 100279
Anchorage, Alaska 99510



Dear Mr. Reese:

I am pleased to submit a letter of support for your efforts to establish a volunteer guardian ad litem program. Such a service will provide a needed adjunct to existing guardian ad litem services.

The use of carefully selected and well trained volunteers in child welfare matters has proven to be very effective. The Court Appointed Special Advocate Program (CASA) is well respected in communities in the lower forty-eight. The continued increase of child abuse cases and the number of divorces in the Anchorage area are impacting the court system as well as investigation and rehabilitation resources. At a time when financial resources are declining we must find responsible, yet creative ways to serve families in need. The volunteer guardian ad litem is, indeed, a responsible solution to the problem of the increased number of children requiring representation.

I wish you well in the development of the volunteer guardian ad litem program. I am happy to support your efforts and the enabling legislation which will allow you to proceed.

Sincerely,

Milli Andreini, M.S.W.
Executive Director

MA/wst



Southcentral Alaska Chapter -
National Committee for
Prevention of Child Abuse

808 E STREET, SUITE 200, ANCHORAGE, ALASKA 99501 (907) 276-4994
Programs of the Anchorage Child Abuse Board, Inc.





Trial Courts

State of Alaska

THIRD JUDICIAL DISTRICT

303 K STREET

ANCHORAGE, ALASKA 99501

December 19, 1985

WILLIAM D. HITCHCOCK
Master, Trial Courts

John Reese, Co-Chairman
Volunteer Guardian ad Litem Program
211 H Street
Anchorage, Alaska 99501

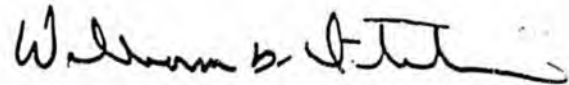
Dear Mr. Reese,

I am writing this letter in support of the efforts being made to establish a full-time volunteer guardian ad litem program within the Office of Public Advocacy. As Children's Court Master here in Anchorage for the past seven years, I have seen firsthand the important role which the guardian ad litem plays in children's proceedings. Case investigation and assessment are the most important and often the most time consuming aspects of this job. Unfortunately, the resources of the state within any agency are often strained to the maximum just dealing with the voluminous caseloads. This is where volunteers can play a vital role in being able to devote the time needed to complete impartial investigations and more adequately represent the best interests of the children.

As a member of the National Council of Juvenile and Family Court Judges, I have attended various national conferences at which presentations have been made by volunteer programs in other states. It is my impression that these programs have been extremely successful and have overwhelmingly won the support of the bench and the bar. I think it is particularly unfortunate that we here in Alaska have not done more to tap the resources of our communities and achieve more citizen involvement in areas such as child welfare. A program such as this one would do just that, and from a cost efficient standpoint would materially save the expense of adding more paid staff and attorneys to public agencies.

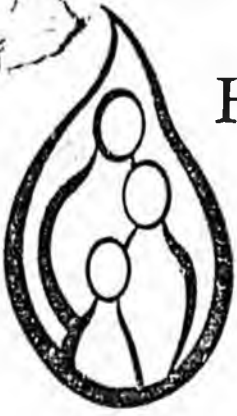
It is also my distinct impression that no program outside that has been successful has been able to do so without competent administration. Recruitment, training and quality control monitoring of volunteers is an absolute prerequisite to success. Therefore, I urge the legislature to pass enabling legislation which would provide funds to secure an administrator for this program so that it may benefit not only Anchorage but eventually become a statewide program.

Sincerely,



William D. Hitchcock
Master, Children's Court

WDH/ss



Human Relations Center

421 E. 45th, Suite 1
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December 23, 1985

John Reese
Co-chair of the Volunteer
G.A.L. Program
Family Alaska Bar Association
Family Law Section
P.O. Box 100279
Anchorage, Alaska 99510

Re: Letter of Support

Dear Mr. Reese:

In response to your letter of December 3, 1985, asking for letters of support for the Office of Public Advocacy and the G.A.L. Program, the Human Relations Center is very much in support of the Office of Public Advocacy. Since most of the cases we work with have to do with child sexual abuse, it is extremely important that our child clients have a strong G.A.L. to protect their interests in these difficult situations. We would be supportive of any legislation that would guarantee more funding for the Office of Public Advocacy so that more G.A.L.'s could be hired. It is obvious that the guardians are so overworked at the present time that they are having difficulty providing high quality services to the children.

We also work with a number of cases where children have reported that they have been sexually abused by a parent during visitation. These cases often result in custody and visitation battles which are complicated by the child sexual abuse allegations. In such cases it is important for the safety of the children that supervised visitation be provided. D.F.Y.S. is not able, due to the time and case load constraints, to provide such supervision for these children. If the volunteer G.A.L. Program could be expanded and supported, then these volunteers could provide some of the supervision that was necessary in our custody cases. Such supervised visitation is also often necessary in our child sexual abuse cases so that the children may maintain a relationship with the perpetrator yet remain safe.

In some child sexual abuse cases, we have mothers who are not supportive of their children and therefore, the children can not be left alone in visitation with a non-offending, non-supportive parent. These are another set of cases where the G.A.L.'s could provide much needed supervision so that the children maintain their mother/child bond with these non-supportive mothers.



We would give our support to any legislation that would: 1) increase the number of G.A.L.'s at the Office of Public Advocacy, 2) provide for funding to increase the volunteer G.A.L. Program, and 3) provide funding so that the volunteer G.A.L.'s could be trained to provide complete and safe supervision to children.

We highly support the Office of Public Advocacy and the volunteer G.A.L. Program. If we can be of further service providing support, please do not hesitate to contact this office.

Respectfully submitted,



Pamela Kirk, M.S.



Phil Kaufman, M.S.

PK:ln
cc: Jay McCarthy

Close Encounters

SOCIAL SERVICES CONSULTANTS
P. O. BOX 6242 215 MAIN STREET 125 HECKMAN BUILDING KETCHIKAN, ALASKA 99901
(907) 225-5460

CORRINE RADERGRAHAM, M.S.W

ALINE COLE BARTON, O.T.R.

15 November 1985

Office of Public Advocacy
900 W. 5th Avenue, Suite 525
Anchorage, Alaska 99501

Dear Ms. Mead:

I am writing this letter in support of the Office of Public Advocacy's grant request from the Coordinational Discretionary Funds Program/Human Development Services.

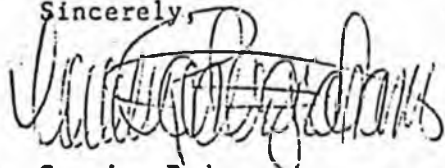
The Alaska Permanency Planning Task Force which was organized by the National Council of Family and Juvenile Court Judges in response to P.L. 96-272 has been actively involved with a consortium of agencies in Alaska to further permanency planning for children in foster care. Volunteer Guardian Ad Litem programs are one part of our goal to provide permanent homes for all Alaska children.

The Alaska Permanency Planning Task Force consists of key members in the State Legislature, Court System, Social Services and private enterprise. As Coordinator, I sincerely hope that funds will be supplied to provide a training coordinator and training materials for the next three years, as training will be instrumental in assuring the success of the Volunteer Guardian Ad Litem legislation which is in the plans of our Legislators at this time.

I know that I may speak for all members of the Alaska Permanency Planning Task Force in supporting your proposal request. I wish you success.

If I can be of any further assistance now or in the future, please do not hesitate to contact me.

Sincerely,



Corrine Radergraham
Coordinator
Alaska Permanency Planning Task Force

cc: Judge Thomas E. Schulz, Task Force Chairman
Task Force Members:
Kathy Tibbles, DFYS SE Regional Manager
Grace Kinney, SE Vice-President, Alaska Foster Parents Association
State Supreme Court Justice Alan Compton
State Senator Joe Josephson
State Representative John Sund
State Representative Robin Taylor
Cecilia Kleinkauf, Associate Professor, Dept of Social Work, U of A, Anchorage
Lisa Weisler, A.A. to State Representative Sam Cotten



Superior Court
State of Alaska
THIRD JUDICIAL DISTRICT
303 K Street
Anchorage, Alaska 99501-2083

CHAMBERS OF
DOUGLAS J. SERDAHELY
Presiding Judge

November 20, 1985

Office of Public Advocacy
900 West Fifth Avenue, Suite 525
Anchorage, Alaska 99501

To Whom It May Concern:

Over the past six months a group of interested persons and agencies in the child welfare system have established the Anchorage Volunteer Guardian Ad Litem Project. The purpose of this endeavor is to provide dedicated community volunteers who, under the auspices of the Alaska Office of Public Advocacy, will provide representation for abused and neglected children in court proceedings.

The Alaska Court System strongly supports your program. We believe that augmenting state resources for guardian ad litem representation through volunteers will materially improve the quality of representation given abused and neglected children. However, emphasis must be placed on quality. Integral to the success of any volunteer program is the ability to recruit, train and monitor the work of these volunteers. Approval of the O.P.A. grant request from the Coordinated Discretionary Funds Program/-Human Development Services would be a tremendous boost for this fledgling program and could be instrumental in spelling the difference between success and failure.

Office of Public Advocacy
November 20, 1985
Page 2

We urge your favorable consideration of this application.

Very truly yours,


Donald J. Sardanelly

DJS:lge

JOHN SUND, REPRESENTATIVE

2505 2nd Avenue
Ketchikan, Alaska 99901
(907) 225-5552

While in Juneau
P. O. Box V
Juneau, Alaska 99811
(907) 465-4919

January 7, 1986

TO: Hayden
Judiciary Committee

K FROM: Kitty
Rep. John Sund's office

RE: HB474 and HB485

I've got two bills for you that just passed out of HESS, both relating to guardians and the Office of Public Advocacy.

John would like to get these scheduled up soon, together if possible. Let me know what you can do.

In the backup for HB474 you'll find:

- A copy of the latest version of the bill
- An overview, including sectional analysis and bill history
- A brochure on guardian ad litem
- Office of Public Advocacy position paper
- Health and Social Services position paper
- Office of Public Advocacy fiscal note and analysis
- Health and Social Services -0- fiscal note
- Two letters from the National Court Appointed Special Advocate Association... 1 regarding financing and 1 about liability
- Letters of support

And as if that wasn't enough, for HB485 we've got:

- A copy of the latest bill
- Overview, with sectional analysis and history
- Position paper and -0- fiscal note from Office of Public Advocacy
- Position paper and -0- fiscal note from Dept. of Health and Social Services
- Position paper from Alaska Health Association
- Testimony of Sister Barbara Haase before the HESS Committee
- Legal opinion from the law offices of William Council
- Letters of support

I have a couple of people to testify, if you want. Let me know.

Donna DeWitt

still to come

House Bill 474- An act relating to volunteer guardians ad litem in the Office of Public Advocacy
Overview prepared by Rep. John Sund's office

SECTIONAL ANALYSIS

Section 1, subsection (a)(6) requires that the Office of Public Advocacy set up a program to train and supervise volunteers to serve as guardians ad litem.

Subsection (b)(3) allows the Office of Public Advocacy to solicit funds from local governments and private individuals.

Section 2 limits the civil liability of volunteer guardians, while participating within the program, to acts of gross negligence.

HISTORY

A guardian ad litem is appointed, at the discretion of a judge, to represent a child's best interests in court proceedings. An attorney guardian ad litem within the Office of Public Advocacy may be appointed as guardian when no appropriate family member or friend is available, as in the case of a neglected or abused child.

Section 1, subsection (a)(6): The Office of Public Advocacy began a volunteer guardian program in August 1985, as a pilot project, because of the overwhelming need for additional guardians ad litem and the lack of available staff time. (each attorney guardian ad litem carries a caseload of between 80 and 100 people) As of 12/20/85, five volunteers were under the supervision of an attorney guardian from the Office of Public Advocacy.

The volunteers have been able to provide more personal attention to the everyday requirements of their wards, such as coordinating meetings and conferring with social workers. This has allowed the staff additional time to perform the more specialized duties required of guardian ad litem.

Section 1, subsection (b)(3): Offers of monetary assistance for training and materials have been forthcoming from the Alaska Bar Association, the City of Anchorage and others. Because of this potential for funding from sources other than state government, the subsection was included in the bill.

Section 2: The National Court Appointed Special Advocate Association suggested that this section be added. It is in line with the statutes of Delaware, Florida, Indiana and North Carolina. Volunteer guardian programs in states without legislative protection are finding difficulty in obtaining affordable liability insurance.

WHAT DOES GUARDIAN AD LITEM MEAN?

Guardian ad litem (GAL) is a legal term meaning guardian for a court case.

WHO CAN BE A GAL?

Anyone who cares about children and who can help the court make good decisions can be a GAL. Often lawyers are GAL's. The judge chooses the GAL.

WHAT IS A GAL SUPPOSED TO DO?

A GAL is supposed to represent the best interests of the child in court. That means making sure the judge is told:

- what has happened to the child.
- what the child needs to be happy and safe, and
- what decisions the judge can make to help the child.

WHY DOES A CHILD NEED A GAL?

Whenever a judge has to make decisions about what will happen to a child, the child may need a GAL.

For example, children whose parents are getting a divorce often have a GAL. And all children whose parents may have abused or neglected them should have a GAL.

A child might also need a GAL if someone other than the child's parents wants custody of the child, if a judge is asked to decide who the child's father is, or if the child might own property.

DOES EVERY CHILD HAVE A GAL?

NO. The court decides whether a child needs a GAL and appoints the GAL. Anyone can ask the judge to appoint a GAL for a child. The judge can be asked in court or by letter.

WHO PAYS FOR THE GAL?

The judge decides who will pay the GAL. Sometimes the child's parents pay, and sometimes the state pays.

DOES A GAL ALWAYS ASK THE JUDGE TO DO WHAT THE CHILD WANTS DONE?

NO. The GAL always listens to the child, but the GAL must decide whether what the child wants is really best.

Sometimes the GAL and the child do not agree. Then the GAL has to make up his or her own mind about what is best for the child. The GAL will tell the judge what the GAL thinks is really best for the child.

DOES THE GAL GET TO MAKE THE DECISIONS AT THE COURT HEARINGS?

NO. The judge makes the decisions after listening carefully to everyone who took part in the court hearing. Like the other people, the GAL is only allowed to make suggestions about what should happen.

HOW DOES A GAL DECIDE WHAT IS BEST FOR THE CHILD?

The GAL talks with everyone who knows a lot about the child. This includes the child, the child's parents, relatives, foster parents, teachers, social workers, psychologists, doctors, and others.

The GAL reads reports written about the child and the child's family. The GAL sometimes asks other professionals to help the GAL learn about the child.

The GAL visits where the child lives, and wherever the child might go live, or the GAL asks someone else to visit.

The GAL also learns about the services available where the child and family live.

WHAT IF THE GAL DOES NOT DO A GOOD JOB?

If you think the GAL is not doing a good job, you should first try to tell the GAL what you think should be done, and ask why the GAL is not doing that.

If this still does not help, you should tell either your social worker, if you have one, or the judge. Parents who are unhappy with their child's GAL should tell their lawyer, the social worker or the judge.

DOES THE GAL GO TO COURT?

Yes. The GAL goes to court. In some cases the GAL might be a witness who

answers questions asked by the lawyers for the other people in court, or the GAL may ask other witnesses questions.

DOES THE CHILD HAVE TO GO TO COURT TOO?

Sometimes the child has to be in the courtroom. Other times the child just comes to the court building, in case anyone wants to ask him or her some questions. Sometimes, the child does not need to be in court at all.

The GAL should find out how the child feels about being in court, and may tell the judge. If the child is going to be in court, or in the court building, the GAL may take the child for a visit first, so it is not so scary.

If the child is not present at court hearings, the GAL will tell the child what happened, as soon as possible after the court hearing, or arrange for someone else to tell the child.

WHAT CAN I DO TO HELP THE GAL?

A GAL needs lots of help to do a good job of representing a child's best interests.

The child can help the GAL most by trying to trust the GAL and by trying to tell the GAL everything he or she asks about. If the child forgets to tell the GAL something important, the child should call the GAL, or have someone else make the call. If anything changes, the child should let the GAL know about it.

Everyone else who is concerned about the child or who knows something important about the child can help by staying in touch with the GAL.

If the GAL has not called you, you should call the GAL.

HOW DO I FIND OUT IF THERE IS A GAL?

You can find out if there is a GAL by asking the judge, the child's social worker, if there is one, or the lawyers, who are already taking part in the court case.

WHAT IS A GUARDIAN AD LITEM?

An Informational Pamphlet for
Children and Their Families

Written by the Committee
on Guardian Ad Litem
Representation in Alaska

Administrative Office
Alaska Court System
303 K Street
Anchorage, AK 99501

February 1983

HB 474

GUARDIAN AD LITEM
REPRESENTATION IN ALASKA

Report and Recommendations to
The Alaska Supreme Court
from the Guardian Ad Litem Committee

September 1982

COMMITTEE MEMBERS:

Niesje J. Steinkruger
Jack Duggan
Myra Munson
Robert Dunn
Judge Victor Carlson
Judge Charles Tunley
William D. Hitchcock, Master

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REPRESENTATION FOR ALASKA'S CHILDREN
IN THE JUDICIAL SYSTEM

I. INTRODUCTION

Court appointments of guardians ad litem to represent children in judicial proceedings are made by the hundreds each year. There is no other area of the law, except perhaps appointment of counsel for criminal conflict of interest cases, where the court system affects so many individuals by the payment for representation. Appointments of guardians ad litem for children (and occasionally incompetents) are routinely made in divorce cases, child in need of aid proceedings, probate matters, guardianships, adoptions, paternity actions, and mental health commitments. Yet there is little or no accountability in the Alaska Court System to oversee the cost, effectiveness or quality of these appointments. The only sure analysis we know is that in 1974 there were no guardian ad litem appointments recorded by the court system, and in 1981 there were probably somewhere between 500 and 1,000 appointments.

As this ill-defined unaccountable system rumbles along a few squeaks are beginning to be heard. Divorce lawyers routinely complain among themselves about the role or recommendations of the guardians ad litem. Assistant Attorney Generals and parents' attorneys grumble about the guardian ad litem's (hereinafter GAL) lack of preparation. Trial judges may consider sanctions, but more often shrug their shoulders at inadequate representation. While this is certainly not true of all GALs, the critical factor is that the system almost completely lacks accountability or avenues through which change can be pursued.

The GAL representation of children lacks accountability in two major areas: (A) fiscal and administrative accountability and (B) quality accountability.

(A) FISCAL AND ADMINISTRATIVE ACCOUNTABILITY

Currently the Alaska Court System lacks any method of ascertaining how many GAL appointments are made each year, what type of proceedings they are made in, how long the appointments last, or what the actual costs and fees are by case type or total. GAL appointments are lumped in with all other non-criminal appointments and thus the real numbers and costs are unknown. As evidenced by Exhibit E, an attempt by the fiscal officer to answer these questions, the court system is presently unable to ascertain cost and numbers accounting for GALs. This lack of accountability makes it very difficult for the system to be analyzed or changed because we don't really know where we are. It is impossible to talk about whether a new or different approach will be more or less cost effective because there is no real handle on the number of cases by judicial district, the types and lengths of appointments or the cost at the present time. However, it is the consensus of this committee, based upon collective experience, that the numbers and figures in Exhibit E are low and do not represent the real costs. There is a definite need for the court system to develop a method for keeping track of the numbers, kinds and lengths of appointments as well as the actual costs. This will assist the court system in determining available options for effective GAL representation as well as in developing some fiscal and administrative accountability for the present.

(B) QUALITY ACCOUNTABILITY

The ultimate responsibility for the quality of the GAL rests with the court system. It is the court which is charged with protecting the best interest of the child and therefore, without a GAL, the judge must theoretically perform this function. Many courts and legislatures, believing the judge could not adequately protect the child caught between warring litigants, expanded the use of GALs. The result for many judges may be confusion between accepting what the GAL recommends, perhaps without detailed explanation, because the GAL is supposed to be the "expert" on what is best for the child, and doing what litigants perceive as "overriding" the GAL by making a different decision.

The most important factor in reviewing the GAL system is to remember that, with very rare exceptions, children and litigants cannot complain. Litigants (parents, caretakers or agencies) will complain only about outrageously unethical behavior by a GAL during the course of litigation. The litigant is in a "Catch 22" situation of being afraid of making the GAL angry or defensive and thereby, as would only be human, affecting the recommendation of the GAL. Attorneys speak frequently of filing motions to disqualify or replace GALs for inadequate representation but the numbers of such motions can be counted on one hand — again for fear of antagonizing the GAL. The GAL has power second only to the judge in the minds of litigants.

Children cannot and do not complain about GALs to anyone who can or will do anything about it. A parent may suggest to the GAL that

the child's teacher should be talked to. But, failure of the GAL to do so or to relay the parent's request to the court has no consequences to the GAL. A child may complain to a social worker that the GAL only called once on the phone in a year of representation, but once again the litigant the child complains to does not have any real power. Children do not request new lawyers like criminal defendants do. Few of them are even versed enough in the system to know they might be entitled to one. Few of them even go to court—the GAL goes for them. While the parent or other litigant may initiate communication with, monitor their lawyer, direct them, or in the extreme case, speak for themselves in court, the child is stuck with the lawyer the judge or a clerk deals off the top of the deck.

The need for the court system to take responsibility for the quality of representation by GALs relates directly to the unique aspects of child advocacy. A child client can almost never be part of the natural set of checks and balances on their representative's performance.¹ When is the last time anyone heard of a two year old or even a fifteen year old complaining to a judge about her GAL? The silence does not mean children and litigants are satisfied with the representation the court system provides. The silence means there is no accountability. For any GAL system the essential question is whether or not the model incorporates an intrinsic mechanism for monitoring and assuring the advocate's performance.² Currently Alaska lacks any method

1/ Bross, Donald; Munson, Myra, Alternative Models of Legal Representation for Children, V. Oklahoma L. Rev, 561, 580 (1980).

2/ Bross & Munson, Id., f. 1.

of accounting for quality, or effectiveness of its GAL program. The free-market assurance of competent counsel does not work for a child. The responsibility rests with the court.

II. ROLE OF THE GUARDIAN AD LITEM

The role of the GAL has been a fluid, changing concept in judicial proceedings over the last decade. We equate the phrases "guardian ad litem" and "best interests of the minor,"³ most frequently when trying to explain to a lay person what a GAL is. Judges and lawyers for litigants are frequently called upon to explain to lay people just who the GAL is and how the GAL role differs from a social service agency, a parent's attorney or a judge. There is confusion among litigants and their lawyers as to what the role of the GAL is. Untrained GALs often have difficulty clarifying this matter for litigants. In any event it seems to have evolved that the role of the GAL is to make an independent evaluation as to what is truly in the child's best interests, both in terms of the present situation and also for long-term stability.

As the role of the GAL has evolved many new issues have surfaced. GALs have most frequently been attorneys in Alaska. The GAL role is one many attorneys are not comfortable with. Traditionally, the

3/ AS 09.65.130(c).

distinction between the GAL and the legal counsel has been that the former uses his independent judgment in determining the "best interests" of his ward, while the latter represents for his client what the client determines to be in his own best interests. There is controversy at the present time as to who should represent the child, a GAL (attorney or non-attorney), or legal counsel, or both.⁴ The difficulty with a GAL appointment in Alaska is its lack of specificity. If legal counsel is appointed for a child the lawyer knows the role, fulfills it every day, and has duties defined and limited by the Code of Professional Responsibility. However, with the exception of a statutory charge to "represent the best interests of a minor"⁵ and footnote 7 of the Veazey⁶ opinion there is no code of ethics or commonly accepted set of standards which prescribe the duties of the GAL in Alaska. (See Exhibit A re: Alaska Statutes mentioning GAL.)

While the "best interests" may be the legislative mandate, many lawyers have difficulty figuring out how to get from the appointment to the recommendation. Certainly only a small handful of lawyers ever heard the words GAL in law school and even fewer were taught how to fulfill the responsibilities. The GAL is given four general functions with many, many tasks within each function.

4/ See: Goldstein, Joseph; Freud, Anna; Solnit, Albert J.; Before the Best Interests of the Child, The Free Press (1979); Representation for the Abused and Neglected Child: The GAL and Legal Counsel, Human Development Series, DHHS Publ. No. (OHDS) 80-30272, Aug. 1980; Davidson, Howard, The GAL: An Important Approach to the Protection of Children, Protecting Children Through the Legal System, Am. Bar Assoc., 1981, p. 836.

5/ AS 09.65.130(c).

6/ Veazey v. Veazey, 560 P.2d 382 (Alaska 1977).

These general functions include

- (1) investigator--the task of ferreting out all relevant facts;
- (2) advocate--the task of insuring all relevant facts are before the court at all hearings;
- (3) counsel--the task of insuring the court has before it all available options, and
- (4) guardian--insuring that the child's best interests are protected.

Within these functions suggestions for specific tasks for GAL performance in divorce cases are set forth in the Veazey opinion,⁷ which referred to the Dane County, Wisconsin, procedural guide for GALs. Likewise, the tasks of a GAL in an abuse or neglect proceeding might include the following:

- Investigate
- Monitor system
- Mediate
- Facilitate
- Advocate
- Fact-find
- Coordinate actions involving child occurring in several courts
- Cross-examine
- Hand-hold
- Present evidence
- Prod system
- Assure regularity of proceedings
- Promote and protect the interests of children
- Assess need for additional court proceedings
- Present legal arguments
- Assess information
- Assist the court
- Serve as witness

7/ Id., 560 P.2d 382 (Alaska 1977).

- Develop case plan
- Appeal
- Reform system
- Develop resources
- Prevent unwarranted intervention
- Maintain personal contact with child
- Assure development of treatment plan for children and parents
- Assure child receives all financial, medical, and educational benefits due⁸

Alaska has no procedural guidelines by court rule or statute and despite AS 09.65.130(c), which provides that:

The court in its order appointing a guardian ad litem shall...outline the guardian ad litem's responsibilities...

specific tasks or even orders requiring written reports by certain dates are seldom ordered. Many court systems have specific orders or guidelines setting forth GAL responsibilities. Examples are set forth in Exhibit B and C attached hereto. Some Anchorage judges use the Order for Appointment of GAL, Exhibit D, but it is not used routinely throughout the state despite AS 09.65.130(c).

Once again we conclude that the responsibility must rest with the court system. To appoint a GAL, often a young, new attorney with limited legal experience or life experience and say "go forth and advocate the child's best interest" is not enough. GALs should not be appointed by the court before their roles and responsibilities are defined adequately for them.

8/ Davidson, Howard, the GAL: An Important Approach to the Protection of Children, Protecting Children Through the Legal System, Am. Bar Assoc., 1981, p. 844.

Responsibility for the performance of the GAL, requires active participation by the court system by specifically designating the duties and by generally observing the following:

The guardian ad litem is a "special guardian" temporarily appointed to protect the child's interests. As a special guardian, the guardian ad litem is legally obligated to do everything within his power to insure a judgment that is in the child's best interests. Conversely, it is the court's obligation to insure that the guardian ad litem actively protects and promotes the child's best interests. If for some reason the guardian ad litem does not pursue and protect the child's interests, it becomes the duty of the court to intervene and to reassume those responsibilities. Furthermore, if the child's interests are compromised as a result of the guardian ad litem's neglect, the guardian may be punished and held responsible for any damages sustained by the child. The court remains the child's ultimate legal guardian and must continuously monitor the third party's performance.
[Emphasis added]

Alaska should not even consider moving forward to using non-lawyer guardian ad litem on a large scale when it has yet to define the role and responsibilities for attorney GALs who "know how the system works." In order to move forward to increased quality and more effective representation the philosophy of the judiciary must become one of active involvement and monitoring of the GAL role.

9/ Fraser, B.G., "Independent Representation for the Abused and Neglected Child: The Guardian Ad Litem", 13 Cal. Western L.R. 16-45 (1976-77).

III. APPOINTMENT OF GUARDIANS AD LITEM IN ALASKA

In examining guardian ad litem appointments it became clear to the Committee that a number of different methods have been and are being used around the state. Below is a summary, by judicial district, of the methods of GAL appointments:

A. First Judicial District

SITKA

In Sitka Judge Craske appoints an attorney as GAL when there is a real custody dispute. If feasible, the parties to the divorce are to pay for the services of the GAL. Occasionally, a non-lawyer skilled in counseling techniques is appointed as GAL, when there is no need for an advocate. These laymen are retired social workers and school counselors.

Child in need of aid cases in Sitka have the public defender as the child's representative and sometimes Alaska Legal Services represents the parents.

KETCHIKAN

The practice by Judge Schulz in Ketchikan is to appoint an attorney as GAL for the children in custody disputes. Judge Schulz usually waits for one of the parties to request the appointment of a GAL; however, he takes the initiative if he becomes aware that the parties are not thinking of the best interests of the children, e.g., when using the children to harass one another. Sometimes the parties pay but usually the expense of the GAL is borne by the court system.

In Ketchikan George L. Gucker, Esq., has volunteered for GAL appointments and only if there is a conflict in a divorce case are Miss Blasco of Alaska Legal Services or the assistant public defender appointed.

For child in need of aid cases in Ketchikan an attorney from a list of volunteers which includes Miss Blasco and Messrs. Gucker, Thompson and Bruce is appointed to represent the child and an attorney from a list of all the attorneys in town is appointed to represent the parents, if necessary. The assistant public defender is not involved in CINA cases.

JUNEAU

I consulted with Judges Carpeneti and Pegues in Juneau and the practice in divorce cases is to appoint from a list of attorneys who have volunteered to act as GAL an attorney to represent the child if one of the parties moves for an appointment of a GAL or the court becomes aware of the need for a GAL. Judge Pegues appoints a psychologist who is in private practice to act as a custody investigator and, therefore, the need for the appointment of a GAL is reduced.

In child in need of aid cases the assistant public defender represents the child and if needed, an attorney is appointed to represent the parents.

B. Third Judicial District

Anchorage (Contact: Master William Hitchcock)

The procedures for appointment and compensation of GALs in Anchorage have undergone radical changes over the past four years. Originally the appointment of GALs was made from a general court conflict list which included appointments for other types of conflict cases as well. The system was not satisfactory from a cost standpoint, nor did it insure a quality of representation.

In 1978, the Anchorage court contracted with one individual to provide GAL services for all CP and domestic cases locally. By 1979 this was expanded to add an additional half-time person to assist the GAL in taking a percentage of the cases. This system continued until early 1981 when it became apparent that the volume demands were far outstripping the resources.

Beginning in February, 1981, the Anchorage court entered into contractual arrangements with three law firms to provide GAL services in all CP, domestic, and probate cases. The contract provided for a lump sum payment of \$2,000 per month for all cases during a five-month period from February-June. This was based upon an assumption that there would be between 4-5 cases per month per contractor. At the end of the contract period a total of 72 appointments had been made, thus keeping within the original projection.

In July, 1981, a new six-month contract was entered into with two of the existing contractors, plus a new third contractor. The compensation scheme was changed to a per case basis of \$450 for all hours up to 15 hours. Beyond that, the contractor could seek additional compensation at an hourly rate not to exceed \$40 per hour. Within the first two months of this contract it became apparent that the 4-5 cases per month assumption would be exceeded as appointments were running 8-10 per contractor per month. For the six-month term of the contract ending December 31, 1981, there were a total of 138 appointments, an average of 7.7 cases per contractor per month.

In reviewing the statistical data collected under the July 1981 contract, it became apparent that the \$450 rate per case was too high. A compilation of cases worked during that period revealed an average hourly expenditure of some five hours per case. Since most of these cases were still open it was felt that the actual average would end up to be closer to seven or eight, but still far below the expected average of ten hours per case. This caused us to restructure the compensation scheme. In addition, the divorce cases were requiring substantial time expenditures which made it nearly impossible to factor them into the contract of any kind of averageable basis. Therefore, they were removed from the contract provisions and are now assigned on a rotating basis to all attorneys on the Children's Court conflicts list at an hourly rate of \$40 per hour. Beginning on February 1, 1982, a new contract was entered into whereby each contractor is paid \$2,100 per month for a five-month period ending June 30. After receipt of thirty appointments during the period, the contractor will be paid on a per case basis of \$350 per case thereafter. In any case to which the GAL is appointed, he may bill for time exceeding ten hours at an hourly rate not to exceed \$40 per hour. If appointments continue at a similar rate, they should not exceed thirty for each contractor during the contract period. Presently, as of April 1, 1982, there have been 29 total appointments (against a projected 36 for the two-month period).

On a substantive basis, the contract GAL program seems to be working quite well. Two of the three contract firms have been with the program since the initial contract in February, 1981. One is a three-man firm, the other two are individuals who share office space in the same firm but have individual practices. A legal intern who works with them also assists in handling cases. All of the GALs have participated in a training program presented by the Department of Health and Social Services in January and February of this year which covered a broad range of topics. They have developed some very valuable expertise in handling of children's cases as well.

Our future goals in this program include expanding the contract panel to four or five lawyers or firms. This will give us a broader range of talent to choose from. In addition, we are still tracking the time requirements of these cases in a continuing effort to devise a compensation scheme that will be cost effective yet provide quality representation. In this regard, something will undoubtedly have to be done in July of this year to bring the divorce cases back under a contractual agreement.

Kenai (Contact: Judge James Hansen)

Judge Hansen has historically utilized attorneys as GALs appointed from a general court appointments list. While no particular expertise is required as a prerequisite for such appointments, Judge Hansen has relied heavily on four or five attorneys who have shown a continuing interest in doing the work and have generally performed well.

Appointments are not automatically made in all abuse/neglect CP matters but rather the circumstances of the case are the determinative factor. GAL appointments are made in a significant percentage of such cases, as well as in divorce custody matters when the needs of the children so dictate. Judge Hansen does try to obtain payment for GAL services from a parent or parents in divorce cases and if they are willing to pay, the parties may nominate a specific GAL rather than having to use the court appointments list.

Judge Hansen did not have a ready estimate of the number of such appointments monthly or annually.

Overall, Judge Hansen views the situation as working smoothly in the Kenai court. There is an ample number of attorneys available in the local bar and the ones most frequently appointed seem to do an acceptable job.

Kodiak (Contact: Judge Roy Madsen)

The Kodiak court is the only locale surveyed which has specifically steered away from the use of attorneys as GALs. Several years ago Judge Madsen went to the Kodiak Ministerial Alliance and solicited their involvement in providing GAL services. Two or three of these people became actively involved in such work.

Most recently, Judge Madsen has utilized a woman employed by Kodiak Baptist Mission as GAL in most cases. She has a background in social work and even though she is a layperson, he feels that she does a more than adequate job of representing children. He now uses her whenever possible to the exclusion of all others.

Judge Madsen expressed a generally negative feeling about the performance of attorneys as GALs. He finds that they don't often understand the needs of children and that they tend to protract litigation to the detriment of all concerned.

In terms of volume, the Kodiak court appoints GALs in perhaps two dozen or more cases per year.

Palmer (Contact: Magistrate Brian Johnson)

The Palmer court appoints attorneys as GALs from a general court appointment list composed of about 12 names. Approximately four appointments have been made in the past six months. More attorneys are willing to handle these cases, so demand does not exceed the supply.

Valdez/Cordova (Contact: Phyllis Johnson, Clerk of Court/Magistrate)

While there are not many appointments in this area, there is a problem of resources as there is only one attorney in active practice in

Valdez who is principally available to handle such cases. Most cases are CP although occasional domestic cases do arise.

Unalaska (Contact: Renee Brown, Clerk of Court)

Very few GAL appointment needs arise in this court but when they do, resources are limited. There is a general list of about six attorneys who take court appointments, four of these being Anchorage attorneys who travel to the area regularly.

Dillingham (Contact: Magistrate Peter Ashman)

Alaska Legal Services handles the public defender contact in this area and is appointed to perform the GAL function unless they already represent the parents. If so, a local attorney who handles ALS conflicts would be appointed. There are few appointments made in this court.

C. Second and Fourth Judicial Districts

This report covers the procedures for appointments and compensation of GALs in the Fourth Judicial District, excluding Bethel.

Within the last several years the practice of appointments has varied somewhat. Originally, these appointments were made from a general revolving list of members of the private bar and included other types of conflicts cases as well.

Up until November 9, 1979, in conjunction with attorneys who were appointed GALs, the Division of Health and Social Services was commonly ordered by the court to perform investigations and to submit reports with recommendations in divorce cases where custody was contested. At times the Division worked with the attorney-appointed GALs. At times it performed this service when no GAL was appointed.

This practice became as much of a burden that the Division sued and prevailed on the issue of whether or not the court could order the Division, against its will, to conduct home studies in private child custody disputes. (Granato v. Occhipinti, 601 P.2d 442 (Alaska 1979).) The Division was never formally appointed as GAL. It had done much of the work in these cases.

In conjunction with members of the private bar and the work of the Division of Health and Social Services, the Public Defender Agency in Fairbanks handled GAL work, but only in Title 47 Children in Need of Aid cases where it became evident that the best interests of children became an issue.

At the end of the calendar year of 1979, the then presiding judge of the district, Judge James Blair, instituted a contract situa-

tion with members of the private bar. In actual practice, it appears that very few members of the private bar have been interested in this kind of work. Attorneys performing this service have usually been those few attorneys interested in it.

These attorneys then became the contract attorneys, with the first contract entered into for the calendar year 1980. Prior to the contract agreement, compensation was made to GALs on an hourly basis at \$40.00 an hour. The present contract compensation rate is at \$35.00 an hour to the attorney, to a maximum of \$1,500. Also employed in the contract could be a paralegal assistant who is compensated at a rate of \$15.00 an hour, to a maximum of \$250. At present, this writer is aware of only one formal contract in which the contractors are an attorney (husband) and paralegal (wife) who are compensated at the rate just mentioned. The contract GAL work is primarily divorce work, CINA work where the public defenders have a conflict, and adoption cases.

Travel to bush areas is also reimbursable under the contract. Usually the court pays for the transportation. The present contractor reports that there are an average of 15 GAL cases being handled under this contract at any one time.

While this contractor is handling the majority of these cases at present, members of the private bar who are interested continue to handle a few cases when they are requested to, because of workload or conflict on the part of the contractor. There are very few of these cases, however.

Appointments for the bush villages of Tok, Galena, Ft. Yukon, Barrow, and a number of smaller villages are handled out of Fairbanks. The more difficult GAL cases tend to be handled in Fairbanks because of the expense in transporting the court to a village for several days. If the court is going to a village for other cases, it attempts to consolidate all important cases to the time period it is present in the village. In general, the practice of hearing bush GAL cases seems to be determined by expense and convenience to the court and the parties to where the case will be heard.

Appointments of GALs in the Fourth Judicial District has risen dramatically in the last several years. This appears to be largely due to increased awareness and sensitivity to the needs of children in these proceedings. Also of significance is the Supreme Court decision in Veazey v. Veazey, 560 P.2d 382 (Alaska 1977), in which the court outlines at some length the specific duties of the GAL and the responsibilities of good representation.

In summation, a single contractor now handles most of the GAL work in contested custody cases and domestic matters. The Division of Family and Youth Services sometimes handles reports to the court in difficult adoption proceedings but not as an officially appointed GAL. There are very few of these cases. The Public Defender Agency, with very few exceptions, handles GAL work in CINA cases only. There are

large numbers of these, probably well over a hundred a year. Members of the private bar occasionally handle GAL work on an as-needed basis, mostly in conflict cases.

It is this writer's personal opinion, based on several years of experience and observations, that the quality of representation in these cases varies, and seems to be dependent upon the individual GAL's personal workload, level of expertise, and interest in this kind of case.

D. Costs and Numbers

Attached hereto as Exhibit "E" is the committee's letter to the court system requesting information about costs and numbers of GAL appointments. The bottom line is that very little information is available and what is available is confusing. For example, the figures may include some appointments of parents' attorneys in children's proceedings cases; no figures are kept by the court system of actual numbers of GAL appointments or the categories of litigation they are in; and large numbers of appointments and dollars are missing by the fact that the public defender's office serves as GAL in some judicial districts. In summary, the costs and figures tell us only that we don't know very much about the real costs to the overall State budget or the numbers of appointments. It is the general feeling of the Committee that the costs and numbers reflected in Exhibit "E" are unreliable and low.

IV. INPUT TO THE COMMITTEE

The committee mailed out a letter requesting input in March of 1982. The letter is attached hereto as Exhibit F. One thousand five hundred fifty went to the Alaska Bar Association for mailing to all attorneys; six hundred went to the Alaska Foster Parent Association for

mailing to licensed foster homes; and copies were sent to Alaska Native organizations and villages, Division of Family and Youth Services offices, magistrates, mental health centers, military offices and legal services offices. The following is a summary of the thirty-one responses received.

A. Attorneys

GALs should be trained in the areas of child sexual assault, especially incest, and domestic violence. Enclosed is a list of network programs.

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Sent materials from a Philadelphia advocacy program; stresses need for multidisciplinary approach; sees roles of GAL and attorney as complimentary and necessary.

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Comments relate primarily to divorce custody. Problems he sees include: abdication by trial judges of decision making to GAL; bias and inexperience of GAL; cost to litigants increases because case is "drug out". Suggested answers include: lay people being GALs; GAL should not make a recommendation — should merely report facts to the judge; funding through court system with some reimbursement by litigants; training via community college courses; role defined by knowledgeable committee.

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GAL should be from the same community or least a community with the same values. The GAL should be provided by DHSS, and the GAL should tell the attorney what position to take. Cases should be non-adversary; distinguish between GAL and attorney — no one can do both; in house GAL become cynical and part of the structure; lists merely attract the inexperienced because pay is so low. Private bar should be used and "paid promptly and well", a manual written by others than those performing the service will be a waste of money and "self-serving"

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Special problem in rural areas because often parents or children may not be at the hearing; GAL not routinely appointed in Nome, but should be. Private bar and public defender feel DHSS represent the child, so they feel GAL is unnecessary; public defender ends up representing the wishes of the child, not the best interests of the

child. When the child lives in another village, GAL may not be able to talk to the child except at the hearing. GAL could well be lay people — perhaps a contract with one person in Nome and one person in Kotzebue would work. Consideration should be given to having a representative of a native corporation serve in the GAL role.

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Nonlawyer GAL have merit but would need the assistance of a lawyer to protect the child's legal rights — unclear how they could be combined. Manual should address the need for GAL to advocate for adequate child support for the custodial parent.

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Attorneys are available to handle court appointments; the rate of compensation is far too low — minimum fee should be \$75.00 an hour. The role of GAL and attorney are inconsistent; a GAL appointment by the court should not impose any type of attorney/client relationship.

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Children definitely need representation by a GAL. "The attorney who is GAL has the same responsibility to his child/client as any attorney has to any client. The attorney is there to ensure that the child's interests are protected, his preferences placed before the court, and to inform the child of his options and rights." Manual should list community resources; and a manual should distinguish among the options available in child abuse cases and those in which children's parents are disputing custody or visitation. Most lay people do not understand the role of a GAL — a pamphlet is a good idea. Serving rural areas might be accomplished by assigning attorneys by geographical area or by judges as legal services and the district attorney offices do. Lay GAL, provided they receive training and an attorney is on call to each, would allow adequate representation of children.

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After submitting comments pointing out that the role of GAL and attorney are inconsistent because the GAL at trial becomes a witness, which is unethical for an attorney, and suggesting the creation of a state agency of GAL to be represented by his own counsel, Mr. Ingraham wrote again suggesting that children do not need representation in custody suits, but rather the court needs an expert witness to perform the functions the court has directed a GAL to perform in Veazey. The expert witness would present facts and recommendation to the court and be prepared to submit to cross examination by the competing parties, not including the child.

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Manual for GAL is a good idea. CLE type training sessions for GAL has requirement prior to appointment should be considered. One full time position for the 4th judicial district might be a good idea. All attorneys or at least all civil attorneys should be required to participate in a rotation for GAL appointments, but probably not politically feasible. Training in social services perhaps with DFYS personnel would raise attorney's awareness. DFYS should again be involved directly in home studies or assistance to GAL especially in rural areas where the social worker is better informed about the people involved in the case.

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Sent materials about ABA grants.

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In most, if not all disputed custody situations, the child is in need of zealous legal advocacy. The role and responsibilities of the GAL has been clearly defined by the Alaska Supreme Court. Any specific questions should be the subject of an inquiry to and prompt ruling by the bench. The best preparation for prospective GAL is to have represented the claimants in several prior proceedings. Child custody proceedings and quasi criminal proceedings involving children are so different the problems of providing representation should be treated separately. The court system should contract with at least three firms in the Anchorage area — contracts should be awarded by competitive bid, which permits greater costs control and quality.

B. Judges and Magistrates

It would be beneficial if the person appointed were bilingual and a resident of Tok. The person could be a nonlawyer, although a lawyer would be preferable. If adequate training were available, perhaps a minister in the community would be available. It would be preferable for the trainer to meet with the proposed candidate at the court in the area where the proceedings will be held.

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From experience with both lawyers and nonlawyer GAL, non-lawyers are more helpful to the ward and the court. Lawyers approach the job from an adversarial point of view. The hourly rate difference between that paid the lawyer and nonlawyer also make it less costly to employ a nonlawyer. People from the Kodiak Ministerial Association, and currently Ms. Sandra Jackson, a former social worker employed by the Kodiak Baptist Mission, have been excellent GAL; because of their training they have not required any special training.

C. Agencies

In divorce custody proceedings the GAL needs training in child development and the effects on the child of family disruption. The GAL should "advocate for continuing the mediation between the adults, so the

child's best interests are protected." Mediation should be done by a professional, not the GAL. The state should contract to provide training to GAL.

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In rural areas it may be necessary to train lay people if there are not enough attorneys and call upon them as the need arises. GAL could be trained through DFYS training geared to the local community or one person from each community could be trained in Anchorage and then return to train others. The role of GAL is defined in statute and DFYS manual. Lay people could be involved by advertising in local papers.

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Our focus is the preschool exceptional child. We ask the committee address the needs of these children in the report and the planned pamphlet. Particular emphasis might appropriately be placed on adherence to P.L. 94-142.

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Based on years of work in the social services/court system in Virginia, she believes the child is best represented when the GAL has a good relationship with the social agency and the child's social worker. The best representation for children is a social/attorney approach. This requires only additional organizational effort and no additional expenditure of funds for training.

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For children affected by domestic violence recommendations are: 1. custody not be awarded to the abusive parent unless he/she successfully completes anger control classes and treatment for battering, 2. visitation with the abusive parent be supervised at all times, 3. foster home personnel be trained in non-violent child rearing and techniques for unlearning violent behavior, and 4. GAL and other helpers be thoroughly trained in the appropriate handling of domestic violence issues. She is willing to work with the committee.

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Sent letter on the local offices of BIA. No comments.

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Recommends attorneys, who will have little opportunity to become familiar with the child they are representing in rural Alaska, be given additional training in the area of communicating with children. Also recommends development of a volunteer GAL program similar to that in Washington which could be tried out experimentally in several areas of the state.

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GAL have tended to not learn about the issues involved in treatment of the child, but carrying out their adversarial role in the court hearing seem to attack the kind, type, or quality of treatment, rather than having helped to delineate the goals and need for treatment in advance. GAL tend to not be interested in the case except at the formal hearing. The role of the GAL should be to coordinate and consult with other professionals. Training should emphasize utilizing available resources. Non-law trained people may be better representatives of the child's interests than an adversarial attorney and inadequacies would be overcome with training materials described in the request for comments. Attorneys have a professional obligation for pro bono professional services and consequently token payment for GAL services is not all together unfair.

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The most troubling problem with the present system of GAL representation is the lack of time the GAL spend with clients. Representation by nonlawyers is advantageous. Advantages include cost savings, ability to monitor cases more thoroughly and do more background work, ability to spend more time with clients, and more accessibility to the GAL by the client. Community groups of GALs, which meet monthly to train and give support to one another and write grants, etc., would be helpful. A manual is a must, as well as ongoing training. The court is probably able to monitor GAL's performance, whether attorney or non-attorney. Enclosed GAL brochure for Oregon.

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Suggests contact people in Washington involved with the GAL program in King County. Since the GAL represents the best interests of the child in "nonadversary" proceedings no real reason to require they be lawyers. Training could be an adaptation of the domestic relations course offered paralegals. Nonlawyer volunteers could solve problems of representation in rural areas.

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Forwarded letters to agencies working with domestic violence.
No comments.

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D. Division of Family and Youth Services (Social Workers and Probation Officers)

GAL in children's proceedings should be chosen to give an interested but unbiased third party assessment of the child's situation and to provide recommendations as to what actions or changes would be in the best interest of the child. GAL need not always be an attorney. The adversarial training of an attorney often introduces a subtle bias into the role, making it a three-sided fight; the legislature seems to encourage nonattorney GAL or it would have required attorneys; if the

child needs a legal advocate to protect his rights, then an attorney should be appointed otherwise it need not be an attorney to represent the best interests of the child; lawyers are more expensive than non-lawyers; in rural areas lawyers are unavailable or the cost of allowing them to actually view the child's situation is prohibitive; attorneys are not trained in assessing social and cultural factors. Advantages of using nonattorneys as GAL include minimizing the adversarial nature of child custody proceedings; minimizing costs; and increasing the possibility in rural areas of appointing someone familiar with culture and local conditions. Where the ICWA is a consideration it might be possible to appoint the tribal body as GAL and have them designate an individual to prepare the report — "much as is done now when the public defender agency is appointed." This must be approached carefully to avoid the possibility of bias. Other considerations include the need for clear cut standards for GAL. The proposed handbook is an excellent idea, but include adverse sanctions for failure to fulfill established standards. Use of nonattorney GAL might require greater diligence on the part of judges to guard against bias toward or against the parties.

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Few children at McLaughlin Youth Center have ever had a GAL, except some from Barrow. Many could have used one, especially those where the parents ceased to be involved in planning or caring for the child.

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Representation by the GAL is roughly the same as that by the AG and the parents and the public defender for the parents. None of the parties has their lawyer present during emergency or temporary custody and an hour or two before the adjudication all the attorneys interview the child, the parents, and the social worker, and then everyone leaves for Anchorage. No GAL could catch any mistakes in the social worker's planning in this kind of system nor in his experience do GAL investigate thoroughly, make home visits, or consult with the other experts. Services could be improved if the GAL were better prepared before coming to the hearing, independently and routinely sent a questionnaire to the school and other information sources to gather an evaluation, discuss long-range planning and possibly signed a case plan, and finally were available when cases get bogged down during permanency planning. A nonlawyer GAL or GAL associate could perhaps do the investigative work, however if the hearing became difficult a nonlawyer GAL would become ineffective.

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GAL have no consistent guidelines or common thought on how long they should serve. There is a need for them to serve in all cases until custody is ended.

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Several areas needing to be addressed: the judge does not seem very familiar with the role and responsibilities of a GAL; the judge states there are no court funds to pay for the GAL representation. Nonlawyers with no training or education as to their responsibility are being appointed to be GAL. They see the need for training and education for people in the judicial system, including local attorneys, so there is a trained group of people who can be called upon to provide professional GAL representation.

V. DEFICIENCIES IN THE ALASKA SYSTEM

The committee has identified the following deficiencies in the Alaska GAL system as primary and in need of immediate attention:

A. There is a need for the Alaska Court System to develop a method for at least monitoring the total number of GAL appointments it makes each year, what areas of litigation they are in, and what percentage the court system budget pays for. These bare figures would be helpful in ascertaining what the system is providing and being able to compare the present system with proposed changes. This improved accountability would result in some fiscal and administrative responsibility on the part of the court system.

B. There is a need for the Supreme Court to review Administrative Rule 1 which provides for attorneys appointed as guardian ad litem to receive \$40.00 per hour and non-attorney GALs to receive \$25.00 per hour. In asking practitioners why they do not volunteer for GAL work the two most frequent answers are "I don't know what to do" and "I lose money at \$40.00 per hour." This amount was set in July of 1978, four years ago, and during this time most lawyers have increased their client charges 15-25%. The amount was not even close to competitive in 1978 and is approaching pro bono for lawyers who do not do the work in large volume.

C. Attorney and lay GALs are given no training in what their job is or how to carry it out. An effective GAL system includes a strong training and continuing education program. Training should be given in applicable law, dynamics of divorce, child development, techniques of interviewing children, dynamics of the physically or sexually abusive family, dynamics of the chronic neglecting family, divorce visitation from the child's perspective, using mental health experts, how to interpret psychiatric and psychological reports, cultural sensitivity, traditions and lifestyles, the Indian Child Welfare Act, treatment of troubled adolescents, mediation, developmental disabilities, special education, and placement options. Presently no specific training is required to be a GAL. Such training is not expensive but requires the administrative capabilities of an entity such as the court system to organize the training. The urban communities all contain most of the necessary "specialists" in these areas and the court system would be able to ascertain the most cost-efficient way for such training, i.e., take the training to the village or bring prospective GALs to the training.

The Department of Health and Social Services, realizing the need for GAL training offered a single seminar composed of four sessions for GALs in Anchorage in early 1981. The agenda is attached hereto as Exhibit G. However, it is not the responsibility of the Department of Health and Social Services to assure the quality of GALs. It is the responsibility of the court system due to its special relationship to children. While the court has come to recognize the need to train judges and magistrates it is now time for the courts to recognize that they have been delegated with the responsibility to protect the best

interests of children and part of the fulfillment of that responsibility requires the court to assure that competent GALs represent children. Assurance of competent GALs requires that the court system set up a continuous, on-going quarterly or twice-yearly program in each community for GAL training. Furthermore GALs need to be required to attend training on a regular basis in order to receive appointments.

D. There are no minimum qualifications for serving as GALs except as established by individual judges or contracting courts.

E. There is no method for sharing knowledge among presiding judges as to new systems being tried for GAL services. For example, the contracting system being used in Anchorage has not been advertised such that attorneys in other areas could request similar contracts with the court system.

F. With the exception of a couple individual judges the system has not been innovative in terms of trying new approaches to providing GAL services, such as lay guardians. Any such program must be actively supported by the court system and carefully monitored for quality.

G. Generally, the orders appointing GALs do not set forth the responsibilities of a GAL.

H. The court system has not taken an active role in assuring that GAL services are being adequately provided in the best quality, cost-efficient manner.

VI. MODELS TO CHOOSE FROM

Four general categories of models exist for providing GAL services. Most systems are one or a combination of these four models.¹⁰

A. Ad Hoc Appointments

This is a system whereby a judge or clerk subjectively assigns an attorney or lay GAL based on a party or the judge's own motion. This is the system that Alaska uses most often. Most frequently the appointments are of attorneys who receive far less than the going rate of compensation for other legal work. The difficulty with this system is accountability. Some of the criticisms are that only other attorneys and judges can structure the GAL behavior, often in closed proceedings. In reality, there is little or no censure unless someone files a bar grievance. Also, because of low compensation, the lawyer usually has better paying ways to spend his time other than giving attention to the GAL appointment. Other than personal interest or pride there is no incentive to do a thorough job. Finally, specialized resources regarding child development, mental health, family dynamics, etc., are not readily available without the cumbersome process of applying to the court for expenses.

B. Panels

Panels are a selected group of advocates who are regularly appointed to do GAL work. While Anchorage and Fairbanks have had formal and informal "lists" these have not actually been panels since the information about what the "list" is has not been generally disseminated to the bar. A GAL "panel" is composed of persons who have been screened

10/ Bross & Munson, Id., p. 580.

by some entity such as the court system or bar association, and meet certain minimum criteria. They are generally held out by the system to be better than the average practitioners by virtue of experience, training and dedication. The accountability of this system varies with the court system that administers it by virtue of whether "real" screening is done and whether the panel is reviewed and unqualified members or those who have not completed continuing education are removed. The advantages to the system are obvious — quality can be monitored, special resources in family dynamics, child development, etc., are developed by practitioners just as they are in tort or contract damage litigation and practitioners develop expertise and efficiency. The problems with the system are that it involves increased participation from the judiciary directly by the court deciding some GALs should or should not serve on the panel and indirectly by providing administrative support and tracking of cases. (See Exhibit H for sample.)

C. Legal Clinics

These are offices where a number of attorney GALs practice together. There are no private legal clinics in Alaska such as Legal Services for Children in San Francisco or the Youth Law Center in Des Moines. These clinics must profit to survive and speculation is that \$40.00 per hour does not bring much profit and grant monies are not readily available.

The public defender agency acts as a legal clinic for GAL cases in some areas of Alaska. For example, by far the majority of

Child in Need of Aid GAL appointments in the Fourth Judicial District are to the public defender's office. The office receives several hundred. The problems here are that historically the public defender's office is overburdened and not as well-staffed as its Department of Law Criminal and Civil counterparts. New, green lawyers are given the GAL cases since the subject matter tends to rank somewhere below misdemeanor work. Some public defenders view "kiddie law" as relatively unattractive and feel the risks to the child by their inattentiveness to the case is far less than to the adult client who may go to jail for years by the lawyer's lack of preparation. It is a matter of priorities and the GAL appointments often are on the bottom of the overworked public defender's caseload. Also, some public defenders have great difficulty in switching from the strong client directed advocate role of the criminal system to the "best interest" role of the GAL in civil courts.

In some cases a companion criminal case arises after the public defenders are appointed GAL in the children's proceedings. This is particularly true in sexual abuse or physical abuse cases. Often the parent is indigent and receives private conflict counsel at court expense in the criminal case. This is a large hidden cost to the court system, since these are usually felonies, that is indirectly a GAL expense.

The advantages of using the public defender's office for GAL appointments are equally weighty. There is a pool of lawyers available and some tend to develop expertise by sheer volume. They know how the system works, who to believe, whose reports to check personally, and