

OPEGA
PERFORMANCE
AUDIT

FINAL
REPORT



**Performance Audit of Guardians *ad litem* for
Children in Child Protection Cases – Program
Management Controls Needed to Improve
Quality of Guardian Services, and Assure Effective
Advocacy of Children’s Best Interests**

Report No. SR-GAL-05

a report to the
Government Oversight Committee
from the
**Office of Program Evaluation & Government Accountability
of the Maine State Legislature**

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Performance Audit of Guardians *ad litem* for Children in Child Protection Cases – Program Management Controls Needed to Improve Quality of Guardian Services, and Assure Effective Advocacy of Children’s Best Interests

Purpose

The Court appoints GALs to independently represent the best interests of children in child protection proceedings.

OPEGA evaluated whether GAL services are: in compliance with statute; effective in promoting the best interests of children; and supported by adequate resources.

The Maine State Legislature’s Office of Program Evaluation and Government Accountability (OPEGA) has completed a review of Guardians *ad litem* (GAL) for children in child protection (CP) cases at the direction of the joint legislative Government Oversight Committee (GOC). In accordance with federal and state law, the Court must appoint GALs for children in CP proceedings. GALs are appointed to independently represent the best interests of children pursuant to 19-A MRSA §1507 Family Law, or 22 MRSA §4005 Child Protection Law. This review is specific to Title 22, CP GAL activity.

The Judicial Branch (JB) of the State of Maine estimates spending over \$3 million dollars to pay independent guardians *ad litem* for services in state fiscal year 2006.¹ This figure does not include any administrative costs. Reimbursements for GAL services have increased by more than 585% over the past decade, significantly impacting the Court’s finances. This trend does not appear to be diminishing in the near future.

The Government Oversight Committee asked OPEGA to conduct a performance audit of Guardian *ad litem* services to determine if:

- guardian *ad litem*-related activities are in compliance with the relevant statutes and rules;
- the guardian *ad litem* program is effective in promoting the best interests of children; and
- the resources for monitoring GAL activities and reimbursing GALs’ reasonable costs and expenses are adequate.

1 Administrative Office of the Court (AOC).

In conducting this performance audit, OPEGA focused on the adequacy and effectiveness of the Court's internal controls for assuring the quality of GAL services. OPEGA also focused on the activities and performance of the GALs themselves.

Conclusions

A. Much has changed since Maine's GAL legislation was first enacted three decades ago. The volume of child abuse and neglect cases and related court events has escalated across the country. The Court's role, and subsequently the GAL role, in achieving stable, permanent homes for abused and neglected children have also expanded. With increased social awareness of child abuse and neglect, and deepened understanding of children's needs for timely permanent placement, have come:

- intensified societal expectations of GALs; and,
- confusion about the role of GALs in the child welfare system.

The JB has responded to the unique supports GALs require by creating: *Maine Rules for Guardians ad litem* and *Standards of Practice for Guardians ad litem in Maine*, core training, and a *GAL Handbook*. The GAL community has responded by independently establishing the GAL Institute of Maine, participating as part of the Court Services Advisory Committee (CSAC) and assisting with training.

Unfortunately, OPEGA has concluded that this set of activities is not enough to assure that all children receive GALs who are effective in representing their best interests. The Court does not have sufficient tools in place to know whether GALs are complying with statutory mandates. Nor can judges be confident that they are receiving complete and accurate information and wisely considered recommendations from GALs. Under these circumstances, judicial decisions in child protection cases may not be optimal.

In executing this audit, OPEGA gathered information from multiple, independent sources confirming wide variation in GAL compliance with mandated activities and performance quality. These inconsistencies were apparent between GALs and between activities. Because of the way the Court administers GAL services, there is little documented, standardized and accessible data to analyze. Therefore, while OPEGA can confidently state that compliance and performance inconsistencies are readily detectable, we cannot quantify the extent of compliance with mandated activities, or the effectiveness of GALs themselves.

Clearly, there are high-performing, dedicated and effective GALs. There are also too many reports of GALs with questionable performance, particularly regarding contacts with children and

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interactions with other key individuals in children’s lives (see Appendix 4).

Judicial oversight within the adversarial process does not provide the level of support, supervision and performance monitoring necessary to ensure compliant, effective and efficient GAL performance.

- B. Judicial oversight within the adversarial process, the current method used to monitor GAL activities, does not provide the level of support, supervision and performance monitoring necessary. This mode of supervision does not include the kinds of supports GALs need to consistently establish and maintain successful relationships with children. Consequently, the quality of services provided by GALs is highly dependent on the skills, experience and character of individual GALs themselves.

The JB administers GAL services using the same model as appointed indigent legal representation, and treats GALs as independent experts in court. However, GALs do not simply provide the court with independent, expert opinions, or render legal services that judges can adequately supervise through the adversarial process. Instead, GALs provide highly specialized child advocacy, analogous to social services. A human services program management model would be more appropriate for administering and supervising GAL services.

- C. When surveyed, GALs and judges reported that GALs are underpaid, though court-established fees and reimbursement rates for Maine’s paid GALs are in accordance with national trends (see Appendix 6). Paid GALs currently receive the same hourly rate as court-appointed attorneys representing indigent clients. Importantly, the cost of providing GAL services is rising faster than costs of other types of indigent representation due to changes in federal requirements for adjudicating CP cases. Though the JB receives a limited amount of federal grant funds for CP case processing improvements, this funding has only been enough to cover costs for developing and providing required GAL training, and producing the *GAL Handbook*. To handle federally-mandated obligations, the Court has been sacrificing portions of its appropriation originally budgeted for other necessary, but discretionary, spending (court security systems, for example). Under these circumstances, the Court has not dedicated resources to GAL accountability structures.

Maine has reached a “tipping point” of sorts, where the complexity of CP cases and volume of court events have made exclusively contracting GAL services too costly, especially if there is to be control of service quality.

OPEGA’s analysis indicates that Maine has reached a “tipping point,” where the volume of court events and complexity of CP cases have rendered exclusively contracting GAL services too costly, especially if service quality is to be controlled. We believe some resources could become available if the Court Appointed Special

Advocate (CASA) program expanded, paid GALs were not limited to attorneys, and teams delivered GAL services.²

OPEGA does not consider it reasonable or appropriate to expect judges to add comprehensive GAL supervision and program monitoring to their workloads. Instead, a program with dedicated administrative management staff, high-performing attorney GALs, CASAs, and other professionals could better serve children and judges.

OPEGA believes that a GAL program could be developed with the more than \$3 million dollars annually spent on GAL services. An organizational and economic assessment is necessary to determine the most cost effective way to deliver high quality GAL services, and the most reliable way to ensure the best interests of children are represented. OPEGA considers Maine to be at a critical juncture, where changing from the current arrangement to a staffed GAL program would improve services and be more cost effective.

Findings and Action Plans

Yellow shading means the action is part of the response to Finding 1.

Finding 1: Lack of a Program

Guardian *ad litem* services are not being managed as a “program” with adequate focus on the quality and effectiveness of service delivery.

OPEGA Recommendations

Reconfigure GAL services as a program with appropriate management components and controls.

Judiciary Actions

The Supreme Judicial Court (SJC) will convene a task force to evaluate alternative organizational structures for providing GAL services.

By October 2007, the task force will propose a GAL program with key management components that address weaknesses and realize efficiencies described in this report’s additional Findings.

- The proposal will include a recommendation regarding organizational location of the GAL program; a proposed budget that shows how existing resources may be re-allocated; and identification of any additional resources needed.

The SJC will present this proposal to the Joint Standing Committee on Judiciary during the second regular session of the 123rd Legislature.

² Maine’s CASA operation would need to implement the national model comprehensively for this to be advisable.

Finding 2: Role Confusion

Individuals involved in child protection cases do not clearly understand the GAL role.

OPEGA Recommendations

The Judiciary and the Department of Health and Human Services' (DHHS) Office of Child and Family Services (OCFS) should immediately take steps to reduce confusion about the role of the GAL in child protection cases for internal and external parties, and especially for the children.

Judiciary Actions

1. By January 2007, the Chief Judge of the District Court will conduct an education program for judges on GAL activities in Title 22 cases, the Court's oversight responsibilities, and the importance of clarifying the GAL role. Judges will be encouraged to communicate their expectations of GALs throughout cases at court events where all parties are present.
2. The Family Division will develop educational materials, appropriate for different ages, explaining what to expect from GALs. The Family Division will also establish a plan for assuring the timely distribution of these materials to all individuals involved with each CP case, especially those who are not typically present at court events. Distribution of these educational materials will begin by January 2007. If it is determined additional resources are needed, Court leadership will make an appropriations request of the Legislature.

Executive Action

OCFS' Acting Director of the Division of Policy and Practice will update the caseworker *Policy Manual* so it clearly and accurately explains the GAL role. Policy Manual updates and descriptions of the GAL role will be reviewed with all current OCFS supervisors and caseworkers working on Title 22 cases, with all new caseworkers prior to being assigned a Title 22 case, and with all relevant staff periodically thereafter.

Finding 3: Lack of Compliance and Performance Controls, and Evaluation Systems

OPEGA found that there is no basic compliance monitoring system, much less a centralized and on-going performance monitoring and evaluation system for GALs.

OPEGA found that judicial oversight alone has not been an adequate compliance and performance monitoring control.

OPEGA Recommendations	Judiciary Actions
<p>A. The Court should implement a compliance and performance monitoring and evaluation system for GALs that will identify GALs who are:</p> <ul style="list-style-type: none"> • not complying with mandated requirements; • not sufficiently involved in the lives of the children to effectively represent their best interests; or, • behaving in a manner that negatively affects children and others involved with their cases. <p>The system should specify a range of sanctions for GALs who are not in compliance or meeting performance standards.</p> <p>B. The Court should establish an independent oversight board to solicit feedback on GAL performance from people who do not have access to judges.</p> <p>C. The SJC should develop, as part of its Rules and Standards for GALs, a Code of Conduct, expressly for GALs, specifying acceptable behavior and behavioral prohibitions. The Code should include a feasible and timely set of sanctions for violations.</p>	<p>1. The Court will establish a standardized form for GAL reports by January 2007. This form will document compliance.</p> <p>The task force convened by the SJC will make recommendations about how to use this information, including methods to sanction non-compliant GALs. Court leadership will give consideration to handling instances of non-compliance in the interim.</p> <p>2. The Court will address the need for performance monitoring as part of its overall proposal in response to Finding 1.</p> <p>3. The Court will address the need for a Code of Conduct and how best to implement it in conjunction with the assessment and proposal that is planned in response to Finding 1.</p>

Finding 4: Lack of Child-Oriented System Supports

There are no resources in the GAL system dedicated to supporting GAL efforts to build relationships with children.

OPEGA Recommendations

The Court should intensify its focus on the relationship between GALs and children by:

- working with the Youth Leadership Advisory Team (YLAT), and other youth, to develop materials to support GALs in building rapport and trust with children;
- assuring that older children have every reasonable opportunity to attend hearings, or at least fully understand cases as they unfold in court;
- incorporating interpersonal skill development into the training for paid GALs; and,
- devising and implementing mechanisms to facilitate judges receiving feedback about relationships between children and their GALs.

Judiciary Actions

1. The Court Services Advisory Committee (CSAC) and Manager of the Family Division will review the CASA training segments on interpersonal skills and incorporate them as appropriate into the training for paid GALs. This will be accomplished by January 2007.
2. The Manager of the Family Division will determine whether the materials suggested by OPEGA can be developed using existing resources or with assistance from other interested and involved organizations. This determination will be made by January 2007. If it is determined additional resources are needed, Court leadership will make an appropriations request of the Legislature.
3. The task force described in response to Finding 1 will research ways to assess, and provide judges with feedback about GALs' interactions with children. The Court will address the need for these mechanisms as part of performance monitoring.

Finding 5: Inadequate Supervision

Paid GALs are not supervised in a manner consistent with providing human services.

OPEGA Recommendations

- A. The Court should use supervision methods consistent with best practices in human services.
- B. The Court should assure that ME CASA adheres as closely as possible to National CASA program requirements including, but not limited to, supervisor to volunteer ratios, annual performance evaluations and meeting continuing education requirements.

Judiciary Actions

In response to Finding 1, the Court will assess and propose modifications to GAL service delivery. This will include researching and making recommendations about the level of supervision required and how best to provide it.

Finding 6: Weak Complaint Process

The existing complaint process is not effective in assuring that poor performing GALs are:

- dismissed from on-going cases in a timely manner;
- not appointed to new cases they may not be suited for; or,
- when appropriate, removed from the roster altogether.

OPEGA Recommendations	Judiciary Actions
<p>A. The Court should enhance the current Rules related to complaints to include:</p> <ul style="list-style-type: none"> • clear criteria to serve as the basis for legitimate complaints; • transparent policies and procedures for handling complaints so that those complaining will know what to expect; and • clear processes, policies, and procedures for using complaints to dismiss GALs from cases, to require GALs to take specific actions to improve performance, or to remove them from the roster. <p>The Court should communicate the complaint process and attendant criteria, policies and procedures to all stakeholders involved in child protection cases.</p> <p>B. The Court should create a central file to log complaints and track their status. Information about substantiated complaints could then be reviewed by judges before appointing particular GALs to cases.</p> <p>C. The Court should consider establishing an independent oversight board with authority to investigate GAL complaints, recommend dismissal of GALs from specific cases, and remove GALs from the roster.</p> <p>D. The Court and OCFS should open an avenue to allow OCFS caseworkers and supervisors to communicate their concerns about GAL performance to judges.</p>	<ol style="list-style-type: none"> 1. The task force will make recommendations about changes to the Court Rules regarding the complaint process. These changes will set appropriate criteria, policies, and procedures for filing and taking action on complaints. By October 2007, the task force will present the proposed Rule changes to the SJC for approval. 2. By October 2007, the task force will make recommendations on how to communicate the GAL complaint process to all stakeholders in CP cases at the time GALs are appointed. 3. The task force will determine by October 2007 whether a complaint database and the accompanying processes, procedures and reports can be developed and maintained with existing resources. If so, the Court will proceed to do so. If not, Court leadership will make an appropriations request of the Legislature. 4. The Court will consider the possibility of establishing an independent oversight board and other mechanisms for receiving feedback on GAL performance as part of the overall proposal it plans to develop in response to Finding 1.

Finding 7: Inadequate Screening

The screening of prospective paid GALs is insufficient. It does not include interviews or routine reference checks to prevent inclusion of applicants who have readily apparent characteristics incompatible with GAL service.

OPEGA Recommendations

The Court should conduct interviews and reference checks for all prospective paid GALs and the results should be a factor in deciding whether an individual is added to the GAL roster.

Judiciary Actions

1. Effective immediately, the Chief Judge of the District Court will instruct the Family Division Manager, or designee, to check references on prospective GALs. The reference checks, at a minimum, will verify the information presented on resumes and applications. The Family Division staff will communicate results to the Chief Judge of the District Court, who will consider them when approving the addition of applicants to the GAL roster.
2. The Court will address the need for interviews and other improvements to the screening process as part of the overall proposal it plans to develop in response to Finding 1.

Finding 8: Weak Recruitment and Retention Efforts

Recruitment and retention efforts do not include a strategy to maintain an ample pool of high performing GALs.

There are also no deliberate efforts to keep strong GALs on the roster or to make the best use of their expertise.

OPEGA Recommendations

- A. The Court should make efforts to recruit professionals other than attorneys to serve as paid GALs, especially in geographic areas where there are shortages. The Court should modify the Rules for GAL qualifications to accomplish this.
- B. Assuming the Court opens up the pool of GALs to a mix of different professionals, the Court should also create a differentiated pay scale to reflect the typical market variations in pay rates for different types of professional expertise.
- C. The Court should create an incentive system to recognize and benefit from the contributions of high-performing, effective GALs.

Judiciary Actions

1. The Family Division Manager, or designee, will research whether persons already serving as paid GALs in Title 19-A cases (i.e. mental health workers) can be added to the roster for Title 22 cases. The Court will make a determination by January 2007.
2. The Court will address other methods to enhance the pool of GALs recommended by OPEGA, as part of the overall proposal it plans to develop in response to Finding 1.

Finding 9: Outmoded Use of Information Technology

Technology available in the marketplace is not being fully employed to capture and share information to support:

- effective management of GAL services;
- assessment of GAL compliance and performance;
- efficient case management; and,
- efficient management of finances and other resources.

OPEGA Recommendations	Judiciary Actions
<p>A. The Court should purchase and implement an electronic case management system to record and track GAL activity and court events, as well as share information among GALs and other parties to cases. The electronic case management system should be designed and implemented in coordination with the Executive Branch’s Office of Information Technology (OIT) to maximize opportunities for sharing information between the Court and DHHS.</p> <p>B. The Court should standardize the information and level of detail that must be submitted with GAL invoice forms. Those data elements should be captured electronically and in consistent formats as either required voucher data fields in the existing accounts payable system or in an interoperable system designed to produce management information.</p> <p>C. The Court should use the data captured in the case management and financial systems to electronically generate, maintain and share management information that would be helpful to Court leadership in planning, managing and assuring the quality of GAL services. Performance and caseload information should also be shared with court clerks and judges to assist in making decisions about GAL appointments.</p>	<p>The task force to be convened in response to Finding 1, will include recommendations on IT needs to support the provision of high quality GAL services in its proposal.</p> <p>The task force will coordinate with the Executive Branch OIT in developing its recommendations.</p>

Finding 10: Insufficient Tracking of Expenses and Costs

Many of the costs associated with providing mandatory GAL services to children in CP cases are not captured and identified as such.

OPEGA Recommendations	Judiciary Actions
<p>The Court should update its accounting codes and time reporting processes so they can accurately capture and classify all costs associated with providing GAL services. Court leadership should perform financial analysis of these costs and communicate the results in a way that shows the impact of providing GAL services on the Court's budget.</p>	<p>By July 2007, the State Court Administrator or designee will develop and implement the accounting and time reporting changes necessary to capture all costs associated with providing GAL services in CP cases.</p> <p>Alternatively, the AOC will develop an assessment of complete costs using estimates based on retrospective data. Court leadership will use this cost information to develop budgets, make appropriation requests, and determine resource allocations. If the Court needs additional resources, leadership will make requests to the Legislature's Judiciary and Appropriations Committees.</p>

Finding 11: Need to Set Legislative Direction

Existing legislation is inadequate for defining the GAL role, supporting GAL compliance and performance, and assuring GAL accountability.

OPEGA Recommendations	Judiciary Actions
<p>A. The Legislature should update Title 22 to clarify the role of the GAL and to assign specific responsibility for GAL accountability.</p> <p>B. Revisions to Title 22 should incorporate any language necessary to implement changes that ensue from the anticipated assessment of GAL service delivery approach and methods. The Legislature may instruct the Court to provide recommendations for statutory revisions in conjunction with the actions the Court has agreed to take in response to Finding 1.</p> <p>C. The Legislature should consider whether the 3-month visitation requirement that exists in Title 22 is still adequate for effective GAL representation. The Legislature may seek perspective and recommendations on this matter from the Court and OCFS.</p>	<p>The task force performing the assessment of GAL service delivery will also make recommendations to the Judiciary Committee on statutory revisions that are necessary to better support the provision of effective GAL services.</p>