



Guardian Ad Litem Placement May Shift for Reasons of Funding and Conflict of Interest

at a glance

Florida's Guardian ad Litem Program provides courtroom representation and advocacy for abused, neglected or abandoned children using a combination of lay volunteers, paid staff, and attorneys.

Housed in the judicial branch since its inception, various placement options are under consideration this session; each has advantages and disadvantages.

The program has not systematically identified or disseminated best practices but a newly formed state association should improve these opportunities.

There are limited federal funds available for guardian programs and Florida has made a good effort to secure these limited resources.

Purpose

The Joint Legislature Auditing Committee directed OPPAGA to review the Guardian ad Litem Program to address three questions.

1. What are the advantages and disadvantages of moving the responsibility for program oversight

from the Office of the State Courts Administrator to another governmental entity?

2. Is the program sharing best practices among circuits to help the program meet its statutory mandate?
3. Does the program have strategies for maximizing the use of federal funds?

Background

Florida law requires the appointment of a guardian ad litem to provide courtroom advocacy and represent the best interests of a child in the following circumstances:¹

- in all dependency cases in which a child is the victim of abuse, neglect or abandonment;
- in all cases of marriage dissolution, custody, visitation, or parental responsibility where there are verified allegations of abuse, neglect or abandonment; and
- in all criminal proceedings where a minor or person with mental retardation is a victim of or witness to a sexual offense.

¹ Sections 39.822, 61.401, and 914.17, *Florida Statutes*.

Information Brief

The Office of the State Courts Administrator has coordinated the program since its inception in 1980. While office staff assists with guardian work in addition to their other responsibilities, no position is designated as director or administrator of the Guardian ad Litem Program.

The chief judge in each of the state's 20 judicial circuits is responsible for management and supervision of the program employees and volunteers in the circuit. Each circuit employs guardian ad litem staff that recruits, trains, and supervises volunteer guardians ad litem. Paid staff includes program directors, case coordinators, administrators, and staff attorneys who advise program staff and volunteers.

Trained volunteers serve as the guardians ad litem.² They visit with the child and the family and assume a role as advocate for the child, providing the court with information believed to represent the "best interests" of the child.

Not all children who are eligible for a guardian ad litem receive one. According to the Office of the State Courts Administrator, in calendar year 2000 the program provided assistance to 54% of the dependency cases and 58% of all cases in which the court appointed a guardian. (See Exhibit 1.)

Program circuit staff reports that to serve a higher percentage of eligible children, additional paid staff is needed to recruit, train and supervise volunteers, and in some cases provide direct advocacy if adequate or willing volunteers are not available. The offices employ priority case assignment criteria to allocate their guardian resources. For example, a young child who had been abused and abandoned would be a higher priority for a guardian than an older child living in an unsafe or unsanitary home.

² The 9th Circuit uses pro bono lawyers as guardians ad litem and is conducting a pilot effort using both paid attorneys and volunteers as guardians ad litem.

Exhibit 1 58% of Eligible Children Receive a Guardian

Division of Court	Number of Cases Court-Appointed	Number of Cases Guardian Assigned	Percent Guardian Assigned/Appointed
Dependency	9,486	5,130	54%
Family Law	1,064	840	79%
Criminal	1,120	711	64%
Delinquency	120	90	75%
Domestic Violence	102	76	75%
Total	11,892	6,847	58%

Source: Office of State Courts Administrator.

The \$14.1 million Fiscal Year 2001-02 operating budget for the Guardian ad Litem Program includes \$8.6 million in state funds, \$3.1 million in county funds, as well as federal and other funding sources. (See Exhibit 2.)

Exhibit 2 The State Provides the Largest Source of Funding

Funding Source	FTEs	Amount	Percentage
State General Revenue	193	\$ 8,641,972	61%
County	67	3,100,000	22%
Family Court Trust Fund	16	565,906	4%
Voices for Children Foundation (11 th Circuit only)	7	692,500	5%
9 th Circuit Pilot Project	11	535,000	4%
Other ¹		547,158	4%
Total	294	\$14,082,356	100%

¹ Includes other federal, local, and foundation grants.

Source: Office of the State Courts Administrator.

The Family Court Trust Fund is available to the Guardian ad Litem Program because the program is housed in the judicial branch. If the program is moved from the judicial branch, it may no longer be able to access these funds, which comprise 4% of its budget.

Observations

1. What are the advantages and disadvantages of moving the responsibility for program oversight from the Office of the State Courts Administrator to another governmental entity?

Why move the program? The debate over whether the Guardian ad Litem Program should be moved from the judicial branch is the result of an approaching change in how the state trial courts system will be funded and issues of professional ethics.

Revision 7 to Article V of the Florida Constitution directs that in Fiscal Year 2004-05, state government will assume the cost of all essential court activities, including some costs previously paid by the counties. To date, the court has not defined guardians ad litem as an essential court activity. This situation has prompted both the courts and child advocates to look for a suitable alternative placement for the program.

A second significant factor is that the current placement creates actual and perceived conflicts of interest. While the Office of the State Courts Administrator administers the Guardian ad Litem Program, the chief judge in each trial court is responsible for managing program staff and operations. As a result, when guardian ad litem staff disagrees with a judge's decision, and requests a rehearing or appeal, staff is publicly disagreeing with program management, placing all parties in conflict. Alternatively, others can argue that judges treat guardians' recommendations more favorably because they come from court staff. Program and court staff believe that the current placement under the chief judge

compromises the courts' integrity and the perceived effectiveness and status of the program.

Placement Options. Several placement alternatives have been suggested, including

- an independent office within the judicial branch,
- public defenders' offices,
- an agency in the executive branch, and
- a not-for-profit organization.

Each placement option has advantages and disadvantages. (See Exhibit 3.) Two primary criteria for assessing these options are costs and independence from conflict. In addition, guardian staff report that the program would benefit from a program administrator to provide statewide direction and consistency. The program is currently decentralized among the 20 judicial circuits.

Leaving the program in the Office of State Courts Administrator appears to be the least expensive option, although this placement would continue to present conflict of interest concerns and would not address the need for increased direction unless program administration were modified.

The option of making the program independent, served by the Justice Administrative Commission, would seem to be the second least expensive and would resolve concerns over conflict of interest and centralization. However, both House Bill 629, which includes this option, and Senate Bill 686 propose significant changes in addition to shifting program placement that would increase program operations and costs. House Bill 629 would create an Office of Child Advocate that would house the Guardian ad Litem Program and address other child representation issues.

Exhibit 3
Every Placement Option Has Advantages and Disadvantages

Placement	Independence	Cost	Centralization
Current Placement Office of State Courts Administrator and Chief Judges of the Circuit Courts		Advantage No increase in costs; uses existing administrative, personnel, and fiscal structure of the circuit courts	
	Disadvantage Conflict of interest due to supervision by judges		Disadvantage Currently program is decentralized among the 20 judicial circuits
Proposed Placement, House Bill 629 Office of Child Advocate served by the Justice Administrative Commission	Advantage Independent	Advantages <ul style="list-style-type: none"> ▪ Uses existing personnel and fiscal structure of the Justice Administrative Commission ▪ Likely to retain program access to court trust funds ▪ May be able to remain in same office space, avoiding moving costs 	Advantage Program would become centralized, which could increase efficiency and effectiveness
		Disadvantage Would add cost of program administration and additional duties	
Proposed Placement, Senate Bill 686 Within the Offices of the Public Defenders		Advantages <ul style="list-style-type: none"> ▪ Uses existing administrative, personnel, and fiscal structure of the public defenders ▪ Likely to retain program access to court trust funds 	
	Disadvantages <ul style="list-style-type: none"> ▪ Conflict of interest when public defenders represent the parents of same youth represented by guardians ad litem ▪ Ethical consideration when public defenders asked to represent a child as a guardian and when a child is charged as a delinquent 	Disadvantages <ul style="list-style-type: none"> ▪ Requires an increase in attorneys because attorneys work with volunteers to serve as guardians ▪ May require moving costs and additional space rental costs 	Disadvantage Program remains decentralized among the 20 judicial circuits
Executive			Advantage Program could become more centralized
	Disadvantages <ul style="list-style-type: none"> ▪ Provides less independence ▪ Potential conflict with staff of other executive agencies such as Department of Children and Families 	Disadvantages <ul style="list-style-type: none"> ▪ Added costs for moving ▪ Transferred costs for office space ▪ Transferred costs for personnel and fiscal structure ▪ Added costs for supervision ▪ Potential loss of access to court trust funds 	
Not for Profit	Advantage Independent daily operations	Advantage Program could be asked to support operations with private funds; could become a disadvantage if program unable to raise sufficient funds	Advantage Program could become more centralized
	Disadvantage Placement for budget authority and oversight purposes subject to conflicts and political pressure, depending on oversight structure.	Disadvantages <ul style="list-style-type: none"> ▪ Added costs for moving ▪ Transferred costs for office space ▪ Added costs for fiscal and personnel functions ▪ Added costs for supervision ▪ Potential loss of access to court trust funds 	

Senate Bill 686 would move the functions of the current Guardian ad Litem Program to the public defenders' offices and add attorneys to work with the staff and volunteer guardians to represent the best interests of the children in court. This option could create conflicts of interest. For example, in cases where the public defender's office represented the parents in a criminal case, such as for child abuse, it would be a conflict for the office to represent the child as well.³

Also, the public defender may have represented the child in a delinquency case. When the child is the attorney's client, the attorney has an obligation to carry out the youth's expressed wishes concerning the case and must honor attorney-client expectations of confidentiality. In contrast, the attorney as guardian ad litem must determine and inform the court of how to address the child's best interest, which may or may not coincide with the child's expressed wishes. Such changes in representation could be confusing to delinquent children served by guardians.

The remaining options, placing the program in an executive or not-for-profit agency, appear to introduce greater costs and retain concerns over conflict.

2. Is the Guardian ad Litem Program sharing best practices among circuits to help the program meet its statutory mandate?

The program has not systematically identified or disseminated best practices but a newly formed state association should improve these opportunities.

The Office of State Courts Administrator generally provides program information to the circuit courts, which supervise program

staff. The Office of State Courts Administrator provides problem resolution, assists program attorneys, develops operating standards, hosts semi-annual program directors meetings, and funds director's membership in the National Court Appointed Special Advocates Association.

However, there is no systematic effort to identify local best practices that can be shared statewide in order to increase the effectiveness of guardian activities. Systematic efforts could include statewide collection and analysis of program data, as well as implementation of statewide quality assurance efforts that assess circuits' use of and adherence to program standards. For example, after more than 10 years, circuits are beginning to implement consistent statewide standards to prioritize case assignments, which is a best practice effort to meet statutory objectives within the constraints of limited resources.

To improve use of best practices, Guardian ad Litem Program directors created an independent association funded by the National Court Appointed Special Advocate Association. Started in July 2001, the association is charged with improving communication through newsletters and more frequent telephone and regional meetings, developing greater opportunities for staff training and networking, and establishing formal methods to share best practices, especially for volunteer recruitment.⁴

While the new association should improve communication among the circuits, the program would benefit from a centralized administrative structure that would standardize and enhance program activities. The Legislature should consider this issue if the program is relocated or restructured.

³ In general, public defenders refer cases in which they have a conflict to a private attorney appointed by the court.

⁴ We recommend that the association provide a web site that posts newsletters and best practices as they are identified.

3. Does the Guardian ad Litem Program have strategies for maximizing the use of federal funds?

There are limited federal funds available for guardian programs and Florida has made a good effort to secure these limited resources

Supplemental funding. Florida obtains funds from three of four federal supplemental funding sources for guardian programs. (See Exhibit 4.) These federal funds are short-term or enhancement monies, rather than long-term funding sources. Florida also obtains funds from the fourth source, the Children’s Justice Act, but directs the funding to other child abuse and neglect activities.

Substantial funding. Three other federal sources have been accessed by other states to support their guardian activities.

However, these funds do not appear to be realistic sources of revenue for Florida’s program. (See Exhibit 4.) South Carolina obtained Title IV-E funding for its guardian program through its state allocation, but a review of federal guidelines indicates that use of these funds is not allowed for court - related activities. And, although New York and Louisiana accessed Temporary Assistance for Needy Families funds for guardian activities, in Florida, these funds are fully committed to support welfare-to-work activities. Finally, all states obtain funding through the Department of Health and Human Services for the Child Abuse and Treatment Act. To obtain this funding, states must have a guardian program. While funding the guardian program with these funds is not prohibited, the funds generally support states’ child abuse prevention and intervention services.

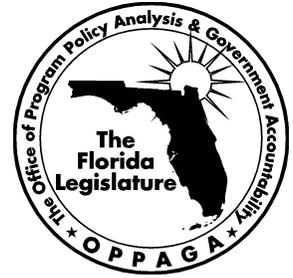
**Exhibit 4
Supplemental and Substantial Federal Funding Sources to Support Guardian ad Litem Activities**

Federal Source	Use of Funds	Limitations	Florida Guardian ad Litem Access to Funds
<i>Supplemental Funding</i>			
National Court Appointed Special Advocate Association: Office of the Juvenile Justice of Delinquency and Prevention of the U.S. Department of Justice	Funds support competitive grants to states and local programs.	Can only be used to expand or enhance programs and cannot be used to replace other funding.	YES. In Fiscal Year 2000-01 funding supports the new statewide association and three local circuits receive grants
Victims of Crime Act (VOCA): Department of Justice, Office of Victims of Crime	Variable annual funding awarded to the Attorney General’s office. Funds are competitively awarded as one-year grants to public or not-for-profit agencies providing direct services to crime victims.	Agencies receiving funding must reapply each year and only services related to criminal events are eligible.	YES. In Fiscal Year 2001-02, seven guardian programs received funds totaling \$420,000 and in Fiscal Year 2001-02, three circuits were awarded funds totaling \$95,000.
Dependency Court Improvement Funds: Health and Human Services Administration for Children and Families	Awarded to the state’s high court to (1) assess the role of the court in child abuse and neglect proceedings, (2) develop plans to improve court processes, and (3) implement improvements as necessary, ensuring collaboration with the state’s child welfare system.	Funds can only be used to support court improvement activities and cannot supplant other state funding.	YES. The Office of the State Courts Administrator uses a portion of its grant to support statewide activities.

Federal Source	Use of Funds	Limitations	Florida Guardian ad Litem Access to Funds
<p>Children’s Justice Act: Health and Human Services, Administration in Children and Families</p>	<p>Funds are awarded to the Department of Children and Families , Office of Family Safety to improve (1) the handling of child abuse and neglect cases, (2) the handling of suspected child abuse and neglect cases related to fatalities and (3) the investigation and prosecution of these cases.</p>	<p>Funds must be spent based on guidance from the required multi-disciplinary task force.</p>	<p>NO. Guardian ad litem programs do not receive funding from this source.</p>
Substantial Funding			
<p>Title IV-E: Department of Health and Human Services, Administration for Children and Families</p>	<p>Awarded to the Department of Children and Families, Office of Family Safety. An entitlement program for qualified children in out-of-home care. Funds support foster care activities, train department staff, and offset administrative overhead.</p>		<p>NO. These funds cannot be used for court - related activities.</p>
<p>Temporary Assistance for Needy Families (TANF): Department of Health and Human Services, Administration for Children and Families</p>	<p>Block grant funds are awarded to the Department of Children and Families. Funds are the foundation of welfare reform and support working poor families, encouraging work and helping avoid welfare dependence.</p>		<p>NO. While limited components of the Guardian ad Litem Program meet fund requirements, full expenditure of Florida’s block grant for other activities is expected.</p>
<p>Child Abuse Prevention and Treatment Act. (CAPTA), Child Abuse and Neglect Grant (CAN): Department of Health and Human Services, Administration for Children and Families</p>	<p>Funds are awarded to the Department of Children and Families, Office of Family Safety. Funds support statewide child abuse prevention infrastructure and services.</p>		<p>NO. To receive this grant, states must provide advocacy representation for children in dependency actions, but funds are not intended to support this program.</p>

The Florida Legislature

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