

Standards for guardians *ad litem* improve proficiency of practitioners

Guardians *ad litem* (GALs) are appointed by the court in contested custody cases to represent the best interests of the child. GALs are supposed to conduct a thorough investigation and make a recommendation as to which custody arrangement is best for the child. Because the GAL's recommendation generally is relied upon so heavily by judges, that recommendation, and the accompanying investigation, is a critical part of custody determinations. The GAL is effective only if she or he thoroughly investigates the case and makes a reasoned recommendation to the court based upon that investigation. There is considerable evidence that GALs in Missouri are not performing thorough investigations and that battered women and their children are being harmed.

TASK FORCE FORMS IN ST. LOUIS

Several years ago, battered women's advocates in the MCADV St. Louis Region observed that the practices of some guardians *ad litem* were harmful to victims of domestic violence. As a result, those advocates convened a task force two years ago to try to improve the knowledge and sensitivity of GALs.

Specific incidents that led to the formation of the task force included battered women being pressured by certain GALs into settling cases in ways that were dangerous to the woman and her children. In addition, these GALs were using coercive tactics — such as screaming, threatening to take the child away from the victim, and the use of threatening body language — to obtain the result they wanted. These GALs were not conducting thorough investigations and either did not know about, or did not understand the significance of, domestic violence in the relationship for both the mother and the children.

The task force determined that these problems could best be resolved by encouraging GALs to conform to standards issued by the Missouri

This technical assistance publication was written by **Nina Balsam**, MCADV Legal Advocacy Projects Director.

There is considerable evidence that guardians *ad litem* in Missouri are not performing thorough investigations and that battered women and their children are being harmed.

Supreme Court. While the Supreme Court promulgated the GAL standards, they do not carry the force of Supreme Court rules and thus have no statewide enforceability.

In the course of their work, members of the St. Louis task force also learned there were similar problems with GALs in other parts of the state. In practice, some GALs spend little time investigating a case and make recommendations based on scant information. In addition, many do not have any training about domestic violence or child development. Because of this, they cannot discern the dynamics in the family and the danger to the mother and children. This can lead them to recommend a custody order that causes greater harm to the mother and child.

Some judicial circuits have implemented the standards in one way or another, but the task force had no real sense of where or how they were being implemented. As a result, the task force decided the most effective way to increase the quality of GAL practice was to pursue a statewide effort to encourage each circuit to implement the standards. As a precursor to starting the campaign, members of the task force surveyed all 45 court circuits in Missouri to determine if they have implemented the Supreme Court standards and how GALs are held to the standards in the circuit. Questionnaire respondents also were asked if their circuit likely would be willing to implement the standards if they had not yet done so.

It is important to note that many of the circuits have implemented the standards by practice, but only two — the 11th and 13th judicial circuits — have passed a local rule to formally implement the standards.

OVERVIEW OF STANDARDS FOR GUARDIANS *AD LITEM*

There are 16 separate standards for guardians *ad litem*. The standards are important because they require the GAL to fully investigate a case, fully participate in all proceedings, and truly represent the best interests of the child. The standards further outline how a GAL should make a recommendation to the court with regard to placement of the child and what kind of training GALs must receive to carry out their obligations competently. If the standards are implemented, many GALs will perform their duties with greater efficacy, and custody determinations made by courts truly will be in the best interests of the child. The domestic violence training component of the standards makes it more likely that GALs, and hence the court, will take domestic violence into consideration.

The standards require that the GAL act in the best interests of the child and faithfully discharge their duties or be disqualified [*see standards 2.0 and 3.0*]. They further require that the GAL meet with the child in the child's living environment as often as necessary to determine that the child is safe and to ascertain the child's best interests [*see standards 5.0*]. They require that the GAL have access to all relevant records but maintain con-

fidentiality of those records [see standards 6.0 and 7.0].

The GAL is required to review the progress of the case, advocate for timely hearings, make the child aware of the court process, participate in court proceedings by presenting evidence or filing appropriate pleadings, and make the child's wishes known to the court, even if they are inconsistent with the GAL's position [see standards 8.0, 9.0 and 11.0]. The GAL also should participate in all proceedings outside of the court, such as settlement negotiations or development of plans that affect the child [see standard 10.0]. If the child's wishes conflict with the GAL, the GAL must make this known to the court and another GAL or an attorney for the child may be appointed [see standard 13.0]. The GAL must present a recommendation to the court as to custody of the child and reasons in support of her or his position [see standard 14.0]. Finally, the GAL must have 12 hours of training initially, and six hours every year thereafter. The training shall include family and domestic violence issues [see standard 16.0].

HOW TO IMPLEMENT THE STANDARDS STATEWIDE

There are three ways the standards can be implemented in a circuit: by passage of a local rule, by passage of an administrative order, or by policy or practice. The "best practice" is to have the circuits implement them by passing a local rule, which must be done by the court *en banc*, or by having the administrative judge of the family court implement them by administrative rule.

Passage of a local rule is probably the best way to implement the standards, but it also is the most difficult. The presiding judge in the circuit will have to take the lead role in passing a local rule in the circuit. In addition, the court *en banc* (all the judges in the circuit) will have to vote on passage. The administrative judge of the family court, should one exist in the circuit, also can implement the standards through an administrative rule that covers family court practice. Finally, either the presiding judge or the administrative judge can implement the standards by policy or practice.

In some circuits, garnering support from lawyers for implementation is crucial. If lawyers are unwilling to attend trainings, passing the standards might be detrimental to that circuit because there won't be a sufficient number of GALs available. Once you have sufficient attorney support, battered women's advocates and supportive attorneys can ask the presiding judge or administrative judge to implement the standards. In other circuits, attorney support might not be necessary if the presiding judge or administrative judge thinks implementing the standards is important. You should determine the best strategy for each of the circuits after reviewing the questionnaire results to gauge interest in each circuit.

If the Missouri Supreme Court standards are implemented, many guardians *ad litem* will perform their duties with greater efficacy, and custody determinations made by courts truly will be in the best interests of the child.

CIRCUIT	PRESIDING JUDGE	PHONE	FAMILY LAW JUDGE	PHONE
1 ST	Gary Dial	(660) 465-7012		
2 ND	Russell Steele	(660) 665-3145		
3 RD	James Holcomb	(660) 359-4377		
4 TH	John Andrews	(660) 564-3334		
5 TH	Patrick Robb	(816) 271-1444		
6 TH	Owens Lee Hull Jr.	(816) 858-2232		
7 TH	Michael Maloney	(816) 792-7711	James Welsh	(816) 792-7713
8 TH	Werner Moentmann	(660) 542-1466		
9 TH	Gary Ravens	(660) 288-3602		
10 TH	Robert Clayton II	(573) 221-0579		
11 TH	Ellsworth Cundiff	(636) 949-7900	Frank Conard	(636) 949-7900 ext. 5514
12 TH	Edward Hodge	(573) 473-5840		
13 TH	Frank Conley	(573) 886-4050	Cary Augustine	(573) 886-4050
14 TH	Channing Blauer	(660) 248-2194		
15 TH	Robert Ravenhill	(660) 259-6101		
16 TH	Edith Massina	(816) 881-3612	J.D. Williamson	(816) 435-4711
17 TH	Joseph Dandurand	(816) 380-8226		
18 TH	Donald Barnes	(816) 827-0164		
19 TH	Byron Kinder	(573) 634-9190		
20 TH	Jeff Schaeperkoetter	(636) 583-6333	Jeff Schaeperkoetter	(636) 583-6309
21 ST	Robert Cohen	(314) 615-8029	Susan Block	(314) 615-8029
22 ND	Michael Calvin	(314) 622-3707	Thomas Frawley	(314) 662-4452
23 RD	M. Edward Williams	(636) 797-5443	Carol Bader	(636) 797-5425
24 TH	Kenneth Pratte	(573) 783-3105 or (573) 883-2705		
25 TH	Douglas Long	(573) 422-3338		
26 TH	Mary Dickerson	(573) 346-4440		
27 TH	William Roberts	(660) 885-6963 ext. 213		
28 TH	C. David Darnold	(417) 682-2444		
29 TH	Jon Dermott	(417) 625-4310 or (417) 358-0441		
30 TH	Theodore Scott	(417) 345-6822		
31 ST	Henry Westbrooke	(417) 868-4074	Don Burrell Jr.	(417) 868-4078
32 ND	William Syler	(573) 335-2802		
33 RD	David Dolan	(573) 545-3141		
34 TH	Fred Copeland	(573) 748-2228		
35 TH	Stephen Sharp	(573) 888-2456		
36 TH	W. Robert Cope	(573) 686-8082		
37 TH	R. Jack Garrett	(573) 323-4513		
38 TH	James Eiffert	(417) 581-2727		
39 TH	J. Edward Sweeney	(417) 847-2361		
40 TH	Timothy Perigo	(417) 451-8257		
41 ST	Ronald Belt	(660) 385-3713		
42 ND	William Seay	(573) 224-3221		
43 RD	Kenneth Lewis	(816) 586-2581		
44 TH	John Moody	(417) 924-3246		
45 TH	Fred Rush	(573) 324-3112		