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COURT APPOINTED SPECIAL ADVOCATES/GUARDIAN AD LITEM

FALL 1988

Clearinghouse on Child Abuse and Neglect Information P.O. Box 1182 Washington, DC 20013 (703) 821-2086

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Office of Human Development Services Administration for Children, Youth and Families Children's Bureau National Center on Child Abuse and Neglect P.O. Box 1182 Washington, DC 20013

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4301E4 CD-10099

Recruitment of Volunteers to Serve as Kitsap Juvenile CASAs for Abused and/or Neglected Children. Final Report.

Harrison, P. R. Altrusa Club of Bremerton, Port Orchard, WA. Kitsap CASA. Supported by: National Center on Child Abuse and Neglect

(DHHS), Washington, DC, (90CA1231), 7 pp., April 30, 1988.

April 30, 1988.

Subject Code: 96

A project to attract prospective volunteers for a court appointed special advocate (CASA) program is described. Newspaper and radio interviews and public speaking were used to recruit volunteers. Between June 1987 and February 1988, 35 cases were assigned to volunteer child advocates, involving 62 children. Only 5 volunteers left the program, leaving 25 active CASAs at the end of the grant period. Volunteers were carefully screened and trained, with monthly in-service training. The CASA program became part of the County Juvenile Department at the end of the grant period. Volunteer and client profiles are tabulated. A financial report is included.

Descriptors: final reports, volunteers, child advocacy, childrens rights, juvenile courts, court appointed special advocates

4295G2 CD-10041

Valley County Guardian Ad Litem Program. Final Report. Valley County Guardian Ad Litem Program, Glasgow, MT. Supported by: National Center on Child Abuse and Neglect, (DHHS), Washington, DC, (90CA1038), 6 pp., undated.

undated.

Subject Code: 90

This final report describes a project that provided trained guardian ad litem (GAL) volunteers who served as spokesmen for abused and neglected children coming before the court. A training manual was compiled that provided information and guidelines for volunteers to use on an ongoing basis. An audiovisual slide presentation was also prepared. Program brochures were printed and distributed. Volunteers, recruited from Valley, Phillips, and Blaine counties, completed a comprehensive training program. A financial status report is included.

Descriptors: final reports, professional training, volunteers, lawyers, guardian ad litem

4295A2 CD-10017

Court Appointed Special Advocate Project. Final Report.

Multnomah County Court Appointed Special Advocates, Portland, OR.

Supported by: National Center on Child Abuse and Neglect (DHHS), Washington, DC, (90CA1222), 6 pp., undated.

undated.

Subject Code: 90

The Court Appointed Special Advocates (CASA) project of Multhomah County, Dregon, is described. The development of the program during its first 2 years is highlighted, and the major issues it has faced are summarized. Information provided includes program statistics, program impact, volunteer program development, administrative results, staff development, community relations, and resource development. Areas of concern detailed include screening out inappropriate volunteers, maintaining confidentiality, funding and resource development, and recruiting and involving minority volunteers. Other activities described are: legislation, the State CASA Association, and CASA program start-up in other Oregon counties. Future activities are also outlined.

Descriptors: final reports, courts, volunteers, family advocacy, court appointed special advocates, oregon

4294H4 CD-09999

Reducing Trauma to Child Victims of Sexual Abuse Through a Rural Community Based Volunteer Program. Final Report.

Janes, P.

South Central Community Action Agency, Twin Falls, ID Guardian ad Litem Pilot Project.

Supported by: National Center on Child Abuse and Neglect (DHHS), Washington, DC, (90CA867), 60 pp., January 9, 1987. January 9, 1987.

Subject Code: 90

This final report discusses a program designed to incorporate service improvements for preventing and treating child sexual abuse and for assuring protection of children who have been endangered. The program supplied Guardian Ad Litem volunteers and attorney representation on all requested cases of sexual abuse petitioned to the court in the 8 counties of the Magic Valley in Idaho. Approximately 100 cases were represented through public awareness efforts and consistent positive involvement with the various agencies, counties, and judiciary systems. Change was facilitated in case management, numbers of interviews children face upon reporting, treatment provided to victims and families, and agency intercooperation. Addenda contain the working agreement of the project, materials for volunteer Guardians Ad Litem, and reporting procedures and forms. (Author abstract modified)

Descriptors: final reports, sexual abuse, victims, volunteers, guardian ad litem, child advocacy, child witnesses, rural environment

4283K1 CD-09704

Independent Representation for Children in Custody and Visitation Disputes.

Nicholson, E. B.

American Bar Association, Washington, DC. National Legal Resource Center for Child Advocacy and Protection.

In: Nicholson, E.B. and Bulkley, J. (Editors). Sexual Abuse (cont. next page)





Allegations in Custody and Visitation Cases. Washington, DC, American Bar Association, pp. 230-233, February 1988.

February 1988.

Subject Code: 96

This chapter examines whether or not to appoint independent representation for children in custody and visitation disputes. The current trend appears to be that when the dispute involves an allegation of child abuse or neglect, judicial discretion favors appointment of an independent representative for the child. Experience in the juvenile courts suggests that the guardian ad litem or attorney for the child presents a proven mechanism for improving the court's ability to respond in the best interests of the child. 9 references.

Descriptors: custody of child, visiting privileges, childrens rights, right to counsel, guardian ad litem, courts, lawyers

4283J4 CD-09703

Child Sexual Abuse Allegations in Family Court Proceedings: A Survey of Legal Issues.

Nicholson, E. B.

American Bar Association, Washington, DC. National Legal Resource Center for Child Advocacy and Protection.

In: Nicholson, E.B. and Bulkley, J. (Editors). Sexual Abuse Allegations in Custody and Visitation Cases. Washington, DC, American Bar Association, pp. 255-277, February 1988.

February 1988.

Subject Code: 96

This paper describes how child sexual abuse allegations may affect the legal context of custody and visitation decisions. The family court's limited legal authority and its limited resources make it difficult for the family court to adequately respond in child sexual abuse cases. The role of the court in supervising visitation when any form of sexual abuse has occurred needs to be better defined. The need for protective mechanisms in family court proceedings will probably increase. Protective mechanisms found in the juvenile court, such as mandatory appointment of guardians ad litem, might also be adopted by family court best serve its responsibility for the child. 71 references.

Descriptors: sexual abuse, family courts, custody of chil, visiting privileges, courts role, guardian ad litem, case management, incest

4283G2 CD-09689

Civil Actions on Behalf of Abused Children.

Lawritson, J. L.

Fortune and Lawritson, Denver, CD.

In: Freeman, L. (Editor). Managing Risks While Protecting Children. National Association of Counsel for Children, Denver, CO, pp. 123-144, 1986.

1986.

Subject Code: 96

Directed at lawyers involved in child abuse cases, this chapter examines civil actions on behalf of abused children. Appointing a guardian ad litem, problems with child witnesses, how to manage hearsay evidence, and theories of liability are among the issues discussed.

PAGE: 1255

5 of 122

Item

Descriptors: civil liability, civil courts, legal process, guardian ad litem

4283C1 CD-09672

Risk Management for the Attorney Guardian Ad Litem. Freeman, L.

National Association of Counsel for Children, Denver, CO.

In: Freeman, L. (Editor). Managing Risks While Protecting Children. National Association of Counsel for Children, Denver, CO, pp. 159-171, 1986.

1986.

Subject Code: 96

Risk management for the attorney guardian ad litem (GAL) is discussed, although many of the same concepts apply to jurisdictions using lay guardians ad litem. Topics include the role of the GAL, holding the child's representative accountable, and ways in which to reduce risks. 21 references.

Descriptors: risk, guardian ad litem, lawyers, civil liability

4283B4 CD-09671

Managing Risks While Protecting Children.

Freeman, L.

National Association of Counsel for Children, Denver, CO. National Association of Counsel for Children, Denver, CO, 171 pp., 1986.

1986.

Subject Code: 96

Perspectives are provided on how to reduce the risks of malpractice liability while meeting the needs of children. Areas discussed include: agency counsels, state and public employees, physicians, the school district, child protective services, institutions, guardians ad litem, and federal and civil actions on behalf of children. 164 references.

Descriptors: civil liability, courts, risk, legal responsibility, physicians, schools, institutions, guardian ad litem

4282H4 CD-09647

When Children Are Battered by the Law. Bross, D. C.

Barrister Magazine 11(4):8-11, 45, 48-49, Fall 1984. (cont. next page)

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Fall 1984. Subject Code: 96

Issues in children's law and problems of child advocacy are only being addressed slowly, in spite of increasing documentation of child neglect and abuse. If parental protection breaks down, independence of representation is an important feature in determining the degree to which the child's interests are advanced. Examples of child advocacy bringing new perspectives are given. Court Appointed Special Advocate (CASA) programs are the most common form of legal advocacy for children. The recent creation of a committee on the needs of children by the American Bar Association is a positive step toward improving legal protection for children. The National Legal Resource Center for Child Advocacy remains the most important overall influence in the field. Development of the field as a legal specialty and development of statewide offices of child representation are approaches for the future.

Descriptors: childrens rights, rights of minors, legal processes, child advocacy, lawyers role, child protection, child witnesses, child abuse laws

4282G4 CD-09643

Children at Risk. Making a Difference Through the Court Appointed Special Advocate Project.

Blady, M.

National Council of Jewish Women, New York, NY, 318 pp., 1982.

1982.

Subject Code: 96

Establishment of a Court Appointed Special Advocate (CASA) Project is discussed, followed by a description of 5 National Council of Jewish Women (NCJW) sections that used a basic project model to develop 5 variations to fit local needs. Also addressed are the following topics: the structure of child welfare services; the role and functions of the CASA; assessing a community's interest in and readiness for a CASA Project; organizing and administrating a CASA Project; project evaluation; and advocacy. Numerous appendices offer sample forms and brochures for CASA projects. 32 references and 4 figures.

Descriptors: courts, child advocacy, models, needs assessment, evaluation

4282F2 CD-09637

Annotated Bibliography of Representation of Children in Custody Cases. Law Review Articles and Periodicals.

American Bar Association, Washington, DC. National Legal Resource Center for Child Advocacy and Protection.

In: Nicholson, E.B. and Bulkley, J. (Editors). Sexual Abuse Allegations in Custody and Visitation Cases. Washington, DC, American Bar Association, pp. 234-245, February 1988.

February 1988. Subject Code: 96 PAGE: 1256 Item 10 of 122

An annotated bibliography on representation of children in custody cases is presented. Twenty-one law review articles and journal articles are included.

Descriptors: custody of child, childrens rights, right to counsel, guardian ad litem, courts, lawyers role, bibliographies, reference materials

4255A2 CD-08993

In re Patricia E.

California. Court of Appeal, Third District.

206 CA Rptr. 684 (CA App. 3 Dist. 1984), September 28, 1984.

September 28, 1984. Subject Code: 97

On an appeal of a proceeding to determine whether child's status as a dependent child because of abuse and neglect should be continued, the Court of Appeal found error in the failure of the juvenile court to appoint independent counsel for the child. The court found that appointment of county counsel to represent both the county welfare department and the child constituted a potential conflict of interest, noting that neither the county coursel nor the social worker had spoken with the child prior to the continuation hearing. The court also held that the father had standing to litigate his daughter's right to independent counsel.

Descriptors: guardian ad litem, rights of minor, social services agencies, agency role, courts role, lawyers role, parents rights, california

4254I1 CD-08976 Dryden v. Coulon. Michigan. Court of Appeals. 378 N.W.2d 767 (MI Ct. App. 1985), 1985. 1985. Subject Code: 97

(The following abstract was taken from the ABA Juvenile and Child Welfare Law Reporter, which is available on a subscription basis from the American Bar Association, National Legal Resource Center for Child Advocacy and Protection, 1800 M Street, N.W., Washington, DC 20036.) In contested custody proceedings, the friend of the court was obliged under state law to investigate the environment of the child and report to the court regarding his well-being. As a result of the failure of the friend of the court to carry out these duties, the child suffered permanent mental, physical and emotional injuries. The father filed an action against the friend of the court seeking damages for these injuries. The trial court granted defendant's motion for summary judgment upon an application of the exhaustion of administrative remedies and governmental immunity doctrines. The Michigan Court of Appeals affirmed, but for a different reason. The appellate court

(cont. next page)

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DIALOG File 84: CHILD ABUSE AND NEGLECT-SPRING 1989 EDITION

initially pointed out that, pursuant to M.C.L. Section 552.526; M.S.A. Section 25.176(26), an administrative remedy was provided for grievances by the public against the friend of the court office or its employees. In short, any person who was not satisfied with the decision of the friend of the court could file a grievance with the chief judge. Relying on the rule of law that the remedy provided in a statute for its violation is exclusive, the court found that a judgment for money damages was not contemplated by the legislature for the failure to perform the investigative and reporting duties imposed by the Friend of the Court Act.

Descriptors: civil liability, legal responsibility, guardian ad litem, courts role, lawyers role, legal immunit, michigan

425312 CD-08929

Using Lay Volunteers to Represent Children in Child Protection Court Proceedings.

Duquette, D. N.; Ramsey, S. H. Michigan Univ. Law School, Ann Arbor. Child Abuse and Neglect 10(3):293-308, 1986. 1986. Subject Code: 92

Despite a widespread conviction that children ought to be independently represented in child protection court proceedings in the United States, there is little consensus as to what the role of that independent child advocate ought to be or, indeed, who should fulfill that role. This study accomplished three purposes: articulated an aggressive, ambitious and continuous role for the child's representative which encompassed a broad range of the child's interests, both legal and nonlegal; provided training in this role to demonstration groups of attorneys, law students and lay volunteers; and compared the effectiveness of each of the three demonstration groups in representing children to one another and to a control group of attorneys who received no special training from the research team. Carefully selected and trained lay people representing children in child abuse and neglect legal proceedings under lawyer supervision performed similarly to trained lawyers and law students in the way they approached their duties and in case outcomes achieved and significantly different from attorneys who, consistent with the practice in nearly all the United States, received no special training in child advocacy. Numerous references. (Author abstract modified)

Descriptors: child advocacy, lawyers, paraprofessional training, legal definitions, guardian ad litem

4244H2 CD-08717

Review of Child Abuse and Neglect Research, 1985. Younes. L. A.

Supported by: Office of Human Development Services (DHHS), Washington, D.C., 197 pp., November 1986. November 1986.

Subject Code: 98

This annual review of the currently and recently conducted research on child abuse and neglect is of academic interest. yet the concept of ""research'' was broadened to include legal issues and other publications that deal directly with some aspect of child maltreatment. such as definition. incidence or prevalence, etiology, prevention, treatment, or sequelae, and represent substantive contributions to the CAN body of knowledge. The chapters are structured to present topics and issues of interest to specific professionals and areas that include: general interest; social work and child protective services practice; the law of child abuse and neglect; mental health professionals: law enforcement professionals: educators: medical professionals: publications for parents and children; and ongoing CAN research. Extensive bibliographies are provided for each chapter and a comprehensive subject index will aid the reader in finding the exact topics of interest.

Descriptors: research reviews, court case disposition, legal rights, judicial decisions, reference materials, child abuse, child neglect, guardian ad litem

4243J2 CD-08677

Court Appointed Special Advocates (CASAs): A Selected Annotated Bibliography.

Clearinghouse on Child Abuse and Neglect Information, Washington, D.C.

Supported by: Office of Human Development Services (DHHS), Washington, D.C., 37 pp., December 1986.

December 1986.

Subject Code: 98

This selected bibliography focuses on guardians ad litem or court appointed special advocates (CASAs), and provides references to books, journal articles, and audiovisual materials on the subject. A comprehensive list of State laws regarding guardians ad litem or attorneys for children and a national organization list are also included.

Descriptors: state laws, literature reviews, audiovisual materials, national organizations, guardian ad litem, childrens rights, right to counsel, lawyers

4242H3 CD-08622

Legal Representation for Parents and Children in Child Protection Proceedings: Two Empirical Models of Acquisitional Processes and a Proposal for Reform.

Kelly, R. F.; Ramsey, S. H. Syracuse Univ. College of Law, N.Y. Dickinson Law Review 89(3):605-643, Spring 1985. Spring 1985. Subject Code: 96

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Court record and attorney interview data were collected and analyzed for a random sample of 210 cases involving 375 children in North Carolina to assess 2 models describing the way in which legal services are acquired by parents and children in child protection proceedings. County-level sociodemographic, judicial and administrative, and service information also were assessed. It was hypothesized that parents acquire legal representation within a market model based on supply and demand, while children acquire representation within a model based on the belief that courts can be used to achieve therapeutic goals. Regression analyses supported this hypothesis and indicated that, while parents' attorneys did produce benefits for their clients, children's attorneys produced no measurable benefits for their clients and, in many cases, had a negative impact. It is suggested that the benefit of legal services is a function of differences in the degree of control and that these differences are related to the conditions associated with the 2 models of legal representation. It is argued that by shifting the locus of control for the supervision, training, appointment, and payment of children's attorneys over to an independent, specialized monitoring agency, the goals of independent and adversarial representation of children are more likely to be met. 106 footnotes.

Descriptors: legal services, services delivery, guardian ad litem, lawyers role, role conflicts, child protection services, north carolina

4242D1 CD-08604

Children and the Law in North Carolina: A Casebook for Practice. Final Draft.

Furr, J. E.

North Carolina Administrative Office of the Courts, 180 pp., 1985.

1985.

Subject Code: 96

For use by quardians ad litem, this casebook provides an overview of the legal rights of children with a focus on North Carolina law and statutes. Decisions of the U.S. Supreme Court and, in some cases, other jurisdictions, also are provided. Specific topics include the best interest of the child and factors to be considered in termination of parental rights, custody, foster care, and juvenile delinquency placements. The rights of parents also are examined. Issues in criminal and civil child abuse are examined, as are dependency, neglect, and domestic violence. The role of the department of social services in child protection, abuse reporting, and petitioning also is described. Guidelines for invenile court presentation cover initiation of court action, pretrial resolution and mediation. the adjudicatory hearing, evidentiary issues, disposition, and review. Additional sections deal with issues specific to sexual abuse and exploitation, the child witness, termination of parental rights, rights of foster parents, medical treatment of minors, and child support and custody. Due process rights, the role of the guardian ad litem and the

attorney, and special issues relevant to the mentally ill or handicapped child also are discussed. 84 references.

Descriptors: judicial decisions, state laws, north carolina, legal processes, guardian ad litem, legal rights

4242C3 CD-08602

A Plea for Help. Dealing With Sex Abuse Cases. Frank, C. ABA Journal 12:26, September 1985. September 1985. Subject Code: 96

This article briefly discusses the handling of sexual abuse victims and their court cases and presents guidelines for such cases as put forth by participants in an American Bar Association meeting. Topics discussed in this meeting include the potential for institutional abuse of child victims and the use of forensic teams composed of multidisciplinary child abuse professionals. Meeting participants suggested that lawyers should determine whether a child will be harmed or helped by being put on the witness stand and should keep abreast of court decisions regarding child testimony in sexual abuse cases. They also suggested that lawyers be aware of symptoms of sexual abuse and recognize that such cases probably will be difficult. Finally, they emphasized the importance of being aware of the child's view of the world, knowing how to present the child's testimony, and recognizing when the child may need a guardian ad litem or other interpreter.

Descriptors: sexual abuse, institutional abuse and neglect legal processes, lawyers role, child witnesses, guardian ad litem, testimony

4241G2 CD-08569

Protecting Child Witnesses.

Bross, D. C.

National Association of Counsel for Children, Denver, Colo. In: Bross, D.C. (Ed). Multidisciplinary Advocacy for Mistreated Children. Denver, Colo., National Association of Counsel for Children, pp. 195-203, 1984.

1984.

Subject Code: 96

Various methods are available to protect child witnesses, enhance their testimony, and provide alternate means of proof in child abuse (particularly sexual abuse) cases. Hearsay statements by child victims to others are increasingly being recognized by courts as sources of proof in abuse cases. These may include statements made to a parent or relative, to police, or to an examining physician. Corroboration of allegations may be provided by medical findings, by developmental and psychological evaluations, or by evaluation of the perpetrator (in civil cases). The doctrine of res ipsa





loquitur, which shifts the burden of proof to the defendant, has been recognized in battering and endorsed in sexual abuse cases. Anatomically correct dolls may be used to elicit information from child victims, and information on the child's doll play often may be admitted in evidence. In addition, states are increasingly enacting statutes that permit the introduction of audiotaped and videotaped testimony and evidence. In those cases where it is desirable or necessary to introduce a child witness, appropriate support and the intervention of a guardian ad litem or child advocate can improve the child's testimony and minimize the trauma of court procedures. 21 references.

Descriptors: child witnesses, evidence presentation, testimony, corroboration, guardian ad litem, sexual abuse

4235L3 CD-08526

Permanency Planning for Children Project 50 State Update. National Council of Juvenile and Family Court Judges, Reno, Nev.

Reno, Nev., National Council of Juvenile and Family Court Judges. Supported by: Office of Justice Programs (DOJ), Washington, D.C., (85-JS-CX-K027), 42 pp., July 1986,

July 1986.

Subject Code: 92

Since its establishment in 1981, the National Council of Juvenile and Family Court Judges' Permanency Planning for Children Council has provided training and technical assistance to states seeking to ensure permanent families for the nation's abused and neglected children. These state listings provide synopses of permanency planning progress in the 50 states and the District of Columbia. Listings provide information on each jurisdiction's lead judge and coordinator, task force meetings, training programs, number of individuals trained, volunteer programs implemented, and legislative and court reforms. Listings indicate that task force and subcommittee members met approximately 300 times to plan and implement approximately 100 training conferences and seminars. Over 9,550 judges, legislators, social service personnel, attorneys, and volunteers participated in these training programs. Statutory changes were adopted in 13 states and are pending in 10 others. Changes in court rules were adopted in 3 states and are pending in 5. The number of programs using court-appointed special advocates and nonattorney quardians ad litem has grown to more than 150 nationwide, and at least 8 states have established statewide citizen review systems. Listings of 1985-86 committee members.

Descriptors: program descriptions, state programs, family programs, permanency planning, child advocacy, professional training, guardian ad litem, volunteer training

4235A3 CD-08482

Improvement of Child Protection Services Through Provision of Guardians Ad Litem.

South Central Community Action Agency, Twin Falls, Idaho.

Twin Falls, Idaho, South Central Community Action Agency. Supported by: National Center on Child Abuse and Neglect, (DHHS), Washington, D.C.,(90-CA-867) 309 pp., September 30, 1985.

September 30, 1985. Subject Code: 90

This report describes the objectives, procedures, and evaluation of a volunteer guardian ad litem program serving isolated, rural families involved in child protection cases in a 6-county Idaho area. The program used an attorney-volunteer team model both to protect the child's interests in legal proceedings and to improve delivery of services to children and their families. Volunteers were recruited on the basis of recommendations and through self-referral. Attorneys were recruited via a letter to the local bar association. Attorneys and volunteers received training prior to case assignment, and ongoing in-service training also was made available. Following assignment. volunteers conducted case independent investigations of the alleged abuse/neglect and worked with the supervising attorney in formulating recommendations that would be in the child's best interests. The program operated successfully for 4 years and gained support from all other agencies participating in child protection proceedings. Appendixes provide advertising materials, job descriptions. volunteer forms (application. intake, investigation reinbursements), and related program materials. (Author abstract modified)

Descriptors: idaho, guardian ad litem, volunteers, program descriptions, child advocacy, child protection services

4225E3 CD-08242

Helping Prevent the Abused Child From Becoming a Grownup Abuser. The Role of the Guardian Ad Litem.

Bross, D. C.

National Association of Counsel for Children, Denver, Colo. Judges Journal pp. 11-15, 51, Fall 1985.

Fall 1985. Subject Code: 86

The author discusses the role of the guardian ad litem in child abuse and neglect cases and presents guidelines developed by the National Association of Counsel for Children (NACC). He notes that the independent child advocate can present all facts and legal alternatives to the court and can drastically alter the outcome of proceedings, as is demonstrated in studies that show counsel for children can reduce the duration of foster placement, facilitate the freeing of children in foster care for adoption, and significantly increase parental compliance with treatment plans. He discusses how the symbiotic relationship between the guardian ad litem and the court works to protect and promote the best interests of the child. Finally, he emphasizes that standards of practice must be developed and continually





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DIALOG FILE 64: CHILD ABUSE AND NEGLECT-SPRING 1989 EDITION

revised to assure adequate representation of children. The attached NACC guidelines specify the conditions and actions that constitute adequate investigation and case preparation, outline options for pretrial motions, describe additional rights and responsibilities of the guardian ad litem, and provide hints for improved performance. 6 references.

Descriptors: background investigations, standards, guardian ad litem, child advocacy, professionals responsibility

422112 CD-08065

Burdette v. Lobban. West Virginia. Supreme Court of Appeals of West Virginia. 323 S.E.2d 601, December 6, 1984. December 6, 1984. Subject Code: 97

During the preliminary hearing of a child abuse proceeding, the circuit court ordered the S-year-old victim to be interrogated by her father's attorney without her counsel present. In overturning the order, the Superior Court of Appeals held that pursuant to W. Va. Code 49-6-2(a) (1984), the child was entitled to be represented by counsel at every stage of the proceeding, which would include being interrogated by anyone. The court also held that a neutral child psychologist or psychiatrist may be appointed to inquire into the child's capacity to testify.

Descriptors: sexual abuse, child witnesses, guardian ad litem, rights of minors, competency, testimony, right to counsel, west virginia

4216B4 CD-08023

The Legal Representation of Children in Protection Proceedings: Some Empirical Findings and a Reflection on Public Policy.

Kelly, R. F.; Ramsey, S. H.

Wayne State Univ., Detroit, Mich. Program in Applied Sociology and Urban Policy Studies.

Family Relations 34(2):277-283, April 1985.

April 1985.

Subject Code: 96

Empirical findings and reflections on public policy in the legal representation of children in protection proceedings in North Carolina are discussed. Because of increasing public concern about child abuse and neglect, many States have passed legislation authorizing legal representation for children in protection proceedings. To test the benefit to the child of attorney representation, evaluations of a random sample of child protection cases and attorneys who served in these cases were drawn from 20 of North Carolina's 100 counties. Information was gathered from 210 randomly selected juvenile court cases filed between September 1977 and December 1978. These cases involved 375 children. A scale of judicial coercion was developed to evaluate attorney performance, and a multivariate model of judicial coercion was estimated. Judicial coercion was defined as "the propensity of a court to intervene in the lives of families in which abuse or neglect is alleged by removing the child from the home, and once removed, keeping the child out of the home for a substantial period of time.' Attorney effectiveness was measured by the acquisition of a court disposition that did not involve the child's removal from the home. It was found that attorneys generally produced no significant benefit for the children they represented However, attorneys who were highly committed to their cases and who were skeptical about the need for guardians in every abuse/neglect case were found to be more effective than others. Recommendations for improving attorney to abused/neglected children include use of services specialized training in juvenile law or child welfare. development of a clearer definition of the attorney's role, and creation of methods for monitoring the performance of attorneys representing children in protection proceedings. Tabular data and 17 references. (Author abstract modified)

Descriptors: guardian ad litem, north carolina, state law, evaluation, removing child from home, child advocacy

4214D4 CD-07935

Evaluation of the Placement Project of the Support Center for Child Advocates. Preliminary Findings.

Kenty, M. C.

University City Science Center, Philadelphia, Pa.

Supported by: National Center on Child Abuse and Neglect (DHHS), Washington, D.C., (90-CA-863), 74 pp., January 1983.

January 1983. Subject Code: 90

This report presents preliminary findings and conclusions from an evaluation of the first year's (1981) work of the Support Center for Child Advocates (SCCA), a Philadelphia program providing legal representation for children in placement or about to be placed. Evaluation methodology and data gathering methods encompassed structured and unstructured interviews, systematic observation, documents review, design and implementation of an exhaustive set of case record forms, and participation in selected agency working committees. The organization of the SCCA is described, with attention to its personnel, structure, community relations, and effectiveness. A description of the agency's operations focuses on client flow, staff and volunteer roles, the findings of courtroom observation, and casework. Overall, qualitative evaluation findings indicate the SCCA has achieved its class advocacy goals and effectively managed its operations. Specifically, the agency was found to have been extraordinarily competent in designing procedures to facilitate client representation. Quantitative findings indicate that although few placements have been prevented (SCCA has found that most of its clients need to be placed at least temporarily), many placements have been altered and improved, and client rights have been





protected. Preliminary recommendations are (1) continuing to improve internal information systems, (2) increasing the participation of volunteer attorneys in the representation process, and (3) reevaluating class advocacy activities in the context of achievements and new management in city agencies. Appendixes present evaluation forms and the SCCA guardian ad litem policy.

Descriptors: guardian ad litem, child advocacy, right to counsel, legal aid, program evaluation, pennsylvania, placement

4204F3 CD-07686

In Interest of P. Wisconsin. Court of Appeals of Wisconsin. 349 N.W. 2d 743 (Wis. App. 1984), May 16, 1984. May 16, 1984. Subject Code: 97

Parents of 2 juveniles were ordered to reimburse the county for guardian ad litem fees for services rendered to their children in proceedings alleging the children to be in need of protection. The parents appealed. The Court of Appeals of Wisconsin held that guardian ad litem services are not within the concept of legal counsel as used in sec. 48.275(2)(a), which requires parents to reimburse the county for legal counsel provided to their child.

Descriptors: guardian ad litem, child neglect laws, right to counsel, wisconsin, fees, judicial decisions

4203K2 CD-07657

State in Interest of Dillard. Louisiana. Court of Appeal of Louisiana, Fifth Circuit. 450 So. 2d 977 (La. App. 5 Cir. 1984), May 14, 1984. May 14, 1984. Subject Code: 97

Action was brought against parents for abandonment of their children, and the juvenile court appointed attorneys to represent both parents and children, ordering that the Department of Health and Human Resources pay for these attorneys. The department appealed the order, and the Court of Appeal held that pursuant to the Louisiana Constitution Article 1, Section 13, and LSA-C.J.P. Article 95, Parts B, C, and D, it was within the authority of the court to appoint counsel for the children. It was also found that the attorney appointed was employed by the Indigent Defendant Board and compensated by that board; therefore, the order was reversed as to the directive to the department to pay the attorney's fees.

Descriptors: guardian ad litem, right to counsel, defense counsel, louisiana, fees, judicial decisions

420312 CD-07649

In Interest of M.P.

Florida. District Court of Appeal of Florida, Fifth District.

453 So. 2d 85 (Fla. App. 5 Dist. 1984), June 14, 1984. June 14, 1984. Subject Code: 97

In a juvenile dependency proceeding, the court had ordered the Department of Health and Rehabilitative Services to pay costs and attorney's fees to an attorney who had been appointed guardian ad litem. The department appealed, and the district court held that it was proper to award attorney's fees and to require the department to pay such fees.

Descriptors: guardian ad litem, dependency, right to counsel, florida, fees, judicial decisions

4201G3 CD-07546

ACDAN Project January 1975 Through June 1978.

Arizona Community Development for Abuse and Neglect, Phoenix.

Arizona Community Development for Abuse and Neglect, Phoenix, 390 pp., undated.

undated.

Subject Code: 90

The results of the Arizona Community Development for Abuse and Neglect (ACDAN) project are analyzed. The project was administered by 12 staff members, with 6 planning districts under district coordinators. Included as objectives for the 3-year demonstration were public and professional awareness: identification and needs assessment; training, resource assistance, and resource development: service technical coordination; and general advocacy. Background for the project is recounted in a historical overview. Encompassed in project assessments are a 3-year overview, a discussion of the state of the art of child abuse treatment in Arizona, and a statistical overview. A series of special efforts are reviewed. A brief paper summarizes a workshop on effective Indian reservation efforts, used with 14 tribes living in Arizona. This is followed by a scan of the comprehensive emergency services (CES) system, an evaluation of the 1978 summer training. and miniassessments focusing on 5 populations: Phoenix urban Indians. South Phoenix Mexican-Americans, Casa Grande blacks. Douglas Mexican-Americans, and Nogales Mexican-Americans. Resource development efforts are focused on 5 areas: resource capacity expansion, materials development, resource library packet inclusions and locations, parenting resource survey, and materials distribution lists. Finally, the project's changing needs during the 3 years are analyzed. The ACDAN organizational chart, the Advisory committee organizational chart, and a description and roster for the Advisory Committee are provided.





DIALOG File 84: CHILD ABUSE AND NEGLECT-SPRING 1989 EDITION

Descriptors: state child protection agencies, arizona, comprehensive emergency services, state surveys, mexican americans, native americans

4192C4 CD-07323

An Evaluation of Federally Funded Projects Providing Guardians Ad Litem in Child Abuse or Neglect Judicial Proceedings.

Schrier-Polak, C.; Horowitz, R.; Davidson, H.

National Legal Resource Center for Child Advocacy and Protection, Washington, D.C.,

National Legal Resource Center for Child Advocacy and Protection, Washington, D.C., 133 pp., September 1983.

September 1983.

Subject Code: 96

Ten demonstration programs funded in 1978 and 1981 by the National Center on Child Abuse and Neglect to collect data on the effective use of guardians ad litem (GAD) are evaluated. The report does not favor any one legal approach to the independent representation of abused or neglected children. but emphasizes that the mechanics of a GAD program are a product of a community's resources and particular characteristics. The principal evaluation tools were questionnaires completed by program directors and case activity reports. The programs offered a fertile mix of administration and design. Some used Federal funds to expand or modify existing programs or pay for individual GAD's and training. Other programs were created with Federal funds. A few relied on voluntary attorneys, while others used lay GAD's or paid staff. The evaluation categorizes the GAD projects into 6 models: law school clinic, staf? attorney, paid private attorney, staff-supported private attorney panel. lay volunteer-paid attorney, and lay volunteer. It then assesses the activities of each model with regard to the GAD appointment, the dentention care hearing, adjudication, and dispositon and review hearings. Summaries of the demonstration projects cover legal mandate, management, number served, case representation model, recruitment, training, and other project activities. The appendixes contains the evaluation questionnaire. extracts from State laws relating to the use of GAD, an annotated bibliography of GAD law review articles prepared in 1980, and the final report of the Nation GAD Policy Conference.

Descriptors: guardian ad litem, child advocacy, federal programs, program evaluation, demonstration programs

4192A3 CD-07314

Court Appointed Special Advocate: A Guide for Your Court.

National Court Appointed Special Advocate Association, Seattle, Wash.

National Council of Juvenile and Family Court Judges, Reno, Nev., 237 pp., undated.

undated.

Subject Code: 96

PAGE: 1262 Item 31 of 122

Guidelines are presented for using volunteer court-appointed special advocates (CASA's) for children within the child welfare judicial system CASA's represent allegedly abused or neglected children, serving as the children's quardian ad litem. They are trained to investigate, advocate. facilitate, negotiate, and monitor. The manual presents an overview of the court system, defines the neglected and abused child, and explains how the child gets to court. Court hearings are described, including those for shelter care. dependency factfinding trial, dispositional, and termination factfinding trial. Permanent planning is explained, and the preparation of CASA's for hearings is described. Guidelines for interviewing, preparing written reports, and giving effective testimony are offered. A section on preparation for factfinding hearings examines the role of the CASA at the hearings and evidentiary aspects of a CASA's testimony. A section on program administration considers managerial tasks. the organizational climate, and the resistance phenomena. A final section presents program models, with 4 basic structures outlined: CASA as monitor, CASA as friend, CASA as party, and CASA as attorney. Directory, footnotes, and appendixes.

Descriptors: legal processes, guardian ad litem, child advocacy, program descriptions, volunteer training

4191L3 CD-07310
Protecting the Rights of Abused and Neglected Children.
Miller, J.; Miller, M.
Trial 19(6):68-72, 102, June 1983.
June 1983.
Subject Code: 96

In 1974 Congress passed the Child Abuse Prevention and Treatment Act, which stipulates that for a State to get assistance under the act. the State must have child abuse and neglect laws that meet certain requirements. These requirements include the assignment of a guardian ad litem (GAL) to represent an abused or neglected child in court: a State program requiring reporting of known or suspected cases of child abuse and neglect; investigation of these reports by the proper authorities; guaranteed immunity for people who report suspected cases; availability of protective treatment endangered children: administrative procedures and for personnel to handle cases of child abuse and neglect; and a campaign to inform the public about the incidence and problems of child abuse. In court a GAL's presence is vital to protect a child's rights. In certain instances, the child is also entitled to an attorney. In 1980, the National Legal Resource Center of child Advocacy and Protection, a project of the American Bar Association, sponsored the first national conference on GAL's as court-appointed representatives for abused children. Experience in the United States with official, legal advocacy for children appears to be scant, but several Canadian Provinces are providing precisely this in the Office of Official Guardian. Several American States have





established special trust funds to bankroll child abuse programs.

Descriptors: childrens rights, guardian ad litem, abused children, child abuse laws, right to counsel

4191J1 CD-07300

Do Attorneys for Children in Protection Proceedings Make a Difference? A Study of the Impact of Representation Under Conditions of High Judicial Intervention.

Kelly, R.; Ramsey, S.

Wayne State Univ., Detroit, Mich. Program in Applied Sociology and Urban Policy.

Journal of Family Law 21(3):405-455, 1982-1983.

1982-1983.

Subject Code: 96

The use of attorneys as guardians ad litem in child custody cases in North Carolina is analyzed. Recent legislative efforts in many states have been directed at ensuring the provision of attorneys as guardians ad litem for children in child protection proceedings. Implicit in this legislation are the assumptions that representation would provide a significant benefit to these children and that an attorney is the proper choice for this representative. In the North Carolina system, however, results indicate that attorneys for children were not only ineffective, but even tended to substantially delay a child's return home. The effectiveness of representation was measured by the ability of the child's attorney to prevent removal of the child from the home and to facilitate child's return to the home. The highly interventionist nature of the North Carolina system is cited as a factor which might limit the validity of the conclusions in other jurisdictions. Findings suggest an improvement in the quality of representation for children through increasing the funds available to pay attorneys, making the funding independent of the judiciary, and tying these funds to performance.

Descriptors: north carolina, guardian ad litem, lawyers, custody of child, removing child from home, returning child to home

4191D4 CD-07279

Legal Aspects of Child Abuse -- Neglect: An Introductory Outline.

Dale, M. J.

Langerman, Begam, Lewis and Marks, Phoenix, Ariz.

In: Haralamble, A.M. (Editor). Practical Child Advocacy. Denver, Colo., National Association of Counsel for Children, pp. 29-37, 1982.

1982.

Subject Code: 96

The legal process leading to a determination of neglect or abuse is reviewed. Attorneys and others should understand 2 basic points about the law of child abuse and neglect. First, the law is of recent vintage, unlike most American laws. Second, the statutes and court practices differ markedly from State to State. Proceedings usually begin with the filing of a petition or the taking of custody. The parents will receive notice and be asked to appear at a preliminary hearing. At that time, the court will notify the parent of the charges. A factfinding or adjudicatory hearing is often time consuming and charged with emotion. If it is found that the parent did neglect the child, a dispositional hearing will follow. The role of counsel varies by jurisdiction. The prosecutor and the counsel for the parents are typical participants, and in some States a guardian ad litem is appointed. Public defenders represent the children directly in some instances, while not in others. Information sources are noted and 2 recent Supreme Court decisions are briefly described.

Descriptors: child advocacy, legal processes, legal services, lawyers role, guardian ad litem

4191B4 CD-07271

Special Child Advocates - A Volunteer Court Program. Blady, M.

National Council of Jewish Women, New York.

In: Perspectives on Child Maltreatment in the Mid '80s. Washington, D.C., National Center on Child Abuse and Neglect (DHHS), pp. 54-57, 1984.

1984.

Subject Code: 96

The National Council of Jewish Women has developed a Court Appointed Special Advocate (CASA) program. The program strives to properly represent children involved in neglect and abuse proceedings. There is a need for someone to present the court with an independent evaluation of and recommendation for what is in the child's best interest. This is the role of the CASA volunteer. Potential volunteers are interviewed to discover their special skills and weaknesses. Volunteer training centers on learning about the foster care system and the functions of public child welfare agencies. Training deals with conducting interviews and writing reports and includes exercises in values clarification. Since the CASA program reviews foster care caseworkers and service delivery. cooperation between CASA volunteers and social workers is important. Usually, the CASA program supports caseworkers' recommendations and helps ensure the court's case disposition is implemented. The CASA program is currently undergoing evaluation. Preliminary observations indicate that the project is doing well. The 3 original CASA projects are working to secure funding for continuing operation. In Florida, State funding supports CASA as part of a demonstration project. In other localities, financial support is being sought from the county government, corporations, and private individuals.

Descriptors: child advocacy, voluntary agencies, volunteer training, court case dispositions, interagency cooperation, national organizations





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DIALOG File 64: CHILD ABUSE AND NEGLECT-SPRING 1989 EDITION

416512 CD-06721

Functions of the Guardian Ad Litem in Child Abuse and Neglect Proceedings Los Angeles Juvenile Court.

Wilg, J. K.

Guardian Ad Litem-Dependency Court Improvement Project, Los Angeles, Calif.

In: National Guardian Ad Litem Policy Conference Manual. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 96-114, July 1982.

July 1982.

Subject Code: 96

The functions of the guardian ad litem (GAL) in child abuse and neglect proceedings in Los Angeles (California) Juvenile Court were examined using 6 actual cases. Ten activities of the GAL are defined as functions of the GAL because they are distinguishable from the activities of the social worker and the child's attorney. These are: to act as a mediator; to coordinate the juvenile court and other court departments; to provide continuity of case information throughout the court process: to persuade the social worker to consider alternative placement recommendations; to reduce trauma to the minor; to bring an existing case back to the court's attention: to raise questions which promote the best interests of the child; to assure that the child receives attention from those persons responsible to meet the child's needs; to argue directly or request that an attorney argue to prevent continuances which are not in the interests of the child: and to request independent counsel for the child. Numerous references.

Descriptors: guardian ad litem, juvenile courts, california, child advocacy

4165H4 CD-06719

Ninaty-Nine and Forty-Four One Hundredths Percent Pure Agency Representation of Children's Interests in Child Abuse and Neglect Cases.

Thomas, G.

Regional Inst. of Social Welfare Research, Athens, Ga. In: National Guardian Ad Litem Policy Conference Manual.

American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 90-95, July 1982.

July 1982.

Subject Code: 96

The following contentions are discussed: that the child protective agency is capable of representing the interests of children in child dependency court proceedings; and that the imposition of a guardian ad litem (GAL) or legal counsel by court appointment contributes nothing more than increased costs and bureaucratic posturing. A brief review of public child welfare agency involvements in child abuse and neglect cases indicates that the agency operates as if it represents the child's interests most of the time before, during, and following child dependency court proceedings through a process of informal negotiations to effect resolutions. The degree to which the agency assumes responsibility for representing the child's interests is likely to broaden as a consequence of provisions in P.L. 96-272 authorizing federal payments for voluntary parental placements. This act also broadens a child's substantive rights to independent representation by mandating state provision of preplacement prevention services. Thus, the potential exists for more informally negotiated case resolutions that do not require independent representation of a child's interests.

Descriptors: best interests of the child, dependency, guardian ad litem, agency role, agency responsibility, child advocacy, child protection organizations, juvenile courts

4165F4 CD-06711

Report on an N.A.C.C. Field Experiment Contrasting Three Models of Representation of Children.

Shink, S. F.

National Association of Counsel for Children, Denver, Colo. Guardian ad Litem Project.

Guardian 5(1):2-9, Winter 1982-1983. Winter 1982-1983. Subject Code: 96

A field study of 3 models of guardian ad litem (GAL) representation for abused and neglected children is described. The Ad Hoc Model is the system of appointing GALs on a case by case basis to represent the child in all stages of the proceedings. The Volunteer Model encourages team advocacy utilizing a combination of legal and trained volunteers. The volunteers perform nonlegal, essential services involving contacts with clients, families, and others. The Children's Legal Clinic Model consists of a multidisciplinary staff of professionals, students, and lay people who handle a high volume of cases, thereby providing the staff with the opportunity to become specialists in child advocacy. Preliminary results concerning objective measures of the 3 models (time between filing for GAL and assignment of GAL, streamlining court processes, etc.) and subjective ratings of the models (sensitivities to child's needs, interagency relations, etc.) indicate that the Children's Legal Clinic Model is superior to both other models, and that the Volunteer Model is superior to the Ad Hoc Model.

Descriptors: guardian ad litem, models, child advocacy, field studies, comparative analysis

4165F3 CD-06710

The Abused Child's Right to Counsel: Why Legal Representation vs. Non-Legal.

Schrier, C. J.

Support Center for Child Advocates, Philadelphia, Pa.

In: National Guardian Ad Litem Policy Conference Manual. American Bar Association, Washington, D.C. National Legal (cont. next page)





Resource Center for Child Advocacy and Protection, pp. 147-153, July 1982.

July 1982.

Subject Code: 96

The abused child's right to counsel is described, and the issue of legal counsel v. lay representative serving as a guardian ad litem (GAL) is discussed. Since children are no longer considered subjects of abuse-neglect proceedings, but rather are active participants with standing to assert independent rights and interests, legal counsel for the child must be appointed if he or she is to have equal power to influence administrative and-or court actions. Anything less would undermine the child's status and ability to compete as an equal party with parents and the state who are routinely represented by legal counsel, and could result in unequal protection of the child from further abuse, unwarranted and over-reaching state interference, and or intrusion into family unity and privacy. Since parents cannot be presumed to be acting in the best interest of the child, the voluntary acceptance of service by a parent cannot be presumed to be in the child's best interest or more importantly, what the child desires. Operating from a regulated institutional perspective with limited service resources and options, agency staff cannot be presumed to be acting on behalf of the child, 3 references.

Descriptors: right to counsel, childrens rights, guardian ad litem, best interests of the child, child advocacy, legal aid

4165F1 CD-06708

Problems Encountered by Courts in Establishing Guardian Ad Litem Programs.

Rogers, J.

Pulaski County Juvenile Court, Little Rock, Ark.

In: National Guardian Ad Litem Policy Conference Manual. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 137-146, July 1982.

July 1982.

Subject Code: Se

Problems encountered by courts in establishing guardian ad litem (GAL) programs are discussed. Problems associated with funding, staffing, paperwork, volunteers, training, legal expertise, community acceptance, agency understanding, and the sacrosanct concept of the family protecting all its members are described. The ideal program would have 1 director trained in the social sciences and an assistant who is a lawyer and able to present the facts to the court, or a lawyer-director with an assistant trained in the social sciences who can help recruit volunteers and match volunteers with families and children. The appointment of the GAL is pro forma by the judge. The actual matching of the specific volunteer to the specific case is done by the GAL director. The director or assistant director needs to monitor the legal progress of the case and the actual work done by the volunteer.

Descriptors: guardian ad litem, courts role, program planning, program administration, volunteers

4165E1 CD-06704

Should the Guardian Ad Litem be an Attorney? In All Cases or in What Type Cases?

Ray-Bettineski, C.

King County Juvenile Court, Seattle, Wash. Guardian Ad Litem Program,

In: National Guardian Ad Litem Policy Conference Manual. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 154-158, July 1982.

July 1982.

Subject Code: 96

The issue of whether or not and in what types of cases the guardian ad litem (GAL) should be an attorney is discussed. The following theoretical role responsibilities of the GAL have been identified: investigator, advocate, counsel, and quardian. Legal experts have concluded that an interdisciplinary team is required to insure that the role of GAL is performed at optimal level. This conclusion is based on the following contentions that: attorneys lack knowledge essential to the nonlegal aspects of the case, attorneys appointed as GAL do not specialize in representing children in this role, and these cases are only part of an attorney's work load so that time is limited. According to the Court Appointed Special Advocate (CASA) model, the role functions of the GAL include: investigator, advocate, facilitator, and monitor. Legal training is not a necessary prerequisite for the role of GAL in this model. The CASA model provides specialized legal counsel, retained on contract, to provide training, ongoing legal advice, and representation at evidentiary hearings, 14 references.

Descriptors: lawyers role, guardian ad litem, child advocacy, legal responsibility

4165D4 CD-06703

Should the Guardian Ad Litem Attend All Hearings? Case Conferences? Interviews With the Child by All Parties?

Ray-Bettineski, C.

King County Juvenile Court, Seattle, Wash. Guardian Ad Litem Program.

In: National Guardian Ad Litem Policy Conference Manual. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 199-205, July 1982.

July 1982.

Subject Code: 96

The issue of whether or not the guardian ad litem (GAL) in (cont. next page)





DIALOG File 84: CHILD ABUSE AND NEGLECT-SPRING 1989 EDITION

child abuse and-or neglect cases should attend all hearings. case conferences, and interviews with the child (by all parties) is discussed. A GAL provides the most effective advocacy for the neglected or abused child in the juvenile justice system. The presence of the GAL is essential at all hearings related to the child's interest (pre-adjudicatory, adjudicatory, dispositional, and post-dispositional review hearings). The GAL should decide whether he or she should join a conference of professionals concerning the child and whether his or her presence is necessary or desirable at various interviews between the child and others. Even if the GAL decides to waive his or her presence, arrangements should be made for the GAL to receive in writing the outcome of such a meeting. Requiring that the GAL be present with the child during interviews by all parties seems restrictive, beyond the role of the GAL, and perhaps not in the child's best interest. 14 references.

Descriptors: child advocacy, best interests of the child, juvenile courts, guardian ad litem, case management, interviews

4165B4 CD-06695

Should There be Changes in the Guardian Ad Litem Language Contained in P.L. 93-247 Child Abuse Prevention and Treatment Act?

Norman, C. B.

United States House of Representatives, Washington, D.C. Select Education Subcommittee.

In: National Guardian Ad Litem Policy Conference Manual. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 54-61, July 1982.

July 1982. Subject Code: 96

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The issue of whether or not there should be changes in the quardian ad litem (GAL) provision of the Child Abuse Prevention and Treatment Act of 1973 (P.L. 93-247) is discussed. The major thrust of P.L. 93-247 is to provide assistance for demonstration programs for the financial prevention, identification, and treatment of child abuse and neglect, and to establish a national center on child abuse and neglect. However, a provision was included which incorporated the notion that the child's interests should be represented in judicial proceedings. The language used in the state statutes varies greatly in its interpretation of the GAL provision. Four questions require resolution prior to Congress' decision to change the language of the GAL provision during reauthorization: whether the eligibility requirement should be met by statutory provision only, rather than by the options currently made available; whether the GAL should in all cases be an attorney; whether the court should also appoint a counsel or guardian to represent the interests of parents who are themselves minors and-or indigent; and whether the GAL should represent the interests of the child involved in the judicial proceeding only. 8 references.

Descriptors: guardian ad litem, federal laws, statutory construction, state laws, best interests of the child, child advocacy, legal problems

4165A1 CD-06688

Civil Liability of the Guardian Ad Litem.

Miles, L. W., Jr.

University of California, Davis, Law Review 12(2):700-722, 1979.

1979.

Subject Code: 96

The role of the guardian ad litem in California child maltreatment cases is analyzed, and deficiencies in the statutory scheme concerning the guardian ad litem's authority and appointment are described. The guardian ad litem is charged with protecting the child's best interests, but statutory deficiencies make the effective discharge of that responsibility difficult. The causes of action against people who fail to diagnose the battered child syndrome or to report suspected child maltreatment are explored, and the possibility of a civil action against the child abuser is described. Various theories upon which the guardian ad litem may predicate liability against people who fail to diagnose the battered child syndrome or report suspected child maltreatment against people who abuse the child are discussed.

Descriptors: guardian ad litem, california, battered child syndrome, diagnoses, best interests of the child, state law, civil liability

4164K4 CD-06683

Guardian Ad Litem Requirements of the Child Abuse Prevention and Treatment Act -- Public Law 93-247 -- Should They be Changed?

Martinez, S.

United States Senate Human Resources Committee, Washington, D.C. Subcommittee on Child and Human Development.

In: National Guardian Ad Litem Policy Conference Manual. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 45-53, July 1982.

July 1982.

Subject Code: 96

The legislative history of the guardian ad litem (GAL) provision of the Child Abuse Prevention and Treatment Act (Public Law 93-247 as amended) is described, and the case for changing the GAL requirement of P.L. 93-247 is reviewed. The orginal version of the Act which passed the Senate did not contain any specific references to the GAL. During the 1977 hearings on reauthorization of appropriations for programs under the Act, the GAL requirement was cited as 1 of the 2 requirements which presented the greatest difficulty for





states to meet. Although some states indicated objection to the GAL requirement because of the costly and time-consuming demands of this requirement, 46 states or territories have implemented state laws which meet the requirements for GALs of P.L. 93-247. Given the limited amount of federal funds made available under the Act for state grants, it is remarkable that so many states have amended their state child abuse and neglect laws to qualify for funds under P.L. 93-247. 9 references.

Descriptors: guardian ad litem, federal laws, state laws, child abuse laws, legislation, child advocacy

4164K3 CD-06682

Protecting the Interests of Children in Custody Proceedings: A Perspective on Twenty Years of Theory and Practice in the Appointment of Guardians Ad Litem.

Makaitis, R. T. Creighton Law Review 12:234-255, 1978. 1978. Subject Code: 96

To examine the strengths and weaknesses of appointing guardians ad litem in various custody related proceedings, the development of the concept is outlined with special attention given to Nebraska law. Until recently, guardians ad litem were not appointed in judicial proceedings affecting children unless the child was a party to the action at trial. However, many states now authorize the appointment of guardians in cases such as divorce, custody, and neglect-abuse where the child is not a party but whose welfare and interests are nevertheless at stake. Children's position in court proceedings has greatly improved, but there is concern that appointment of quardians ad litem will have to be mandatory to adequately safeguard the interests of children and that the discretion allowed the trial courts by the new statutes is not astercised often enough to guarantee the children's safety. Numerous references.

Descriptors: nebraska, custody of child, guardian ad lite, child advocacy, trial courts, best interests of the child

4164J1 CD-06676

When Should the Lay Guardian Seek Legal Advice and How is This to be Provided and What is the Potential Tort Liability of the GAL?

Levine, R. S.

Pennsylvania Child Advocates, Inc., Pittsburgh.

In: National Guardian Ad Litem Policy Conference Manual. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 159-163, July 1982.

July 1982.

Subject Code: 96

Conditions under which the lay guardian ad litem (GAL) should seek legal advice and the lay GAL's potential tort

liability are discussed. As to when a lay GAL should seek advice and the provision of legal advice, only legal subjective observations can be drawn from exisiting facts. Although legal training is an essential component of any GAL program and should be mandated, it is not mandated universally. The manner in which legal assistance is available to the GAL apparently varies: it may take the format of attorneys in private practice on contract to the program. full-time lawyers specifically hired by the GAL program, or attorneys appointed along with the lay GAL to represent each child's interest. Malpractice insurance is available for both lay GALs and attorneys. To reduce the potential tort liability of GALs: all employees should be covered by malpractice insurance: all staff should be required to undergo thorough trainings in the areas of juvenile law, practice, and procedure; and legislation should be drafted which grants GALs immunity from tort claims assuming good faith. 5 references.

Descriptors: guardian ad litem, legal rights, legal immunity, child advocacy, paraprofessional training, civil liability, legal responsibility

4164H1 CD-06668

Who, in Addition to the Judge, may Determine When a Child is Entitled to and Needs a Guardian Ad Litem?

Horowitz, R. M.

American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection.

In: National Guardian Ad Litem Policy Conference Manual. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 62-72, July 1982.

July 1982.

Subject Code: 96

The issues surrounding the determination and appointment of a guardian ad litem (GAL) in child abuse and neglect court cases are discussed. In addition to the judge, the parent, the petitioning agency, the child, and an independent state entity can select the GAL. However, for the very reason that a GAL is necessary, i.e., conflict among the parent, child, and state, the first 2 options must be rejected. If the child is allowed to select the GAL, this assumes that either a mature child or the child's guardian (if not the respondent) can act for the child. The principal benefit of allowing a mature child to select a GAL is the child's heightened sense of participation. The advantage of an independent state entity selecting the GAL is that the entity may assure quality representation. 5 references.

Descriptors: guardian ad litem, childrens rights, child advocacy, decision making





4164G3 CD-06666

Duties and Procedures of a Guaridan Ad Litem in Juvenile Cases in Rhode Island Family Court.

Healy, E. V., Jr.

Rhode Island Family Court, Providence.

In: National Guardian Ad Litem Policy Conference Manual. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 120-136, July 1982.

July 1982.

Subject Code: 96

Duties and procedures of a guardian ad litem (GAL) in juvenile cases in Rhode Island Family Court are described. The role of the GAL is to arrive at an independent determination of what is best for his ward. In arriving at this determination, the GAL should use all the resources available to him under the authority of his appointment, but he should also avail himself of personal and separate resources. Fee structures, budgets, and excerpts from annual reports of various child advocate support centers are appended. Whenever an attorney-GAL and a special advocate from the court-appointed special advocate office are both appointed for a child, the duties and responsibilities of each must be distinguished.

Descriptors: rhode island, guardian ad litem, family courts, lawyers role, child advocacy, legal processes

4164G2 CD-06665

A Comparison of the Guardian-Ward and the Attorney-Client Relationship.

Harhai, S. J.

National Association of Counsel for Children, Denver, Colo. In: National Guardian Ad Litem Policy Conference Manual. American Bar Association, Washington, D.C., National Legal Resource Center for Child Advocacy and Protection, pp. 79-89, July 1982.

July 1982.

Subject Code: 96

The guardian-ward relationship and the attorney-client relationship are compared. The attorney-client and guardian-ward relationships are wholly separate and incompatible responsibilities. One individual can never be in both relationships with the same person. A guardian ad litem (GAL), however, can and should be licensed to practice law since this is the least expensive way to protect the child's interest in a child protection lawsuit. The argument has been made that not all of the functions of the GAL require legal expertise and expensive legal talent should be utilized only where required. This is a reasonable position and is, in fact, consistent with modern theories of law office management.

Descriptors: guardian ad litem, child advocacy, lawyers role, role conflicts 4164G1 CD-06664

Some Reservations About the Role of the Guardian Ad Litem. Hardin, M. A.

American Bar Association, Washington, D.C. Permanency Planning Project.

In: National Guardian Ad Litem Policy Conference Manual. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 226-231, July 1982.

July 1982.

Subject Code: 96

The conflict inherent in the quardian ad litem's role in child abuse or neglect hearings as representative of the child's desires and as representative of an independent view of the child's best interests is discussed. The first role means articulating and supporting, function without reservation, the desires of the child. The second role function means articulating and supporting the guardian ad litem's view of the child's best interest. In the first instance. effective representation of the child's views requires that the child be provided with both an attorney and status as an equal party in the case. The reasons for appointing a guardian ad litem who does not represent the views of the child, but who adopts an independent point of view, are less clear than those for appointing a legal representative of the child's views. Before expanding the guardian ad litem's involvement in child abuse cases, the courts should be reasonably assured that the guardian ad litem will bring about an improvement in either existing legal representation or agency social work practice.

Descriptors: legal problems, guardian ad litem, role, child advocacy, best interests of the child, childrens rights

4164F4 CD-06663

Should the GAL's Duties Continue Through Foster Care Review? How Does P.L. 96-272, the "Adoption Assistance and Child Welfare Act of 1980" (HR 3434) Affect the GAL?

Hardin, M. A.

American Bar Association, Washington, D.C. Permanency Planning Project.

In: National Guardian Ad Litem Policy Conference Manual. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 206-218, July 1982.

July 1982.

Subject Code: 96

The duration of the guardian ad litem's (GAL) functioning through foster care review and the effects of the Adoption Assistance and Child Welfare Act of 1980 on the role of the GAL are discussed. The same GAL who has been involved in the early stages of intervention should be involved throughout the (cont. next page)

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DIALOG File 64: CHILD ABUSE AND NEGLECT-SPRING 1989 EDITION

course of the proceedings, from initial intervention through adjudication, disposition, review, and ultimate resolution of the case. The extent to which the GAL should participate in case planning and nonjudicial case review depends on the GAL's qualifications, the nature of the case, and the way the particular system operates. The Adoption Assistance and Child Welfare Act of 1980 does not define the role of the GAL, but provides the GAL with valuable ammunition to work toward a permanent placement for the child. Program changes mandated by the Act include: prevention of unnecessary foster placements; timely, goal-oriented case planning; services to reunite families and to maintain parent-child contacts; periodic review and timely decision-making; services to assist long-term placement; and other laws and regulations. 30 references.

Descriptors: child protection laws, guardian ad litem, legal responsibility, child advocacy, permanency planning, foster care, case management

4164C3 CD-06650 ·

The Guardian Ad Litem for the Abused Child: Conceptual Influences and Unresolved Issues.

Davidson, H. A.

American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection.

In: National Guardian Ad Litem Policy Conference Manual. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 14~22, July 1982.

July 1982.

Subject Code: 96

Unresolved issues concerning the role of the quardian ad litem in child abuse and neglect judicial proceedings are reviewed. The guardian ad litem requirement was written into the Child Abuse Prevention and Treatment Act of 1974 due to the testimony and perseverance of Brian Fraser, who became executive director of the National Committee for Prevention of Child Abuse. The concepts of the guardian ad litem discussed by Fraser, Isaacs, and Grumet are compared. Perhaps the greatest unresolved issue concerning the role of the guardian ad litem is whether he should consider the expressed wishes of the child or the best interests of the child. Major unresolved issues concerning the use of the guardian ad litem in child abuse cases include: the degree of independence that the quardian ad litem must have to do his or her job properly; the professional background and amount of training an individual needs to be a guardian ad litem; and the cost of adequate guardian ad litem services. 16 references.

Descriptors: legal problems, guardian ad litem, role, legal responsibility, paraprofessional training, child advocacy PAGE: 1269 Item 54 of 122

4163K2 CD-06633

When Does the GAL's Obligation to the Child End: The Dimensions of a GAL's Responsibility.

Bower, J.

District of Columbia Superior Court, Washington, D.C. Volunteer Attorneys Office.

In: National Guardian Ad Litem Policy Conference Manual. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 219-225, July 1982.

July 1982.

Subject Code: 96

The dimensions of the guardian ad litem's (GAL) responsibility to the child in abuse or neglect proceedings are discussed. The GAL's goal is returning the child to a home which has become safe and stable or, lacking that possibility, placement of the child in a permanent, stable home with other caring people, preferably adoptive parents. This goal, permanency, must be met as soon as is humanly possible. By focusing on permanency planning from the beginning of a case and by commanding access to a broad range of knowledge of the legal protections and services available to children, the GAL can give clients improved and more timely access to the stable homes they deserve and need. The GAL and judges should work together in fashioning remedies that will promote permanent planning for all neglected children. 2 references.

Descriptors: guardian ad litem, legal responsibility, placement, permanency planning, child advocacy

4163H3 CD-06622

National Guardian Ad Litem Policy Conference Manual. (Revised Edition).

American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection.

American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, 391 pp., July 1982.

July 1982.

Subject Code: 96

Independent representation for children in judicial actions related to child abuse and neglect is discussed in a compilation of papers written by participants of the first National Guardian Ad Litem Policy Conference. State legislative reform brought about by the ""Child Abuse Prevention and Treatment Act'' provision for guardian ad litem appointments is examined. Inadequacy of funding for guardian ad litem programs is discussed, and possible sources of funding are investigated. The role of the guardians ad litem also is discussed, and standard procedures for acting in the best interests of the child are suggested.

Descriptors: guardian ad litem, child advocacy, conference reports, policy formation, best interests of the child





4163A2 CD-06593

Training and Educational Requirements of the GAL--Who Decides?

Clodfelter, M.

Office of the Undersecretary for Political Affairs (DOS), Washington, D.C.

In: National Guardian Ad Litem Policy Conference Manual. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 36-41, July 1982.

July 1982.

Subject Code: 92

Issues concerning the training and educational requirements of the guardian ad litem (GAL) are discussed. The GAL is the most pervasively accepted form of advoacy in child abuse and neglect cases, but unfortunately, the GAL is effective only when he-she understands his or her role in the adversary arena. Ideally, training and education should be mandated through legislation or a court ruling. There exists, however, a question of the feasibility on the part of individual states to mandate specific training, as well as the question of who should bear the cost of the training. Perhaps the best and most realistic strategy is for the GAL to be statutorily required to be suitably trained and qualified, thereby leaving it to the discretion of executive or judical agencies to provide the specifics of the programs. Eight concepts which the GA1 must understand concerning his-her role are presented. 5 references.

Descriptors: guardian ad litem, paraprofessional training, child advocacy. legal responsibility

4163A1 CD-06592

Law Students as Guardians Ad Litem. Boskey, J. B.

Seton Hall Univ., Newark, N.J. School of Law.

In: National Guardian Ad Litem Policy Conference Manual. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 166-175, July 1982.

Julv 1982.

Subject Code: 92

An innovative program whereby law students serve as guardians ad litem in child abuse and neglect proceedings is described. In recent years, the practice of appointing a guardian ad litem for a child has been expanded from tort litigation to a wide range of other actions. Since guardians ad litem in child abuse and neglect cases are not well paid, there is a shortage of attorneys to serve in this capacity. Most law school training is not directed toward the skills that are needed to serve as a guardian ad litem. The best means of developing both the skills and interest necessary for guardians ad litem is through the operation of a clinical program within the law school servicing children in child abuse and-or termination of parental rights cases. Students in the Seton Hall Family Law Clinic have made excellent guardians ad litem. They typically have more time available to investigate their cases and get more involved with their clients than do full-time attorneys. However, there are 3 major problems with the use of law students as guardians ad litem: the student is not an attorney, and there may be questions as to whether the child is being deprived of right to counsel; the student is less experienced than attorneys representing the other parties; and there may be a lack of continuity in the supervision of a child abuse case.

Descriptors: guardian ad litem, students, professional training, legal services, legal problems, educational programs, child advocacy

4162D4 CD-06559

An Assessment of the Quasi-Independent GAL Office Project: Report of Findings.

Johnson, C.

Regional Inst. of Social Welfare Research, Inc., Athens, Ga.

Regional Inst. of Social Welfare Research. Inc., Athens, Ga., 38 pp., undated.

undated.

Subject Code: 90

The final report of a project evaluating quasi-independent Guardian Ad Litem (GAL) office to improve child protective services is presented, and correspondence of the GAL office is appended. The model employed represents a comprehensive and coherent approach to the provision of GAL services, and is based on a conceptual framework in which case management is viewed as a total process with a logical beginning (detection) and ending (resolution), with component parts assuring more independent functioning (quasi-independent status) and more meaningful services to children (provision for diversion and multidisciplinary staff requirement). Two broad conclusions are provided: 1) the nature of services and the procedures and mechanisms for their implementation improved during the project in comparison to the provision of services prior to the project; and 2) the developed model appears to be sound and guarantees meaningful application of the GAL concept.

Descriptors: child protection services, guardian ad litem, program planning, case management, program evaluation

4155G2 CD-06457

Court Appointed Special Advocate: The Guardian ad Litem for Abused and Neglected Child.

Ray-Bettineski, C.

Seattle Juvenile Court, Wash. Guardian Ad Litem Program. Juvenile and Family Court Journal 29(3):65-70, August 1978. August 1978.

Subject Code: 86





DIALOG File 64: CHILD ABUSE AND NEGLECT-SPRING 1989 EDITION

The Court Appointed Special Advocate (CASA) project in King County (Seattle), Washington, is described. The major premise is that a quardian ad litem is the most effective form of independent advocacy for the neglected or abused child. About third of the volunteer guardians ad litem works a professionally in the human, health, or legal services; another third works full-time in other fields; and the remaining third works outside the home part-time. The CASA assumes 4 separate roles; first as investigator, then as counsel, and guardian. Training of the CASA advocate. volunteers includes an overview of their role within the juvenile court system; specific legal skills such as writing recommendations to the court and testifying and undergoing cross examination; and monthly training in increasing sensitivity and knowledge of child abuse (incest, parent-child bonding failure, and interviewing techniques). The CASA program is part of the juvenile court administration structure, and cases are referred to it by judges. In addition to coordinated efforts with King County child service agencies and legal services, the guardians have access to 2 attorneys in private practice. In the first year of operation, 1977, the program provided 376 trained guardians ad litem for 498 children. Factors which account for the program's success are identified. The program has demostrated the practicality of using interested, concerned citizens (volunteer non-lawyer advocates) in an influential way to promote the interests of dependent children. 17 references.

Descriptors: child advocacy, guardian ad litem, washingto, program planning, juvenile courts, volunteer training, courts role, volunteers

4145A4 CD-06179

South Carolina Department of Social Services v. Powell. South Carolina. Supreme Court of South Carolina. 292 S.E.2d 299 (S.C., 1982), June 7, 1982. June 7, 1982. Subject Code: 97

Mother appeals order of the Greenville County Family Court terminating her parental rights to her 2 children. In vacating the order, the Supreme Court of South Carolina held that the trial court should have determined if a guardian ad litem was needed for the mother, since the termination order included a finding of fact that her mental condition is such that she could never function as a parent without help from a competent adult. Since the record raised questions concerning the mother's mental ability the trial court at the outset of the hearing should have either appointed a guardian ad litem for the mother or determined that the mother was sufficiently mentally competent so as not to require one. The order was reversed and the case remanded back to the trial court for another hearing. References.

Descriptors: south carolina, termination of parental rights, guardian ad litem, parents rights

4144C2 CD-06137

Functions of the Guardian Ad Litem in Child Abuse and Neglect Proceedings - Los Angeles Juvenile Court.

Wiig, J. K.

In: Landau, H. R. (Editor). The Abused and Neglect Child 1982. Practicing Law Inst., New York, pp. 73-96, 1982.

1982.

Subject Code: 96

The functions of the quardian ad litem in child abuse and neglect proceedings of the Los Angeles juvenile court are described. A limited study was undertaken by the Los Angeles dependency court improvement project to define the functions of quardians ad litem. The study included the experience of guardians ad litem appointed for children in 6 cases. Although the roles of the child's attorney and the social worker are somewhat ambiguous, the study is an attempt to distinguish the functions of the guardian at litem from those of the child's attorney and the social worker. The relationship of the guardian ad litem to the court, and the training, experience, and attributes of the guardians ad litem were also studied. Ten activities of the guardians ad litem which distinguish the guardian ad litem from the social worker and the child's attorney are described. In addition to these activities, the guardian ad litem provides continuity of case information: acts to reduce trauma to the minor; provides continuity of relationship with the child; and assures that the child receives the attention from those persons responsible to meet the child's needs.

Descriptors: guardian ad litem, juvenile courts, child advocacy, dependency

4143K4 CD-06123

How to Develop a Successful Guardian Ad Litem Program Based on the Experience of Thirteen Programs.

Ray-Bettineski, C.

King County Juvenile Court, Seattle, Wash. Guardian Ad Litem Program.

In: Protecting Children Through the Legal System. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 847-856, 1981. 1981.

Subject Code: 96

Guidelines for development of a successful guardian ad litem program for child protection hearings within the juvenile justice system are presented, and the experiences of 13 such programs are described. In developing the guardian ad litem program, the goal is to become an institution within the juvenile justice system and the community. The guardian ad litem is modeled on the concept of the court appointed special advocate, wherein trained, nonattorney volunteers assume the duties of guardians ad litem for abused and neglected children. Techniques for overcoming initial resistance to the





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DIALOG File 64: CHILD ABUSE AND NEGLECT-SPRING 1989 EDITION

program are described, and recruitment, screening, training, program administration, and relationship with the court are discussed.

Descriptors: guardian ad litem, juvenile courts, program planning, programs, program administration, legal processes

4143J2 CD-06117

The Abused and Neglected Child 1982.

Landau, H. R. New York Society for Prevention of Cruelty to Children, N.Y.

Practicing Law Inst., New York, N.Y., 184 pp., 1982.

1982.

Subject Code: 96

A litigation handbook provides reports on child abuse and neglect court proceedings for use by programs, attorneys, and related professionals as an educational supplement and resource material. Topics include: an overview of child protection and the abused and neglected child; the child protective service process; evidentiary exceptions; a focus on children in the court process; functions of the guardian ad litem in child abuse and neglect proceedings -- Los Angeles Juvenile Court; abuse and neglect proceedings in the family court -- the role of the law guardian; representing minors in dependency proceedings; and child abuse and neglect materials.

Descriptors: conference reports, reference materials, legal processes, manuals, guardian ad litem, courts role, lawyers role, child advocacy

4143I3 CD-06114

Representing Minors in Dependency Proceedings. Johnson, J.

In: Landau, H. R. (Editor). The Abused and Neglected Child 1982. Practicing Law Inst., New York, pp. 111-116, 1982. 1982.

Subject Code: 96

Legal considerations and restrictions for lawyers representing minors in dependency proceedings are outlined. Representation of a minor capable of considered judgment in his or her own behalf should be the same as for a competent adult. If the minor is not so capable, the attorney should request that a guardian ad litem (GAL) be appointed by the court. However, financial considerations often make it impossible for courts to appoint an attorney and a GAL to represent a minor. In addition, standards to determine when a minor is capable of considered judgment are lacking. Constitutional, statutory, and regulatory authority for lawyers representing minors in dependency proceedings is described, and special problems in representing minors are noted. Issues discussed include: rights of parents versus rights of children; the possible assumption of both counsel and GAL roles; and use of extraordinary writs, show cause orders, demurrers, and subpoenas or citations on behalf of

minor clients.

Descriptors: guardian ad litem, childrens rights, parents rights, juvenile courts, lawyers role, dependency

414312 CD-06113

Upgrading Legal Practice in Juvenile Court.

Horowitz, R. M.

National Legal Resource Center for Child Advocacy and Protection (ABA), Washington, D.C.

In: Protecting Children Through the Legal System. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 868-895, 1981. 1981.

Subject Code: 96

Upgrading legal practice in juvenile courts is necessary for the provision of support elements specifically relevant to child protection cases. Upgrading suggestions are offered: formal training, association with experienced counsel, suitable under- and post-graduate educational curricula concerning legal and nonlegal subjects relevant to representation in family court, and continual evaluations of legal practices. Five experienced juvenile court practitioners supply others suggestions for areas of improvement. Two legal services delivery mechanisms, special child advocacy programs, court-appointed counsel and active judicial participation through improved court rules are highlighted. A seminar for guardians ad litem in neglect and abuse cases, topics related to permancy planning, a national directory of programs providing court representation to abused and neglected children, a court appointed special advocacy project, duties and procedures of a guardian ad litem in juvenile cases in Rhode Island Family Court, minimum responsibilities of a quardian ad litem, and rules to establish a family court panel plan of the New York Superior Court, Appellate Division, are appended.

Descriptors: legal processes, family courts, juvenile courts, child advocacy, guardian ad litem, lawyers role, permanency planning, child protection

4143E4 CD-06099

The Guardian Ad Litem. An Important Approach to the Protection of Children.

Davidson, H. A.

National Legal Resource Center for Child Advocacy and Protection (ABA), Washington, D.C.

In: Protecting Children Through the Legal System. American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, pp. 835-845, 1981.

1981. Subject Code: 96

The Child Abuse Prevention and Treatment Act of 1974 is (cont. next page)





discussed in terms of its effect on representation for children in court through the appointment of a guardian ad litem (GAL). The provision of a GAL is widely supported as an essential means of helping assure the protection of maltreated children. However, while the laws have changed, the amount of available funding for GAL services has not increased; the strain on the use of state, county, and local revenues for human service programs has become critical. The findings of the National Guardian Ad Litem Policy Conference (1980) are presented, and a list of areas of consensus among the participants is given. 3 references.

Descriptors: guardian ad litem, child acvocacy, child abuse laws, child protection, juvenile courts, financial support, lawyers role

4124B1 CD-05620

Legal Representation of the Maltreated Child. Ciccolella, J. B.

National Association of Counsel for Children, Denver, Colo. National Association of Counsel for Children, Denver, Colo., 223 pp., 1977.

1977.

Subject Code: 92

This is the first in a series of legal training materials to be produced by the National Association of Counsel for Children. Its publication is stimulated by the lack of qualified attorneys to represent abused and neglected children and the failure of law schools to offer courses in this field of juvenile law. Guidelines are presented for guardians ad litem in abuse and neglect cases and the neglect process is diagramed. Title 19, the Children's Code, is reproduced in its entirety and an outline of relevant statutory and case law on dependency-neglect proceedings is given. The bulk of the manual is devoted to several articles on various legal, social, and medical aspects of child abuse and neglect. A variety of legal forms is appended.

Descriptors: professional training, guardian ad litem, juvenile courts, lawyers, legal processes, child abuse law, dependency

4113A1 CD-05312

Matter of John M.

New York. Supreme Court, Appellate Division, Third Department.

431 N.Y.S.2d 720 (App.Div., 1979) December 6, 1979. December 6, 1979. Subject Code: 97

Guardian appeals order of the St. Lawrence County Family Court directing that, prior to the return of the child to the guardian, the Department of Social Services obtain the concurrence of the law guardian. In affirming the order, the Supreme Court, Appellate Division, held that the Family Court had the authority to enter such an order under Social Services

Law. Record indicated that child was emotionally disturbed and in need of long-term specialized treatment, and that he was not receiving adequate care in the guardian's home where, on one occasion, she hit the child, pushed him around, and used obscene language requiring police intervention. Section 358-a of the Social Services Law authorizes the court to approve a transfer agreement upon a determination that the placement of the child is in his best interests, and Section 384-a provides that the child be returned on a specified date unless the parent or guardian is unable to receive the child. Thus, the Social Services Department's argument that the Family Court has the power only to approve or disapprove transfers was rejected by the Court. Further, since the Social Services Law empowers the Family Court to modify transfer agreements, there is no reason why the court should not have such authority at the initial stage of foster care when such an order would likely be most effective. The guardian was experiencing marital difficulties and it was not known at the time of transfer whether she would be able to care adequately for the child at the end of a specified 18-month period. Thus, the Family Court may require the Department to seek the consent of the child's appointed legal counsel before the child is returned without abdicating its powers to the law guardian. References. Dissent.

Descriptors: guardian ad litem, guardians, family courts, state laws, emotionally disturbed children, best interests of the child, courts role, foster care

4112G3 CD-05290

State in the Interest of R.L.B. Louisiana. Court of Appeal of Louisiana, Fourth Circuit. 394 So.2d 860 (La App., 1981) February 10, 1981. February 10, 1981. Subject Code: 97

Court-appointed attorney for the child seeks to set aside the judgment of the Jefferson Parish Juvenile Court placing the child's custody with a family in Mississippi and to have the child returned to Louisiana for placement in foster care. In reversing the order of the invenile court and setting aside the Judgment, the Court of Appeal held that the trial court erred in refusing to admit into evidence a report from the Mississippi Department of Public Welfare and also erred in refusing to transfer custody from Mississippi family to the Health and Human Resources Administration of Louisiana. Shortly after birth the child had been placed with the Louisiana state agency and the mother found incapable, both mentally and financially, of caring for him. At the mother's request, the child was placed with a Mississippi couple, under the supervision of the welfare department in that state, A report from the Mississippi social service agency indicated that the foster parents were unemployed, without suitable housing, or dependable income, but that they were strongly religious and capable of giving the child love and affection.





At a hearing to transfer custody to the couple, the child's mother testified that she would surrender the child for adoption only if the foster couple would adopt. The trial judge expressed his concern that the child would remain in limbo if custody was not placed with the Mississippi couple, and he later denied a request for transfer of custody from the Mississippi couple to the Louisiana agency. The Court found that, assuming that the Mississippi welfare agency's report was accurate, and considering the testimony of a psychiatrist concerning the stability and welfare of the child in the Mississippi home and the mother's emotional illness and instability, the trial judge erred in refusing to transfer custody. While the child's ultimate security is important. his immediate temporary welfare requires better living conditions than those found with the Mississippi couple. Accordingly, the judgment of the trial court was set aside and the custody of the child was placed with the Louisiana Health and Human Services Administration until further order of the juvenile court.

Descriptors: foster care, agency role, social services agencies, permanency planning, mental disorders, best interests of the child, guardian ad litem, legal processes

4112C3 CD-05274

Appeal in Gila County Juvenile Action No. J-3824. Arizona. Supreme Court of Arizona, En Banc. 637 P.2d 740 (Ariz., 1981) November 24, 1981. November 24, 1981. Subject Code: 97

Mother appeals the order of the Gila County Superior Court terminating her parental rights to 2-year-old child and affirmation of that order by the Court of Appeals. In reversing and remanding the order, the Supreme Court of Arizona held that the mother should have been appointed a guardian ad litem pursuant to A.R.S. section 8-535(D); that she was denied effective assistance of counsel because of the omissions of her attorney; and that the preponderance of evidence standard of proof used in termination proceedings does not violate due process. The petition filed by the Arizona Department of Economic Security sought to terminate rights on the grounds of the mother's mental parental deficiencies. Under state law, when termination is sought on that ground, a guardian ad litem must be appointed to protect the parent's interests, but no guardian was appointed in this case. In finding that the mother had been denied effective assistance of counsel, the Court noted that her attorney failed to discuss the case with her, did not permit her to testify about her ability to care for the child or to contradict testimony of other witnesses, and failed to object to findings of fact and conclusions of law that were deficient in failing to state statutory grounds for termination. The Court rejected the challenge to the preponderance of evidence standard of proof on due process grounds, finding that the interests of all parties were adequately protected by that standard. However, because of the errors at trial the matter

was reversed and the case remanded. References. Dissent.

Descriptors: termination of parental rights, guardian ad litem, mental disorders, right to counsel, due process, evidence, proof, parents advocacy

4111E3 CD-05234

Final Report. National Guardian Ad Litem Policy Conference Manual.

American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection.

American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, 200 pp., .1980.

1980.

Subject Code: 96

Materials from a national policy conference on the use of guardians ad litem as court-appointed representatives of children are presented. Conferees (experts in a variety of fields related to child welfare) examined the provision of the Child Abuse Prevention and Treatment Act requiring states receiving funds under the Act to provide for the appointment of a guardian ad litem; discussed the inadequacy of funding to implement fully the Act's guardian ad litem mandate at the state and local level; agreed that provision of independent representation to abused and neglected children was necessary and ultimately cost-effective; discussed the need for standards for the child's independent court-appointed representative; and considered the appropriate role of the quardian ad litem. A consensus was reached on 32 topics related to the use of the guardian ad litem. Reprints of the 22 papers delivered at the conference are provided. Also included are extracts from state statutes on the use of guardians ad litem or attorneys for the child: a compendium of case authorities supporting the child's right to counsel; a list of law schools providing court representation to abused and neglected children; and an annotated bibliography of quardian ad litem law review articles. Numerous references.

Descriptors: guardian ad litem, conferences, resource materials

4096A3 CD-04946 **In re Child X.** Wyoming. Supreme Court of Wyoming. 617 P.2d 1078 (Wyo., 1980) October 10, 1980. October 10, 1980. Subject Code: 97

Mother appealed order of the District Court, Natrona County, terminating her parental rights after a finding of abuse and neglect. Before reaching the merits of the finding, the Supreme Court of Wyoming reversed the District Court, holding that it was improper under Wyoming law for the trial



court to proceed in a termination hearing to adjudicate substantive issues without first appointing an attorney to protect the welfare of the child. The use of the word ""shall'' in Sec. 14-3-211(a), W.S.1977, 1978 Supp., which concerns the appointment of counsel to represent the best interests of the child, mandates that such counsel be appointed. Since the lower court failed to make such an appointment, the matter was remanded back to the District Court for a new hearing.

Descriptors: wyoming, termination of parental rights, guardian ad litem

4094I3 CD-04882

Representation for Abused and Neglected Children: So What, Unless?

Johnson, C. L.

Regional Inst. for Social Welfare Research, Athens, Ga. Region IV Child Abuse and Neglect Resource Center.

American Bar Association, Washington, D. C. National Legal Resource Center for Child Advocacy and Protection, Warrenton, Va., 6 pp., November 23-25, 1980.

November 23-25, 1980. Subject Code: 96

The issue of the ideal time of appointment or the first involvement of the guardian ad litem (GAL) is addressed relating the roles of the court, the public social agency, and the guardian ad litem to the judicial process and their effect on the meaningfulness of the guardian ad litem concept. The conclusion is drawn that while representation is necessary, it is meaningless unless representation is independent and is brought into play prior to the formal judicial proceedings. If the involvement of a guardian ad litem in a child abuse and neglect case can be justified, clearly the justification must be on the basis that the GAL can truly represent the child's interests, welfare, well-being, and rights when applicable.

Descriptors: guardian ad litem, lawyers role, child advocacy, legal rights, courts role, agency role

409412 CD-04881

A Commentary on Independent Representation.

Johnson, C. L.

Regional Inst. for Social Welfare Research, Athens, Ga. Region IV Child Abuse and Neglect Resource Center.

American Bar Association, Washington, D. C. National Legal Resource Center for Child Advocacy and Protection, Warrenton, Va., 5 pp., November 23-25, 1980.

November 23-25, 1980. Subject Code: 96

A commentary on independent representation for the child in abuse and neglect judicial proceedings, namely, representation that has a semblance of freedom to carry out the functions necessary to represent the child's best interest independent of external constraints, and an attempt to address the issue of the auspices of guardian ad litem programs, is provided. Major problems in a court-administered guardian ad litem program include the unlimited discretionary powers of the court, the benign incompetence of the court, and the assumed. and perhaps actual symbiotic relationship between the court and practicing attorneys. If guardian ad litem programs were to be administered by public social service agencies, other issues would arise, namely, assumption of no conflict of agency-child interests, predetermined adjudicatory assessment and dispositional recommendations, and the role in the post-dispositional court orders. As a result, since the best interests of the child might be, and often are, in opposition to the interests of parents, the public social service agency, and the court, the guardian ad litem's job is one that requires a degree of autonomy from both the courts and the public social service agency.

Descriptors: guardian ad litem, agency role, lawyers role, best interests of the child

4083B3 CD-04550 Lewis v. Lewis. Pennsylvania. Superior Court of Pennsylvania. 414 A.2d 375 (Pa. Super. Ct. 1979). November 16, 1979. November 16, 1979. Subject Code: 97

Upon father's petition for order to show cause why mother should not be held in contempt for failing to obey a partial custody order, the Court of Common Pleas, Allegheny County, Family Division, temporarily suspended custody rights of the father and directed the mother and her children to submit themselves to county child welfare services for counseling. and the mother appealed. In affirming the trial court's order, the Superior Court found that, despite facts that the children appeared to be frightened of their father and that there were 2 incidents cited where the father allegedly abused the children physically, the father and the children got along well. The Superior Court also found that, where a psychiatrist testified that he thought the situation was not insoluble, the father's visitation rights would be temporarily but not suspended. The trial court, in custody permanently proceedings, had the authority and responsibility to attempt to save any family relationship which existed, and thus did not abuse its discretion in ordering that the mother and children undergo counseling. Also, the Court held that although in some custody disputes children do need someone to advance and protect their interests, due process does not require that all children involved in custody cases be provided with independent counsel or guardians ad litem. References.

Descriptors: physical abuse, custody of child, due proces, right to counsel, guardian ad litem





4083A2 CD-04545 Matter of T.M.H.

Oklahoma. Supreme Court of Oklahoma. 613 P.2d 468 (Okla. 1980). June 17, 1980. June 17, 1980. Subject Code: 97

Natural parents appealed an order of the District Court, Tulsa County, terminating rights of the parents to their minor who had been found dependent and neglected. In child. reversing and remanding the order, the Oklahoma Supreme Court held that refusing to appoint independent counsel to represent the child in a proceeding to terminate rights of the natural parents in the child was error. Independent counsel must be appointed in such proceedings where there are potential conflicts between the interests of children and those of both the state and their parents. All future termination in Oklahoma must include representation for proceedings children. Further, in order to protect procedural due process rights of parents in termination proceedings, it is necessary that referees or trial judges adequately apprise parents of conditions which resulted in their child being declared dependent or neglected in order that they may be aware of conditions which need to be altered. References. Dissent filed.

Descriptors: termination of parental rights, due process, right to counsel, guardian ad litem, parents rights, child neglect

4083A1 CD-04544 Matter of F.K.C. Oklahoma. Supreme Court of Oklahoma. 609 P.2d 774 (Okla. 1980). April 1, 1980. April 1, 1980. Subject Code: 97

Mother appealed from judgment of the District Court of Pontotoc County, which terminated her parental rights. In affirming the trial court's decision, the Supreme Court of Oklahoma held that the mother was not denied due process when her children were declared dependent and neglected partly because the trial judge failed to advise her of her right to assistance of counsel. Failure to appoint counsel was not appealed until 4 years after hearing determination, the children were represented by counsel at initial hearing, and the summons clearly stated that counsel would be provided for mother. Further, the fact that a parent is uncooperative with social workers, is poor, does not like to accept state assistance, or lives in a dark, dirty, and dismal home are not bases for termination of parental rights; the fact that parent lacks responsibility is a basis for termination. Evidence in trial record was sufficient to warrant termination of mother's parental rights.

Descriptors: termination of parental rights, right to counsel, guardian ad litem, due process

4082L4 CD-04543

Matter of Delaney. Oklahoma. Supreme Court of Oklahoma. 617 P.2d 886 (Okla. 1980). September 30, 1980. September 30, 1980. Subject Code: 97

A mother appealed the refusal of the District Court for Jefferson County, Oklahoma, to vacate its order determining that her 6 children stood in deprived status and terminating her rights over them. The Supreme Court of Oklahoma affirmed the deprived status adjudication but reversed the order terminating the mother's rights. The court held that the deprived status adjudication was impervious to the mother's attack on grounds of facial invalidity because it was launched 2.5 years after the order had been made. The mother, a legal incompetent, had the paternal grandmother of her children serving as guardian of her person and estate. The court held that, under Okla. Stat. Ann. tit. 10, sect. 24(a) and 1109(b). the mother had no constitutionally or legally recognized claim to representation by a guardian ad litem while she was in court by and through a general guardian, and that lack of a guardian ad litem does not constitute a jurisdictional defect. However, the order terminating the mother's rights was fatally flawed on the face of the record by the guardian's stipulation that allowed the court to effect the maternal bond's severance because the guardian had no authority to consent to a decision that would combine adjudication of deprived status of children with adjudication of maternal rights; such a stipulation amounted to a confession of judgment. Dissent noted but not reported. References.

Descriptors: guardian ad litem, right to counsel, maternal deprivation, termination of parental rights, mental disorder, state supreme courts, child neglect

4082K3 CD-04538 Matter of Cusson. North Carolina. Court of Appeals of North Carolina. 258 S.E.2d 858 (N.C. 1979). October 16, 1979. October 16, 1979. Subject Code: 97

The Court of Appeals of North Carolina affirms a district court's finding that evidence would support a finding that a child was neglected within the meaning of N.C. Gen. Stat. sect. 7A-278(4) and that evidence that the child did not receive proper care or discipline from his mother, lived in an environment injurious to his welfare, or was not provided necessary medical care was sufficient to overcome the mother's motion to dismiss the county department of social services' petition for custody of the child. Although provision in N.C. Gen. Stat sect. 7A-283 requiring court appointment of a guardian ad litem for allegedly neglected children was passed after this proceeding was instituted, an order entered after





the effective date of the statute, appointing a guardian ad litem for the child, was clearly within the authority of the court. Granting of the guardian ad litem's motion for additional tests on the child was within the sound discretion of the court, which has the duty of determining what is in the best interest of the child. In North Carolina the law recognizes a presumption that parents have a natural and legal right to the custody, control, companionship, and bringing up of their children, but where the evidence shows by convincing proof that the best interest of the child would be served by removing it from the custody of its parents, the presumption is overcome. The welfare and best interest of the child is always to be treated as the paramount consideration, to which even parental love must yield. References.

Descriptors: best interests of the child, custody of child guardian ad litem, child neglect

4082J1 CD-04532

Matter of Vance A. New York. Family Court, City of New York, New York County. 432 N.Y.S.2d 137 (Fam. Ct. 1980). September 24, 1980. September 24, 1980. Subject Code: 97

The Family Court for the City of New York. New York County. denied a mother's motion for indefinite adjournment of a child abuse petition, holding that the mother's privilege against self-incrimination would not be violated by civil proceedings on the child abuse petition during the pendency of the criminal proceeding against her in connection with the death of another child, notwithstanding that, in order for her to give testimony in defense or partial exculpation in child abuse proceedings, the mother would be forced to risk uses of such testimony against her in criminal proceedings. Delay would leave the child's care in a suspended state for many menths and prevent for an incalculable time the long-term planning essential for his welfare. Section 1014(d) of the Family Court Act. containing a testimonial immunity provision. authorized the Family Court to accord the mother all the protection from self-incrimination to which she was constitutionally entitled. The Family Court Act (sect. 165) provides for a civil format in all proceedings thereunder and for application to them of the civil practice law and rules when "appropriate." Proceedings on the child abuse petition were not controlled by the criminal rule prohibiting an individual's trial while mentally incompetent, but were governed by the civil rule that a trial may be held if a guardian ad litem is appointed for an incompetent party, and were not subject to being indefinitely adjourned because of the mother's incompetence to stand trial as long as a quardian ad litem was appointed for the mother. References.

Descriptors: trials, rules of evidence, best interests of the child, court doctrine, guardian ad litem, due process, right to counsel

408213 CD-04530

Matter of Orlando F. New York. Court of Appeals of New York. 40 N.Y.2d 103, 386 N.Y.S.2d 64 (1976). June 10, 1976. June 10, 1976. Subject Code: 97

In a proceeding to terminate parental custody of a child. the Family Court. New York County, dismissed the petition and ordered the return of the child to the mother. The Supreme Court, Appellate Division modified such order, affirming dismissal of the petition but striking the provision relating to return of the child. On further appeal, the Court of Appeals held that the evidence showed that the mother had failed for a period of more than 1 year to plan for the future of the child, and that custody should be terminated for that reason. The Court further found that the trial court abused its discretion in permitting the law guardian to withdraw as a representative of the child without appointing a replacement. Under Family Court Act sect. 611, finding failure to plan for the future of child or failing to maintain contact with child for longer than 1 year in and of itself suffices to support determination of permanent neglect. Also, under Family Court Act. when natural parent fails to accept parental role, even though as a result of shortcomings for which she may not be fully responsible, the best interests of child dictate that the right to custody be terminated. Further, under the Act. permitting the law guardian to withdraw without replacement. leaving the child unrepresented, is an abuse of trial court's discretion. References.

Descriptors: proof, child neglect, termination of parental rights, guardian ad litem, best interests of the child

408212 CD-04529

Crist v. Division of Youth and Family Services.

New Jersey. Superior Court, Law Division.

320 A.2d 203 (N.J. Super. Ct. Law Div. 1974). April 25, 1974.

April 25, 1974. Subject Code: 97

In a case of first impression in New Jersey, an action was brought to determine the right of indigent parents threatened with removal of children from the home by a public agency under authority of N.J.S.A. 30:4C-12 to have counsel appointed free of charge under the U.S. Constitution. There is no provision in the Code of New Jersey for court appointed counsel for indigent parents in proceedings to terminate parental rights. The Superior Court, Law Division, held that for the state permanently or temporarily to deprive parents of their children under statutes concerned with dependent and neglected children without providing counsel to the parents constitutes a fundamental deprivation of procedural due process. Plaintiffs with standing in the instant case are (cont. next page)

- DIALOG -



DIALOG File 64: CHILD ABUSE AND NEGLECT-SPRING 1989 EDITION

entitled to counsel free of charge, but the plaintiff-parent whose child had been returned to her had no standing. The expense of appointed counsel for indigent parents should be borne by the Division of Youth and Family Services according to the statutory scheme encompassing other necessary expenses. The court also held the ruling would not be applied retroactively in situations where parents' rights have been previously and permanently terminated. The court held that the effect on the administration of justice at well as the potential conflicts which could be generated for the children outweighed desirability of retroactivity. References.

Descriptors: termination of parental rights, economic disadvantagement, due process, guardian ad litem, child neglect, equal protection

4082E1 CD-04512 Dept. of Human Resources, Etc. v. Nester. Kentucky. Court of Appeals of Kentucky. 585 S.W.2d 437 (Ky. Ct. App. 1979). August 10, 1979. August 10, 1979. Subject Code: 97

The Court of Appeals of Kentucky, on review of lower court, declares that the clear meaning of Ky. Rev. Stat. sect. 208.060(3)(a) and (5) mandate the appointment of a guardian ad litem in cases of procedure to declare infant children dependent, neglected, or beyond control of parents commenced under Ky. Rev. Stat. sect. 208.020(1)(b), and (c), and (d). However, the Montgomery Circuit Court had no authority to mandate that neither the district court nor the circuit court should hear any actions involving dependency or custody, or enter any orders therein, unless petitioner provided at initiation of the action an agreement to pay the fees of, and extended by, the guardian ad litem for infant costs defendants. Under the rule of Bradshaw v. Ball, 487 S.W.2d 294(1972), Kentucky courts have no power to force the state to appropriate money for attorneys fees. Thus the Montgomery Circuit Court had no power to compel the state Department for Human Resources to pay guardian ad litem or other court fees.

Descriptors: guardian ad litem, right to counsel, dependency, child neglect

4081J4 CD-04487

In Interest of D.B. Florida. Supreme Court of Florida. 385 So.2d 83 (Fla. 1980). May 16, 1980. May 16, 1980. Subject Code: 97

The State of Florida appealed from orders of the Circuit Court for Dade County directing the state to pay attorney's fees for representation of both indigent children and parents in all juvenile dependency proceedings. The orders by the circuit court held that the state must provide this legal representation as a fundamental constitutional right under the PAGE: 1278 Item 84 of 122

due process clause of the Florida Constitution and the United States Constitution. This finding was based on the decision of the United States District Court for the Southern District of Florida in Davis v. Page, 442 F. Supp. 258 (S.D. Fla. 1977). However, the Supreme Court of Florida held that there is no fundamental constitutional right on the part of all indigent participants in a juvenile dependency proceeding to have counsel supplied to them by the state, but that counsel must be appointed when parents are threatened with permanent loss of custody or when criminal charges may arise from the proceeding. In all other circumstances, the Cleaver test (Cleaver v. Wilcox, 499 F.2d 940 (9th Cir. 1974)) should be applied on a case-by-case basis. The court also held that, when counsel is constitutionally required, the county, rather than the state, must compensate appointed counsel under a formula that recognizes both the obligation of the government to provide counsel and the obligation of the legal profession to represent the poor. The judiciary of the state was directed to follow the instant opinion rather than the contrary view expressed by the federal district court in Davis v. Page. References.

Descriptors: right to counsel, guardian ad litem, due process, equal protection

4081B1 CD-04452

Statutory Provisions Regarding the Guardian Ad Litem Mandate: Some Findings from a Regionwide Survey of Judges in the Southeast.

Johnson, C. L. Regional Inst. of Social Welfare Research, Athens, Ga. Juvenile and Family Court Journal 30(3):15-18, August 1979. August 1979. Subject Code: 96

A questionnaire survey of all 575 identified judges in the southeastern United States was designed to determine the present state of affairs in child abuse and neglect proceedings, with particular emphasis on the effects of statutory provisions regarding the guardian ad litem (GAL) mandate. One-hundred and fourteen of the questionnaires, mailed in August, September, and October of 1977, were returned. Findings indicate that in states with explicit statutory provisions, judges are more likely to appoint GALs in abuse and neglect cases; GALs are appointed earlier in the case process; and GALs' services are retained longer. Only 2 states name specific funding sources in their statutes; most local areas must resort to a variety of sources to pay for GAL services. In the states mandating that the GAL be an attorney and in the state mandating both legal counsel and a GAL, less than 33 percent of the judges felt that there was an adequate supply of personnel. In the area of the judges' perceptions of the need for GAL provisions, 50 percent felt that the need should be determined by the court; 25 percent felt that a GAL is always needed before the preliminary hearing; and 60



percent indicated the need for the court's discretionary powers in appointing GALs in neglect cases. Social workers received the greatest support as alternatives to attorneys in the GAL role. 4 references.

Descriptors: guardian ad litem, judges, state laws, court case dispositions, surveys

4076C4 CD-04443 Family Law. Freedheim, G. K.; Kurtz, W. Council on Children At Risk, Cleveland, Ohio. Trial 16(4):56-57,63, April 1980. April 1980. Subject Code: 96

A review of The Guardian Ad Litem for Children Project, established by the Greater Cleveland Council on Children At Risk and the Cuyahoga County Juvenile Court in 1978 is presented. The project was established to meet a growing need of the court for qualified attorneys to serve as guardians ad litem for children and parents in child abuse, dependency, delinquency, and neglect cases. The Council on Children At Risk decided to recruit and train 100 lawyers in private practice to serve children at risk as court-appointed quardians ad litem. Court cosponsorship and endorsement from the local bar associations were obtained. Individual participation from the legal community was solicited, and the curriculum for a training session was designed. The project required minimum staffing and, with the exception of attorney fees, relatively little money. Eventually, the project should become the ongoing responsibility of the bar with assistance from social service professionals in the community.

Descriptors: guardian ad litem, lawyers role, childrens rights, professional training, program costs, program evaluation, ohio

4076A3 CD-04434

An Organization to Improve Legal Representation of Children--The National Association of Counsel for Children. Bross, D. C.

Colorado Univ., Denver. Dept. of Medicine and Pediatrics. Child Abuse and Neglect 4(2):115-117, 1980. 1980. Subject Code: 96

The National Association of Counsel for Children developed from a meeting of attorneys in Denver, Colorado, at the National Center for the Prevention and Treatment of Child Abuse and Neglect in January 1977. The founding members agreed that attorneys representing children are hampered by isolation from each other, poor pay, lack of contact with multidisciplinary experts on child development, and lack of adequate laws with which to work. The association has drafted guidelines for guardians ad litem, conducted monthly seminars and a national seminar on the representation of maltreated children, published a periodical newsletter, provided a Trial Notebook for every national seminar participant, and involved itself in court cases of unusual general importance to children. The association is tax exempt and self-supporting through membership fees, seminar proceeds, and profits from publications. Its 400 members are drawn from 39 states, Canada, England, Puerto Rico, Holland, and Norway.

Descriptors: lawyers, child advocacy, guardian ad litem, international organizations, conferences

4075K4 CD-04427

National Directory of Programs Providing Court Representation to Abused and Neglected Children.

American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection,

American Bar Association, Washington, D.C. National Legal Resource Center for Child Advocacy and Protection, 12 pp., August 1980.

August 1980.

Subject Code: 95

A directory of special programs providing court representation for maltreated children is presented with emphasis on those providing guardian ad litem services. Most of the projects listed are affiliated with courts, legal services agencies, bar associations, law schools, or public defenders.

Descriptors: directories, guardian ad litem, childrens rights, child advc acy, programs

4075K2 CD-04425

Representation for the Abused and Neglected Child: The Guardian Ad Litem and Legal Counsel.

Alderman, M.

Herner and Co., Arlington, Va.

Prepared for: National Center on Child Abuse and Neglect (DHHS), Washington, D.C., (OHDS) 80-30272, 22 pp., August 1980.

August 1980.

Subject Code: 96

Almost all commentators agree that children who are subjects of abuse or neglect proceedings need independent representation to protect their rights and interests. However, there is disagreement as to whether the child should be represented by a traditional guardian ad litem or legal counsel. State law reflects this controversy; although most states have statutes mandating representation for the child, they vary on whether a guardian ad litem or legal counsel is required. Most arguments, however, support the position that the child's representation should be legally trained. In the area of actual representation, the Johnson report indicates that the Federal mandate to provide representation for all





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DIALOG FILE 64: CHILD ABUSE AND NEGLECT-SPRING 1989 EDITION

children in abuse or neglect proceedings is not being fully realized. A New York study implies that even if children are being represented, the representation might be ineffective. These reports suggest that there is a need for further study to determine whether representatives are actually being appointed and if the representatives are providing effective advocacy for children. Such research should also indicate changes that can be implemented to improve representation for the child in abuse and neglect proceedings. Numerous references.

Descriptors: guardian ad litem, child advocacy, state law, childrens rights, legal rights

4065A2 CD-04129

Recent Developments in the Field of Child Abuse. Kempe, C. H. Colorado Univ., Denver. Dept. of Pediatrics. Child Abuse and Neglect 3(1):9-15, 1979. 1979. Subject Code: 98

Developments in child abuse and neglect prevention and treatment from 1977 to 1979 were discussed at the Second International Congress of the Society for Prevention of Child Abuse and Neglect. Among the advances made in child protective services is a tendency towards a more open system involving many professions and the public at large. Other advances include the early treatment of not only the abused child but also his siblings. the growing recognition that sexual abuse is as frequent and as serious as physical abuse in terms of long-term effects, and the awareness that institutional abuse occurs when society's intervention is harmful. Legal advances being made include the concept of a guardian ad litem or advocate, and the necessity in some cases of involuntary termination of parental rights. The prevention of abuse before it occurs in high-risk families is a new concept, which involves identifying families who might be expected to have problems in bonding, and assisting them.

Descriptors: interdisciplinary approach, public awareness, prevention, intervention, guardian ad litem, risk, conferences

4062K3 CD-04026

In the Matter of the Adoption of Maynor. North Carolina. Court of Appeals of North Carolina. 38 N.C. App. 724, 248 S.E.2d 875 (N.C. Ct. App. 1978). November 21, 1978.

November 21, 1978. Subject Code: 97

A judgment of the superior court of Robeson County, holding that the natural father had abandoned his child and appointing the superintendent of the Department of Social Services as guardian ad litem for the child, was appealed by the father. The court of appeals reversed and remanded, holding that the evidence was insufficient to support the verdict. In view of the evidence that the natural father, who was incarcerated, did not know that his child had been placed in the custody of the Department of Social Services, the fact that the father was unable to locate the child and did not make support payments did not establish a willful intent to abandon the child. The fact that the father had committed a crime which resulted in his incarceration was insufficient, standing alone, to snow such a settled purpose to forego all parental duties as to warrant a finding of abandonment. The term willfully, for the purpose of the statute, means something more than an intention to do a thing; the term implies doing the act purposely and deliberately. References.

Descriptors: adoption, guardian ad litem, financial support, statutory construction, custody of child, abandoned children, neglected children, north carolina

406212 CD-04017

In re Apel.

New York. Family Court, Ulster County.

96 Misc. 2d 839, 409 N.Y. S. 2d 928 (Fam. Ct. 1978). September 1, 1978.

September 1, 1978.

Subject Code: 97

In a child protective proceeding in which an application was pending by the Commissioner of Social Services for an extension of placement, the attorney for the parents moved for an order dismissing the court-appointed Law Guardian in the interests of justice upon the ground that the Law Guardian was biased in favor of the continued placement of the children in foster care. The parents argued that the Law Guardian should assume a position of neutrality, at least at the outset of the proceeding, and should not have determined in advance of the hearing that the child's ""best interests'' would be promoted by any particular disposition. The court stated that the proper role of a Law Guardian who represents children in child protective proceedings is nowhere definitely stated and is somewhat unclear. The court determined that at the outset of a case, a Law Guardian, who in addition to his role as counsel, advocate and guardian, serves also in a quasi-judicial capacity in that he has some responsibility to aid the court in arriving at a proper disposition, should, like the judge, be neutral. However, at some point in the hearing, he has a right to formulate an opinion and then to attempt to persuade the judge to adopt that disposition which, in his judgment, will best promote his ward's interests. In denving the parents' motion, the court viewed the present proceeding as part of a continuum of legal proceedings that had commenced more than five years ago, and stated that the Law Guardian's formulation of an opinion over this period of time could not be subject to criticism or warrant removal. The court added that it also would constitute a dangerous precedent for a court to relieve a lawyer from the discharge of his duties



because he had been zealous in the advocacy of his client's cause and had taken a position in the case which was offensive to the other side, or even to the court. Finally, the court stressed that the court, and not the Law Guardian, had the ultimate power and responsibility of decision, based on all the evidence produced during a hearing at which the parents would have a full opportunity to be heard and would be represented by counsel. References.

Descriptors: guardian ad litem, parents rights, foster care, lawyers role, child advocacy, children's rights

4062A1 CD-03984 Matter of J.J.S. Montana. Supreme Court of Montana. 577 P.2d 378. (Mont. 1978). April 5, 1978. April 5, 1978. Subject Code: 97

The natural parents of a minor child appeal district court's award to the Department of Social and Rehabilitation Services of permanent custody of the child with the right to consent to adoption after the parents failed to make certain improvements in the home. On appeal, the Supreme Court of Montana held that the appointment of counsel to represent a minor in a dependency proceeding is not mandatory, but discretionary. Moreover, the trial court did not abuse its discretion in not appointing counsel where the child was too young to have any position on issues raised in dependency proceeding and where the record of hearing was adequate to determine child's best interest. In determining the custody issue, the best interest of the child is paramount. and there is no showing of an abuse of discretion when the court rejected the parents' suggestion of joint custody between parents and the children's grandparents as an alternative that could preserve the family unit. The family unit need not be preserved at the expense of the child's best interest. References.

Descriptors: right to counsel, best interests of the child dependency, custody of child, dispositional alternatives, court case dispositions, guardian ad litem, montana

406112 CD-03969

In re A.R.W. and Y.W.C. Minnesota. Supreme Court of Minnesota. 268 N.W.2d 414 (Minn. 1978). June 2, 1978. June 2, 1978. Subject Code: 97

The juvenile court ordered that a child who had been found to be neglected five years earlier be returned to his mother's custody, and the child's foster parents appealed. The Supreme Court of Minnesota held that it was not error for the juvenile court to remove the foster parents' attorney as counsel for the child when a conflict arose between the child's expressed desire to return to his mother and the attorney's contention

that the child's best interests would be served by remaining with the foster parents. If the juvenile court's failure to appoint a guardian ad litem was error, it was corrected by the order of the supreme court appointing a guardian ad litem. Where parental rights have not previously been terminated, the party objecting to restoration of parental custody has the burden of proving that returning the child to his parents would be seriously detrimental to the child's interests. If the statutory purpose of returning neglected children is to be effectuated, the trial court should fully consider new evidence of rehabilitation and not give undue weight to the old evidence of neglect, although the evidence of conditions in the parents' home in the past is not irrelevant to the court's determination of present parental fitness. The presumption of parental fitness is based not merely on the right of the parents to rear their own children, but also on the public policy determination that the best interests of the child are normally served by parental custody. References.

Descriptors: neglected children, right to counsel, guardian ad litem, custody of child, parents rights, returning child to home, foster parents, parents rehabilitation

4056D1 CD-03932

In the Interest of Lackey. Illinois. Appellate Court of Illinois, Fifth District. 390 N.E.2d 519 (Ill. App. 5th 1979). May 16, 1979. May 16, 1979. Subject Code: 97

From a judgment of the circuit court of Fayette County declaring parents unfit to care for their child, terminating all parental rights, and appointing the Department of Children and Family Services as guardian of the child with power to consent to his adoption, the parents appealed. The judgment was reversed and remanded by the appellate court. The parents were indigent and had been represented by court-appointed counsel, as was the child. The court held that the parents were entitled to the undivided loyalty not only of their own trial counsel, but of the public defender who appeared in the dependency proceedings as guardian ad litem. Here the public defender, in his role as guardian ad litem, recommended that the trial court strip the parents of all parental rights. included the power to consent to the adoption of their child. This constituted not only an actual conflict but reversible error as well. No merit was found to the parents' contention that they were prejudiced by the appointment as assistant state's attorney of an attorney who had been appointed to represent them at an earlier hearing. The order of the trial court transferring adoptive rights to the guardianship administrator was reversed and the case remanded for appointment of new counsel for the parents and a new hearing on the amended supplemental petition.

Descriptors: adoption, defense counsel, guardian ad litem, (cont. next page)





statutory construction. termination of parental rights

4056A2 CD-03921

In re Ivey.

Florida. District Court of Appeal of Florida, First District.

319 So. 2d 53 (Fla. App. 1975). September 18, 1975. September 18, 1975. Subject Code: 97

A guardian ad litem was appointed for two infants whose parents could not consent to blood transfusions because of their religious beliefs. He brought an interlocutory appeal to review an order of the circuit court which held that the court did not have authority to order that blood transfusions be given the two infants by a willing physician. The district court of appeal held that the section of the child abuse statute providing that ""... such an exception shall not preclude a court from ordering that medical services or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well recognized church or religious organization be provided to the child, when his health requires it...' is in the disjunctive, and the stated exception does not preclude the court from ordering that medical services be provided to the child. Where the physician stated that the situation involved a question of life and death for the infants and that he was willing to act in compliance with a court order, the trial court had authority under the statute authorizing a court to order a dependent child to be treated by a physician willing to do so when the parents do not consent to such treatment, to order the physician to administer such treatments as he might in his medical judgment deem necessary. References.

Descriptors: guardian ad litem, parents rights, religion, statutory construction, courts role, medical treatment, child protection laws

4055B1 CD-03876

The Right of an Abused Child to Independent Counsel and the Role of the Child Advocate in Child Abuse Cases.

Redeker, J. R. Philadelphia Bar Association, Pa. Committee on Child Abuse. Villanova Law Review 23(3):521-546, 1977-1978. 1977-1978. Subject Code: 96

The following legal issues are explored: whether a child who is the subject of a report of suspected abuse under the Child Protective Services Law of Pennsylvania is entitled to independent counsel; at what point in the process this entitlement attaches; the adequacy of the statutory guardian ad litem system as a means of providing counsel; and the role of the counsel representing the abused child. Children are entitled to be represented at the earliest feasible stage in the proceeding by independent counsel, and the guardian ad litem system established by the law is inadequate to satisfy this right. Allegedly abused children should be provided with counsel when the child protective service determines that a report of suspected abuse is ""indicated'' and the system for providing counsel should be monitored to ensure that counsel is able to dedicate a minimum of 15 to 20 hours for an average case. Counsel should also be given the ability to secure adequate social and medical expertise through court-ordered examinations. Counsel for abused children should be adequately trained in the peculiarities and subtleties of child advocacy prior to appointment so they can be efficient advocates for and protectors of their clients. Numerous references.

Descriptors: pennsylvania, child advocacy, lawyers role, child protection laws, guardian ad litem, right to counsel

4054L2 CD-03869

National Directory of Programs Providing Court Representation to Abused and Neglected Children.

National Legal Resource Center for Child Advocacy and Protection, Washington, D.C.

National Legal Resource Center for Child Advocacy and Protection, Washington, D.C., 11 pp., October 1979.

October 1979.

Subject Code: 96

Listings of special programs providing ad litem court representation to maltreated children are presented. The programs were formed in response to the 1974 federal legislation (Public Law 93-247) which requires states receiving funds under the Child Abuse Prevention and Treatment Act to provide a guardian ad litem for every child who is the subject of abuse and neglect court proceedings. Most of the projects identified are affiliated with courts, legal services agencies, bar associations, law schools, or public defenders. In addition, a number of national legal programs providing technical support to such projects are listed. Addresses, telephone numbers, and project directors are included.

Descriptors: directories, legal services, guardian ad litem, childrens rights

4054E4 CD-03843

Implementing the Guardian Ad Litem Mandate: Toward the Development of a Feasible Model.

Johnson, C.; Thomas, G.; Turem, A.

Regional Inst. of Social Welfare Research, Inc., Athens, Ga.

Regional Inst. of Social Welfare Research, Inc., Athens, Ga., 34 pp., undated.

undated.

Subject Code: 96

Results of a regionwide survey of judges in the southeast (cont. next page)





concerning their role in cases of child abuse and neglect are presented. A total of 575 questionnaires were sent out, covering all the judges dealing with juvenile cases in the region. A model, developed from the study, incorporates structural components and processes designed to accomplish the following: provide uniformity to services children receive before, during, and after the normal court process; provide alternatives to entry into the formal court system; provide legal representation and advocacy services to children; make use of community resources; make the guardian ad litem role and functioning quasi-independent of both the court and the public welfare agency; and reduce financial and manpower problems. The process issues include those related to point of entry, mechanisms for entry, roles and functions of the guardian ad litem office, and duration of appointment. The structural issues involve determination of those eligible for guardian ad litem role; auspices under which the guardian ad litem office exists; its composition and scope; and development of major linkages with public social agencies. 13 references.

Descriptors: guardian ad litem, judges role, legal processes

4054E3 CD-03842

Nuch More To Do About Something: The Guardian Ad Litem in Child Abuse and Neglect Judicial Proceedings.

Johnson, C. L.

Regional Inst. of Social Welfare Research, Athens, Ga., 174 pp., February 1979.

February 1979.

Subject Code: 96

Representation for children in abuse and neglect judicial proceedings in the Southeast was studied, using 3 broad concerns: court utilization of the guardian ad litem (GAL), cost and financing of services, and recommendations for altering or expanding the GAL's role. An instrument was sent to all judges in Region IV having jurisdiction over juvenile matters. The data reported are drawn from the approximately 20 percent of the questionnaires returned. Considerably less than 50 percent of the judges appointed or directed the appointment of a GAL in every case. About 50 percent of the judges make the appointment after the petition is filed but prior to the setting of the preliminary hearing date. More than 50 percent of respondents indicated that the GAL's services were terminated prior to or after disposition. Attorneys served as GAL in over 75 percent of cases and social workers in about 10 percent. In some areas services are provided at no cost. Some form of court budget accounted for over one-third of the payment sources. Hourly and case basis were the 2 most preferred methods of payment, with the hourly rate varying; only attorneys received payment. Over 80 percent of the juvenile judges presided over cases, while less than two-thirds of the respondents not specifically identified as juvenile judges did so. Judges with more experience and in larger jurisdictions were more likely to preside over cases.

Judges tended to preside over a significantly higher number of neglect cases. Over 75 percent of the judges indicated an adequate supply of attorneys to meet the GAL demand. Social workers were viewed as the most likely alternative to attorneys. Over 70 percent of the judges felt that the attorneys who serve as GALs in their courts were adequately prepared and knowledgeable in the area of child abuse and neglect. 13 references.

Descriptors: guardian ad litem, judicial decisions, juvenile courts, judges role, questionnaires

4054A4 CD-03827

A Glance at the Past, a Gaze at the Present, a Glimpse at the Future: A Critical Analysis of the Development of Child Abuse Reporting Statutes.

Fraser, B. G.

National Committee for Prevention of Child Abuse, Chicago, Ill.

Chicago-Kent Law Review 54(3):641-686, '978.

1978.

Subject Code: 96

The development of child abuse statutes is analyzed critically. Though each state defines child abuse differently. all definitions are a combination of such elements as nonaccidental injury, sexual molestation, emotional abuse or mental injury, and neglect. The general format of abuse statutes includes: a purpose clause; definition of abuse; mandated reporters; degree of certainty necessary to constitute suspicion; agencies and personnel to which reports should be made; time period within which reports must be made; stipulations covering immunity for reporters; stipulations covering abrogation of privileged communications; and penalty provisions for failure to report. Recent statute amendments concerning reporting have broadened the scope of the law to include investigatory facets such as the mandated investigation, psychological and psychiatric examination of the parents, medical examination of the child, taking of color photographs and X-rays of the child, maintenance of a statewide central registry, temporary protective custody of the child, operation of the child protection team, and education and training of the public and professionals. In response to difficult issues surrounding intervention, states have responded by: transferring the burden of proof from the plaintiff (the child) to the defendant (the parent); using the guardian ad litem role; and mandating cooperation and coordination between intervening agencies. Numerous references.

Descriptors: state laws, child abuse laws, mandatory reporting, legal definitions, evidence collection, privileged communications, guardian ad litem





4053L1 CD-03820

Trends in Child Protection Laws -- 1979. Education Commission of the States, Denver, Colo.

Education Commission of the States, Denver, Colo., Report No. 128, 21 pp., October 1979.

October 1979.

Subject Code: 96

Child protection acts published by the Education Commission of the States (ECS) in 1979 are analyzed. Statutes that have been enacted, amended, or revised through the 1978 legislative session are included. Legal concerns covered by the legislation include: elements of child abuse that must be reported; mandated reporters; time periods within which neglect and abuse must be reported; agencies to which reports must be made; abrogation of the status of certain privileged communications in child abuse cases; permission to take color photographs and X-rays; maintenance of a central registry; activities of child protection teams; guardian ad litem roles played by attorneys; and public education. Citations of state reporting statutes and qualifications for program funding under Public Law 93-247 are appended.

Descriptors: child protection laws, child abuse reporting, state laws, privileged communications, central registries, guardian ad litem, photographs, multidisciplinary teams

4053F1 CD-03796

Legal Advocacy for the Maltreated Child.

Bross, D. C.

National Center for the Prevention and Treatment of Child Abuse and Neglect, Denver, Colo.

Trial 14(7):29-32, 68, July 1978.

July 1978.

Subject Code: 96

The role of the attorney as an advocate for maltreated children is discussed. The attorney acting as a guardian ad litem has a special obligation of accountability to the court. Even when all parties seem to agree on a resolution, there is a need for a child's spokesman to state the implications of the judge's broad discretion as to the child's future. The attorney representing a child should be competent in several diverse fields of law: juvenile, criminal, tort, mental health, administrative, and domestic relations law. In a given case, any one or several of these fields of law may offer the best method for assuring protection for the child represented. Generally, the civil process is preferred over the criminal process in child protection cases. Child protection teams, interested physicians, social workers, mental health professionals, and others may be of assistance in creating an interdisciplinary network of expertise. A visit to the child gives the attorney an opportunity to test the veracity of allegations made and to establish a bond with the child. The importance of the child's advocate in identifying and clearly articulating the child's best interests is underscored. 8 references.

Descriptors: lawyers role, guardian ad litem, best interests of the child, child advocacy

4053E2 CD-03793

Court Problems in the Management of the Family. Booth, M.

In: Franklin, A. W. (Editor). The Challenge of Child Abuse. Proceedings of a Conference Sponsored by the Royal Society of Medicine, June 2-4, 1976. New York, Grune and Stratton, pp. 192-199, 1977.

1977.

Subject Code: 96

The structure of the judicial system for handling cases of child abuse and other family matters in England is discussed. The court most often involved is the juvenile court exercising its jurisdiction regarding care orders. The juvenile court is a specially constituted court of justices, having a legally qualified clerk but otherwise generally composed of lay persons. The advocates who appear before the juvenile court frequently have little experience with child abuse cases. In any contested matter the juvenile court has been and is severely handicapped by its inability to secure proper separate representation for the child. If a case comes to the High Court, the Official Solicitor may be appointed to act as guardian ad litem for a child, but he cannot accept this appointment from any inferior court.

Descriptors: england, guardian ad litem, juvenile courts

4053D4 CD-03791

The Attorney Ad Litem: Guardian of the Rights of Children and Incompetents.

Bernstein, B. E. Hochberg, Bernstein, and Skor, Dallas, Tex. Social Casework 60(8):463-470, October 1979. October 1979. Subject Code: 96

The guardian or attorney ad litem is a special guardian appointed for the limited purpose of prosecuting or defending a particular law suit on behalf of a specific disabled party, including children. Because of the limitations concerning his conduct in a particular case, the guardian ad litem is not necessarily subject to the general law of guardianships. One school of thought with respect to the appointment of a quardian ad litem is that the mandatory appointment of a representative in every case would be in the best interests of all parties to a litigation. Another school believes that the appointment of such an individual should be at the discretion of the court and that only attorneys should be appointed. The use of judicial discretion should be restricted by clarification of the "best interests of the child" in terms specific community goals of the parent-child of the





relationship. The role of guardian ad litem includes explaining the nature of proceedings to the client, ascertaining the actions desired by the client, investigating the client's background and the circumstances of the case, assuring a trial jury for the client, representing the client, employing ordinary advocacy skills, investigating alternatives to incarceration, and preparing the client for incarceration or committment if necessary. Throughout any legal proceedings involving the client, the attorney should work closely with the social work team assigned to the case. 26 references.

Descriptors: guardian ad litem, lawyers, childrens rights, legal aid

4032L3 CD-03262 Child Abuse. An Illness That Is Spreading. Schrier, C. J. Support Center for Child Advocates, Philadelphia, Pa. Shingle 42(6):16-18, 45, Winter 1979. Winter 1979. Subject Code: 86

The Young Lawyer's Section of the Philadelphia Bar Association and the Support Center for Child Advocates developed a model for pro bono legal services on behalf of abused children in order to designate attorneys to represent children as quardians ad litem and counsel. In Philadelphia, these services are used in coordination with those provided by the Child Advocacy Unit of the Public Defender's Association and the Juvenile Law Center. Once a volunteer has been appointed to represent a child, the Center's social worker assists in the investigation of abuse and neglect and helps develop a treatment plan. The social worker contacts the child, hospital, mental health agencies, and relatives, while the attorney contacts the attorneys representing the parent and the Department of Welfare, and the District Attorney. Volunteer attorneys serving on the Center's Training Committee have organized recruitment and biannual training programs which are required of all volunteers representing children through the Center. The Center also advocates child protection within the community, focusing on the development of policies and programs designed to protect abused children and their families. Three cases are described which are typical of the cases handled by volunteers working with Support Center staff.

Descriptors: pennsylvania, legal aid, guardian ad litem, volunteers, child advocacy, program descriptions

4032A3 CD-03218

Special Education Advocacy for the Maltreated Child.

National Legal Resource Center for Child Advocacy and Protection, Washington, D.C.

American Bar Association, Washington, D. C. National Legal Resource Center for Child Advocacy and Protection, 16 pp., September 1979.

September 1979.

Subject Code: 86

Technical assistance guidelines are offered to enable the advocate for the abused and neglected child to connect the needs of the child with special education and related services available under the state and federal laws for developmentally disabled, emotionally disturbed, and handicapped children. Since a large number of abused and neglected children suffer mental, emotional, or developmental impairments, the advocate has the responsibility to ensure that the child receives adequate treatment. The advocate must assure that the child is properly evaluated before pursuing the appropriate administrative remedies under applicable welfare, mental health, or special education laws. After an adjudication of abuse or neglect, the matter must be fully discussed at the court disposition hearing. Finally, a juvenile court judge should enter a disposition order or stipulation of parties to address the special education needs as well as other needs of the child and his family. If problems arise in initiating the advocate must make use of his knowledge services. concerning the welfare and mental health department services and special education entitlements system. If necessary, the advocate should bring the case back before the proper administrative bodies and judge to have the offending agencies held accountable. 19 references.

Descriptors: special education, guardian ad litem, child advocacy, legislation, lawyers role

4024J4 CD-03095

Guidelines for the Protection and Treatment of the Abused Child.

Carroll, C. A.; Schmitt, B. D.

National Center for the Prevention and Treatment of Child Abuse and Neglect, Denver, Colo.

Child Abuse and Neglect 2(2):109-116, 1978.

1978. Subject Code: 86

Ten steps that a multidisciplinary team can take in the protection of abused and neglected children are reviewed. A developmental and emotional evaluation of the child is the first step; this should include observation of parent-child interaction. A guardian ad litem should be appointed for the child and should be provided with all pertinent data. Early adjudication should be pursued in 3 types of cases: those where termination of parental rights is a strong consideration from the beginning; those where the parents refuse to participate in treatment; and those where the child has serious injuries. The roles of the physician and of the social worker in adjudication are examined. Guidelines are suggested for placement in foster care and for return home. A multidisciplinary child protection team should review all major decisions in child abuse cases and should send reports to all the agencies and attorneys involved with the case. The hospitalized abused child has some special emotional needs that have to be considered. Direct treatment services should





DIALOG

DIALOG File 64: CHILD ABUSE AND NEGLECT-SPRING 1989 EDITION

be provided for the child as well as for the parents, and indirect services for the child in foster care or day care should be upgraded. In extreme cases it may be necessary to terminate parental rights.

Descriptors: multidisciplinary teams, guidelines, physicians role, social workers role, guardian ad litem, termination of parental rights

4005C2 CD-02601

Montana's Child Neglect Law--A Need for Revision. Jones, J. L. Montana Law Review 31(2):201-219, Spring 1970. Spring 1970.

Subject Code: 96

A critical analysis of the provisions of the Montana statutory approaches for dealing with the problems of children who are not properly cared for by their parents or quardians is presented. An appendix sets forth a proposed Act which offers a legal definition of neglect which separates conditions of dependency and is intended to cover every possible situation harmful to a child regardless of parental fault. Proposed procedural and jurisdictional provisions are intended to correct the inadequacies of the existing statutes and provide greater overall clarity. Proposals include provisions for taking a child into custody, counsel for the parents. a quardian ad litem for the child, and informal hearings without a jury. Proposals affecting provisions for dispositions, the effect of an order terminating parental rights, allocation of cost, protective orders, and limitations on the inspection of court records are provided. With the increasing awareness of legal rights by parents and others, it is only natural that the present child neglect statutes will come under increasing challenge. 2 references.

Descriptors: montana, proposed legislation, legal definitions, custody of child, right to counsel, guardian ad litem, child protection laws, termination of parental rights

4005A1 CD-02592

An Advocate for the Abused Child.

Fraser, B. G.; Martin, H. P.

Colorado Univ., Denver, Dept. of Pediatrics.

In: Martin, H. P. (Editor). The Abused Child. A Multidisciplinary Approach to Developmental Issues and Treatment. Cambridge, Mass., Ballinger Publishing Co., pp. 165-178. 1976.

1976.

Subject Code: 96

Advocacy and independent representation for children who have been abused, neglected, or deprived is an integral part of any good child abuse system. Advocacy for the child is necessary at all 3 chronological stages of child abuse awareness: identification, investigation, and intervention. The simplest form of advocacy is the ability to identify the symptoms of abuse and a willingness to report the case. The second form requires involvement beyond mere identification and reporting, and involves identification of specific problems and affirmative action for some form of intervention and treatment. Some people who have daily contact with children are unable to identify the symptoms of abuse and others may not want to get involved. Another deterrant at this stage is that legal and social service systems are frequently closed to this type of advocacy. Two forms of advocacy which are more structured and are beginning to attain wide recognition and acceptance are the multidisciplinary team to evaluate all reported cases of child abuse, and the concept of a guardian ad litem to represent the child's interests in a court of law. The guardian and litem has the opportunity to deliver in person to the final arbitrator the child's needs and problems, to indicate what treatment services would be most beneficial for the child, and to recommend that such services and treatment be part of the court-ordered treatment plan: 9 references.

Descriptors: child advocacy, guardian ad litem, multidisciplinary teams

4004L4 CD-02591

The Concept of a Guardian Ad Litem.

Fraser, B. G.

National Committee for Prevention of Child Abuse, Chicago, Ill.

Child Abuse and Neglect 1(2-4):459-468, 1977.

1977.

Subject Code: 96

The right of the abused child to independent representation in the form of a guardian ad litem is discussed. In any case of child abuse that results in adjudication before some forum, that forum should appoint and provide the child with a guardian ad litem. The role of the guardian ad litem is to pursue actively the interests, safety, and rights of the child. The appointment of a guardian ad litem is for a fixed duration and is not necessarily awarded to an attorney. He or she should be an investigator, whose responsibility is to ferret out all of the relevant data; an advocate, whose responsibility is to ensure that all relevant data are presented at a given proceeding; a counsel, whose task is to ensure that all options are presented for appropriate disposition; and a guardian, whose task is to protect the child's interests. 37 references.

Descriptors: guardian ad litem, best interests of the child

4004L3 CD-02590

Interdisciplinary Management of Child Abuse and Neglect. Fisher, G. D.

INFORMATION SERVICES, INC.

Allegheny County Bar Assoc., Pittsburgh, Pa.



Pediatric Annals 5(3):195-204, March 1976. March 1976. Subject Code: 96

The legal perspective of child abuse and neglect is presented. Criminal laws protect the child against certain acts or omissions by others that are considered detrimental to the child's well-being and to society at large. Reporting laws are designed to identify abuse and neglect and to protect the child from further maltreatment. Adoption laws permit the child to be permanently separated from abusive and neglectful parents, and to be placed in an adequate environment. While the legal system establishes the managerial framework for cases of child abuse and neglect, the problem is a medical, psychological, psychiatric, social, religious, and educational problem as well. Other topics reviewed include the role of the guardian ad litem, parent's and children's right to counsel, waiver of husband-wife and physician-patient privilege, and the physician as an expert witness. 16 references.

Descriptors: child protection laws, childrens rights, physicians role, guardian ad litem

4004C3 CD-02554

The Washington Child Abuse Amendments. Gulley, K. G. Gonzaga Law Review 12(3):468-491, Spring 1977. Spring 1977. Subject Code: 94

In 1975, the Washington Legislature amended the Child Abuse Act. which expanded the list of permissive reporters, and extended immunity from any liability for good faith reports. Reporting is encouraged by abrogation of the statutory privilege of confidential communications between physicians and patients, husbands and wives, and psychologists and clients. The basis for civil and criminal liability for failure to report are examined. The method and content of the report, the receiving agency and its mandate, and operation of the central registry of reported cases are discussed. A provision new to the Act is the requirement that a guardian ad litem be appointed in any judicial proceeding in which it is alleged that the child has been abused or neglected. The 1975 enactment also adopted a measure to provide temporary protective custody to children. The definition of abuse and neglect in the 1975 amendments is both confining and confusing. A reportable injury should not be limited to one perpetrated by the child's legal custodian. Reports of abuse should be directed to only one agency, the Department of Social and Health Services. Numerous references.

Descriptors: washington, child abuse reporting, state law, central registries, failure to report abuse, removing child from home, guardian ad litem 4004A3 CD-02546

Trends in Child Abuse and Neglect Reporting Statutes. Education Commission of the States, Denver, Colo. Education Commission of the States, Denver, Colo., Report

No. 95, 21 pp., January 1977. January 1977.

Subject Code: 94

Trends, issues, and problems posed by 7 areas related to child abuse and neglect reporting and central registries are discussed. The areas are: reportable conditions (with a definition of abuse and neglect); persons required to make reports; penalties for failure to report; public education; guardian ad litem; central registry; and child protection teams. Appendices include an updated version, current through the 1976 legislative session, of the distribution by state of all of the elements of the reporting and central registry statutes, and lists of citations to the state reporting and central registry statutes.

Descriptors: central registries, child abuse reporting, child abuse laws, state laws, guardian ad litem

3984D2 CD-02045

Evolution of a Program for the Management of Child Abuse. Wolkenstein, A. S.

Milwaukee Children's Hospital, Wis. Advisory Committee on Child Welfare.

Social Casework 57(5):309-316, May 1976. May 1976.

An analysis of the program of the Advisory Committee on Child Welfare of Milwaukee Children's Hospital provides the basis for a discussion of community management and legal determinations involved with child abuse and neglect. Three categories of the phenomenon are characteristically seen: (1) conditions that definitely indicate child battering, severe neglect, or failure to thrive; (2) suspected abuse; and (3) undetermined cases in which there is a conflict between the parent's right to discipline and the child's right to be cared for properly. Increasing recognition of the child abuse problem prompted establishment of a committee to develop policies and coordinate action in dealing with child abuse cases at the Milwaukee Children's Hospital in 1965. The Committee has grown over the years and now serves not only as a coordinating and referral agency for physicians of the Hospital, but also provides diagnostic evaluation and therapy programming for the cases referred to it, and works closely with the courts, protective services, and other agencies involved with the cases. A child is kept in his own home if at all possible. A legal determination with medical involvement through a committee such as the Advisory Committee of Milwaukee Children's Hospital should come before psychosocial assessment. A community should have specialized units and programs for child abuse and neglect, and consideration should





be made for the channeling of cases into a family court. Appointment of a guardian ad litem for the child should be considered. An overall coordinating counsel position should be established to monitor the programs and financing should be allocated only to programs which will meet the need for combined community activity. 22 references.

Descriptors: advisory committees, pediatric hospitals, community role, community cooperation, community involvemen, guardian ad litem, family courts, interagency cooperation

3975B2 CD-01829

Report of the Select Committee on Child Abuse.

New York State Assembly, New York. Select Committee on Child Abuse.

New York State Assembly, New York. Select Committee on Child Abuse, 168 pp., April 1972.

April 1972.

Investigation of the New York State welfare system by the State Assembly's Select Committee on Child Abuse indicated a pervasive inability on the part of child care agencies to respond both programmatically and administratively to the needs of the children they are meant to serve. With a view toward reorientation of the accountability and planning responsibilities of child welfare officials and ultimate improvement of the child welfare system, several proposals are made in the areas of (1) recognition and reporting; (2) central registry; (3) investigation, verification, and intervention; (4) rehabilitation and foster care; and (5) the Family Court of the State of New York. Some of the Committee's findings are as follows: Complexities in the state reporting laws and rigid, restrictive policies of the State Department of Social Services discourage and limit reports of child abuse. Lack of educational programs about reporting is the most significant reason for underreporting. The state central registry contains inaccurate and insufficient information. Protective agencies need more coordination and more qualified protective workers. Too much emphasis is being placed on custodial foster care programs instead of treatment and rehabilitation. The Family Court is hindered by inadequate supporting services and its second class status among trial courts. A new legal officer, the Children's Attorney should be made responsible for the effective investigation and presentation of child protective cases. Numerous references.

Descriptors: new york, committees, child welfare agencies, agency responsibility, family courts, child abuse reporting, central registers, guardian ad litem

3965C2 CD-01577

Independent Representation for the Abused and Neglected Child: The Guardian Ad Litem.

Fraser, B. G.

Colorado Univ., Boulder. School of Medicine.

California Western Law Review 13(1):16-45, 1976-1977. 1976-1977.

A discussion of the guardian ad litem focuses on independent representation of the child as the best protection of the abused child's interests and the best solution for breaking the self-perpetuating cycle of child abuse. The historical role of the guardian ad litem as the adversary of a defendant child contrasts with the present role as advocate and protector of the child's needs and best interests. Guidelines for appointment and the scope of the quardian ad litem's powers and duties are explored with an emphasis on the court's role as the ultimate guardian, who monitors the performance of the appointed quardian ad litem. The quardian ad litem must investigate the relevant facts; ensure that the facts are before the court: present dispositional options to the court; and ensure the protection of the child's best interests. Prompt appointment of the guardian ad litem to represent the child at all formal proceedings is crucial. Initial actions and alternatives in court proceedings are explored. Social awareness, reporting, treatment, and case analysis of child abuse are reviewed briefly. Numerous references.

Descriptors: guardian ad litem, child abuse laws, courts

3964F4 CD-01543

A Comparison of the States' Child Abuse and Neglect Reporting Statutes.

Education Commission of the States, Denver, Colo. Child Abuse and Neglect Project.

Education Commission of the States, Denver, Colo. Child Abuse and Neglect Project. Report No. 84, 8 pp., March 1976. March 1976.

An overview of the current status of the child abuse and neglect reporting laws in the U.S. consists of a listing of the most pertinent aspects by state. Included are the legal citation, year of enactment, effective date, purpose of the legislation (mandatory reporting), reportable age, definitions of child abuse and neglect, school reporting responsibilities, immunity, mandatory investigation, confidentiality of records, cooperation with other agencies, guardian ad litem, administrative proceedings, personnel or facilities, and dissemination of information.

Descriptors: child abuse laws, child abuse reporting, mandatory reporting, legal immunity, state laws, guardian ad litem, confidentiality, interagency cooperation

3955K1 CD-01352

Protecting the Children of Life-Threatening Parents. Alexander, J.

Citizens' Committee for Battered Children, Chicago, Ill. Journal of Clinical Child Psychology 3(2):53-54, Summer 1974.

Summer 1974.





Strategies developed by the Citizens' Committee for Battered Children, Chicago, to stop life-threatening behavior against the young are described. In its attempt to develop a plan to end child abuse and neglect in Illinois, medical, legal, public relations, and fund raising committees were formed. The Medical Committee makes recommendations based on its own expertise, consultations with national leaders in the field, the 1973 revised "Optimum Standards and Procedures of the Child Welfare League," and the 2-year study on child abuse by the New York State Assembly. A hot line has been established and 7 hospital trauma centers in Cook County are equipped to receive referrals. At the hospital, the child will be evaluated by an experienced multidisciplinary team. including a Department of Children and Family Services social worker. The Child Advocates Association, a group of 75 volunteer attorneys, will collect evidence and advise the parents. Figures derived from studies at the University of Colorado and the Juvenile Protective Association suggest that 20 to 25 percent of the parents may be psychotic. Emergency foster home placement is available for children and rapid termination of parental rights will be sought by child advocate lawyers, who will also act as quardians ad litem. Attempts will be made to change the attitudes of the remaining parent toward their children through a program based on the Parents Anonymous plan and the provision of homemaker services by senior citizens. The Committee will operate as an agency watchdog and will seek to effect independent corrections of malfunctions in service delivery. Public awareness will be a major effort. Professionals are urged to support and organize programs educating the public to report and fight the problem of child abuse.

Descriptors: citizen advisory committees, prevention, program planning, legal aid, guardian ad litem, psychoses, visiting homemakers, public awareness

3951J1 CD-01156

A Child's Right to Independent Counsel in Custody Proceedings: Providing Effective ""Best Interests'' Determination Through the Use of a Legal Advocate.

Devine, J. R. Seton Hall Law Review 6(2):303-335, Winter 1975.

Winter 1975.

The child's right to independent counsel in custody hearings is examined, particularly as it pertains to such proceedings in New Jersey. The power of courts to determine custody matters is traced from the common law doctrine of parens patriae. The concept of the child's best interests employed by various state courts is reviewed. The Wisconsin approach of appointing a guardian ad litem to represent the child's interest is analyzed, and the Milwaukee County Family Court 10-point Bill of Rights for Children in Divorce Actions is presented. The provision of similar child advocates in other states is noted. New Jersey has not included in its interpretation of the best interests doctrine the appointment of independent counsel for children in custody proceedings. PAGE: 1289 Item 121 of 122

New Jersey must recognize the importance of independent representation for children in custody cases as it is unrealistic to assume that the judge or parental counsel will provide such representation and that there will be no conflict between the child's and the parents' interests. Numerous references.

Descriptors: childrens rights, custody of child, right to counsel, new jersey, wisconsin, guardian ad litem

