

Guardians ad Litem

Executive Summary (95-03) February 28, 1995

A guardian ad litem is a person appointed by a court to represent the best interests of a child (or children) in court proceedings when they are at risk of being overlooked. There are many cases where a child's interests might be at risk, such as in some of the almost 10,000 divorces of couples with children, and in the 4,800 cases of child abuse or neglect filed in Minnesota courts in 1993.

Minnesota law requires the appointment of a guardian ad litem in juvenile court proceedings when abuse or neglect is an issue. In family court proceedings, guardians must be appointed when custody or visitation is at issue if the court has reason to believe the child is abused. Further, a judge may appoint a guardian for children in other cases when custody or visitation is at issue or when the court feels that the appointment is desirable.

Many concerns have been raised about the use of guardians ad litem. Most complaints have centered on guardian actions in family court cases, primarily in contested divorce actions. Complaints have focused on guardian bias, lack of oversight and accountability, inadequate training, and inappropriate communication between guardians and judges. Parents have also complained that there is no place to seek relief if they have a problem with a guardian.

In response to legislative concerns, the Legislative Audit Commission directed us to evaluate guardian ad litem services. The commission asked for an objective analysis of Minnesota's current system for providing guardian ad litem services and options for revising the current system. This report attempts to go beyond dissatisfaction with individual guardians and instead focuses on the broader system in which guardians function. This report addresses the following questions:

- How are guardian ad litem services provided in other states?
- How are guardian ad litem services organized and delivered in Minnesota?
- How can guardian ad litem services in Minnesota be improved?

Guardians ad litem became widely used after 1974 when Congress required states to pass legislation providing for the appointment of guardians in every judicial proceeding involving an abused or neglected child. However, the federal government left implementation of guardian ad litem requirements to the states. Most states, including Minnesota, delegated this function to counties, resulting in fragmented and decentralized systems. Our review of guardian services in other states revealed that there is no dominant national pattern for providing guardian services.

Guardian Ad Litem Services in Minnesota

With guardian services organized on a county-by-county basis, Minnesota is one of 33 states where guardian services are provided locally. Minnesota's existing Guidelines for Guardians Ad Litem (1986) were developed by the Minnesota Judges Association to assure the quality of guardian services throughout the state. However, the Guidelines do not carry the authority of statute or rule, are not uniformly applied, and are inconsistent with some court rules related to guardians.

Minnesota counties use various combinations of paid attorneys, paid non-attorneys, and volunteers to serve as guardians. The type of guardian used depends on the volume of cases, local resources, and philosophy of the court. While most county guardian programs use paid non-attorney guardians, the majority of guardians in Minnesota are volunteers. We estimate that in 1993 about 850 people served as guardians ad litem in one or more Minnesota counties and carried over 6,300 cases, at a cost of almost \$3 million dollars (an average cost of about \$450 per case). Most guardians were women, and relatively few were minorities.

According to judges, guardians play a crucial role in the judicial system. Well-trained guardians, working in appropriate roles, gather information, help sort out issues in custody disputes or child abuse and neglect cases, determine whether children receive ordered services, and monitor cases for the court. The vast majority of judges reported being satisfied with guardians, but family practice lawyers and public defenders were less satisfied.

Program Operation

Just under one-half of Minnesota's guardian programs have coordinators, although they are generally the largest programs. We found that there is little consistency across counties in how they recruit, select, and supervise guardians. Many programs have difficulty recruiting minority guardians, and volunteer programs must constantly recruit new volunteers. Although there are ways to file complaints against other professionals, we found that:

- There is no regional or statewide system to process complaints about a guardian, and there are no uniform statewide procedures to remove a guardian from a case or program.

Based on case law, guardians in Minnesota have absolute immunity from lawsuits as do other officers of the court. This is similar to case law in other states.

Roles and Responsibilities

While Minnesota statutes provide for the appointment of guardians, they provide little detail on what roles guardians should fulfill. We found:

- There is not a universally understood or consistently applied definition of the appropriate roles and responsibilities for guardians in Minnesota, leading to frequent confusion and differing expectations.

References to guardian roles and responsibilities are scattered throughout court rules, statutes, case law, and judicial guidelines. Minnesota uses the Guidelines to clarify the guardians roles and duties. But for the reasons cited earlier, the Guidelines are not effective. Judges differ in how they use guardians ad litem. In some cases, guardians simply gather information and present recommendations to the court. In other cases, guardians may act as custody evaluators, or visitation expeditors. Judges, court administrators, and guardians do not always agree on what constitutes the guardians' responsibilities. Judges also differ in their expectations of guardians for communication and reporting. People told us the multiplicity of guardian roles can be confusing, especially to parents who may not always understand why guardians were appointed.

Training

Adequate basic and continuing training is essential for guardians ad litem to be effective. Some national standards for training have been suggested for volunteer guardians, but there are no universal training requirements for all guardians. While some Minnesota counties require and provide training before a guardian is assigned to a case, we found:

- Thirty-three counties do not have any basic training requirements and 57 counties do not have any continuing education requirements.

Nearly 17 percent of the state's guardians told us that no basic training was required prior to their first case assignment. Many guardians reported that they seek out continuing education opportunities, but nearly 59 percent said they were not required to take any continuing education. We also found that paid attorney guardians receive less training than other guardians. In some cases, there was a lack of consistency between the training that judges and lawyers believe guardians need and the training that guardians actually received.

Types of Guardians

The problems with guardian ad litem services in Minnesota are not necessarily tied to one type of guardian program, but cut across program types. County needs and resources vary considerably, and guardian use reflects these differences. The differences among counties lead us to conclude:

- It is nearly impossible to identify one type of guardian that would best serve all jurisdictions.

Volunteer guardian programs are often rated highly, but they may be difficult to implement in some parts of the state. While we could find no reason that guardians must be attorneys, we also recognize that in some sparsely-populated rural counties with small

caseloads, paid attorney guardians may be the most practical choice. Multi-county efforts may be needed to provide adequate guardian ad litem service, especially in areas with relatively few cases.

Some problems with Minnesota's guardian system are concentrated in certain counties or court districts. For instance, every judicial district in outstate Minnesota has at least one county that does not require basic training, but the majority of counties in the Ninth Judicial District in northwest Minnesota lack training requirements. Also, a few guardian programs, such as in Hennepin County, received more than the average number of complaints.

Recommendations

A centralized, statewide guardian system might address some of the problems identified in this report, such as fragmentation, but it would not solve all problems and would reduce the level of flexibility and responsiveness to local concerns present in the guardian system today. Therefore, this report does not recommend a new centralized statewide system. However, we think that guardian ad litem services in Minnesota could be improved if the state Legislature and the Supreme Court provided more guidance to Minnesota counties and district courts.

The guardian ad litem system is primarily a function of the judicial branch and most of the solutions should come from the courts. But the Legislature has a role and can help improve the system. Therefore, our recommendations are directed to the Legislature, the Supreme Court, and local guardian programs. We recommend that:

- The Legislature should clearly articulate the primary roles of guardians ad litem in Minnesota statutes.

Legislation should define guardian roles broadly to include responsibility to conduct an independent investigation, advocate for the child's best interests, and monitor the case and the child's circumstances. We recommend that:

The Supreme Court should update and adopt the 1986 Guidelines for Guardians Ad Litem. The Guidelines should:

- Outline the roles and responsibilities guardians are expected to undertake to fulfill their duties;
- Clarify the roles of guardians ad litem and custody investigator; and
- Develop procedures for how guardians should work with parents who have existing Orders for Protection.

The Guidelines should articulate the specific responsibilities related to the guardian roles defined in statute. For example, to conduct an independent investigation, a guardian should interview the child's parents, social workers, and others with knowledge of the facts; visit with the child; and review school, medical, and other pertinent records. The

Supreme Court is in the process of revising the Guidelines. Further, we recommend that: In its revised Guidelines, the Supreme Court should:

- Develop standards for guardian evaluation and removal;
- Define key characteristics of the guardian ad litem program coordinator, including selection criteria, responsibilities, and necessary training;
- Require written reports from all guardians, with background information to support any guardian recommendations; and
- Require judges to write more detailed appointment orders clearly defining their expectations for guardians' roles and responsibilities in specific cases.

Both parents and lawyers told us that parents often do not understand why guardians are appointed or what they are supposed to do. Family practice lawyers could provide valuable information to their clients on the roles and responsibilities of guardians. Therefore, we recommend that:

- The Supreme Court should work with the Minnesota State Bar Association to provide education on the purpose and roles of guardians ad litem in family and juvenile court.
- The Supreme Court should develop general written materials describing the purpose of guardians ad litem and guardian roles and responsibilities and make them available to parents, lawyers, and other professionals. Program specific information should be developed at the local level.

General guardian ad litem information should be based on the Supreme Court Guidelines. Individual guardian programs should supplement the general statewide materials with program-specific information including the name, phone numbers, and hours for the program coordinator or county contact person, and the local complaint process. We recommend that:

- Within the guidelines set by the Supreme Court, each guardian program should have in place standards for guardian selection and procedures for guardian evaluation and removal. Whenever possible, a guardian program coordinator should assign guardians to cases.

We also recommend that:

- The Supreme Court should adopt a minimum hourly basic training requirement for all guardians, including attorneys, before assignment of their first case and a minimum hourly annual continuing education requirement.

The Supreme Court should be responsible for implementing these requirements, including determining the content of guardian training and developing provisions for waivers of certain training program components based on previous training completed. Based on our review, we suggest that the Court consider requiring a minimum of 40

hours of basic training and 10 hours of continuing training annually. Further, we recommend that:

- The Supreme Court should develop guidelines for guardian ad litem basic training and continuing education curricula. The training curricula should include a component on family violence and should address the issue of how to properly communicate with judges.
- The Supreme Court should provide basic and continuing training for guardians. The Court should allow those counties with adequate training programs already in place to continue to operate them.

We encourage the Court to explore the feasibility of providing district-level training for those counties, such as those in the Ninth Judicial District, with few guardians and small caseloads that are unable to provide training themselves.

We agree that there is a need for increased guardian accountability. Therefore, we recommend that:

- The Supreme Court should establish a guardian ad litem oversight board within each court district to provide an avenue for complaints about guardians, appeals of program coordinator decisions, and a mechanism to generally review guardian programs.

The oversight boards could be modeled after the Lawyers' Profession Responsibility Board, appointed by the judiciary, with representation from judges, lawyers, guardians ad litem, and the community. The boards' responsibilities could include investigating complaints about guardians, removing guardians for cause, and hearing grievances of guardians who were removed at the local level.

As noted earlier, in Minnesota, guardians ad litem have absolute immunity from lawsuits. We do not think a change in guardian immunity is needed. Better definition of guardian roles and responsibilities in Minnesota statutes, revised Supreme Court Guidelines, and specific judicial appointment orders should specify the proper scope of guardian responsibilities for the purposes of guardian immunity.

More Information

The Program Evaluation Division was directed to conduct this study by the Legislative Audit Commission on July 21, 1995. For a copy of the full report, entitled "Guardians Ad Litem," (95-03), 94 pp., published on February 27, 1995, please call 651/296-4708, e-mail Legislative.Auditor@state.mn.us, or write to Office of the Legislative Auditor, 658 Cedar St., St. Paul, MN 55155.

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