

Roles and Responsibilities of Guardians *Ad Litem*

This chapter discusses the roles and responsibilities of guardians *ad litem* in Minnesota's family and juvenile court. Specifically, we considered the following questions:

- **Do guardians *ad litem* have clearly defined roles and responsibilities?**
- **What are guardians' understanding of their role and responsibilities?**
- **Are guardians performing the roles that judges and others expect them to perform?**

In interviews, attorneys, advocates, parents and other interested citizens voiced the concern that guardian roles and responsibilities are not well defined, are interpreted differently in different court districts across the state, and parents don't know what guardians are supposed to do or what is out of bounds. Some people think guardians have too much power, lack independence from judges, and communicate inappropriately with judges. Others expressed concern that guardian reports are often oral not written, and are incomplete with recommendations not supported by facts from an investigation.

We reviewed national literature and Minnesota statutes, rules and judicial guidelines to determine the primary roles and responsibilities of guardians *ad litem*. Using surveys and interviews, we asked judges and court administrators to identify what they believe the responsibilities of guardians should be, and we asked guardians to describe their responsibilities. We also asked guardians to describe how their duties for a specific case are defined, how they submit reports to court, and how they communicate with judges.

This chapter shows that while Minnesota statutes provide for the appointment of guardians, they provide little detail on what roles guardians should fulfill. Minnesota uses the 1986 *Guidelines* to clarify the duties of guardians, but the *Guidelines* do not carry the authority of statute or rule, are not widely disseminated or uniformly applied, have not been revised or updated, and are inconsistent with some court rules related to guardians. Finally, we found that judges differ in the roles that they assign to guardians and in their expectations for communication and reporting.

OVERVIEW OF GUARDIAN ROLES AND RESPONSIBILITIES

Numerous articles have been written describing the various roles and responsibilities of guardians *ad litem*. Some authors have established specific and detailed models for guardian representation. While most of these proposals share general principles, there does not appear to be a consensus regarding the role of the guardian and what functions should be performed. One national study, that has been frequently used as a framework, gives the guardian responsibility for a variety of tasks carried out within the context of six roles. Based on this model and a review of literature, the primary roles and responsibilities of a guardian *ad litem* are to:

1. Conduct an independent investigation to determine all facts relevant to a child's case. This includes reviewing relevant documents, interviewing people with knowledge of the facts (including parents and caretakers); and talking to and observing the child.
2. Advocate for the child's best interests by participating in all aspects of the case, and identifying and advocating for appropriate community resources when necessary.
3. Facilitate the resolution of problems by sharing information and seeking cooperative solutions.¹
4. Monitor the child's case and advise the court concerning the child's best interests throughout the judicial proceeding.
5. Present a report, complete with findings, conclusions and recommendations, to the court regarding the child's best interests.
6. Finally, guardians should maintain the confidentiality of information related to a case.²

Guardians are supposed to advocate the best interests of the child.

The nature of guardian *ad litem* cases will vary depending on whether a specific case involves issues of abuse and neglect in a juvenile court proceeding or custody and visitation issues in a family court proceeding. Every case will be different, some more lengthy and complex than others. The way guardians fulfill the above roles may vary depending on the nature of the case. Appendix C briefly

¹ This should not be confused with mediation. Some national studies mention mediation as a guardian responsibility. However, one national survey found that few guardians perceive mediating as part of their role. This is also the case in Minnesota. Court officials told us that in Minnesota it is generally understood that guardians should not mediate in the legal sense of the term because it is inconsistent with the role of the guardian. To do so may require the guardian to compromise the best interest of the child.

² U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *Final Report on the Validation and Effectiveness Study of Legal Representation Through Guardian Ad Litem* (Washington, D.C.: National Clearinghouse, 1994), 2-5 - 2-11; Rebecca H. Hertz, "Guardians Ad Litem in Child Abuse and Neglect Proceedings: Clarifying the Roles to Improve Effectiveness," in *Family Law Quarterly* (American Bar Association, 1993), 341-347; National Court-Appointed Special Advocates Association, *Standards and Recommended Management Practices for CASA/GAL Programs* (January 1992), 5.

summarizes the activities of a guardian in an actual juvenile court case from a southern Minnesota county. The case study illustrates how the roles and responsibilities of a guardian were fulfilled in one specific case.

As we discussed in Chapter 1, it is rare for states to provide a detailed definition of guardian roles and responsibilities in state statutes. When state statutes address the issue, most describe guardian roles quite broadly, such as the expectation that guardians will conduct an independent investigation, meet with the child and family, and monitor the case.

DEFINITION OF GUARDIAN ROLES AND RESPONSIBILITIES IN MINNESOTA

References to guardian roles and responsibilities in Minnesota are currently found in a variety of places. Minnesota statutes provide for the appointment of guardians and identify guardians as mandatory reporters of child abuse and neglect; court rules contain guardian reporting requirements; court procedures define guardians roles in court proceedings; and the *Guidelines* provide detailed suggestions on a wide variety of issues related to how the guardian system should operate. We found:

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

Minnesota statutes and rules provide little direction on the roles of guardians.

Minnesota laws provide for the appointment of guardians *ad litem* in both family and juvenile courts.³ However, Minnesota statutes and rules provide little direction on the roles and responsibilities of guardians once they are appointed. Minnesota statutes simply direct guardians to “protect the interests of the minor” or “represent the interests of the child.”⁴ While a statutes clearly define, with a list of twelve criteria, what constitutes the “best interests of the child” for the purposes of custody investigations, they do not require guardians *ad litem* to use the same statutory criteria when reporting to the court.⁵ In family court divorce or child custody proceedings, statutes require guardians to “...advise the court with respect to custody, support, and visitation.” The family court also may appoint a guardian to “represent the child in the custody or visitation proceedings.”⁶

Beyond these statutory provisions, Minnesota uses a combination of judicial guidelines and court rules to define guardian roles and responsibilities. The 1986 *Guidelines* provide substantial information for guardian coordinators, guardians,

³ Rules and procedures differ in juvenile and family court. Cases also proceed differently in the two courts, although cases in either may be quite lengthy. Differences that might affect guardians include status as a party to the judicial proceeding, timelines for submitting written reports, interaction with various social service agencies and development of case plans, monitoring compliance with a re-unification plan (juvenile court), and possibly filing a petition for protective services (family court).

⁴ *Minn. Stat.* § 260.155 subd. 4, (a) and *Minn. Stat.* § 518.165 subd. 1 and subd. 2.

⁵ “Best interests of the child” are defined in two places in Minnesota law, both of which relate to custody and support issues: *Minn. Stat.* § 257.025 and *Minn. Stat.* § 518.17.

⁶ *Minn. Stat.* § 518.165 subd 2.

and judges about types of appointment, roles, duties, screening, training, and supervision. The *Guidelines* sought to outline “clear expectations of the role and responsibilities of guardians *ad litem*” in family and juvenile court. In addition to detailing specific guardian duties for each stage of the judicial process in an appendix, the *Guidelines* state:

...it is the responsibility of the guardian *ad litem* to represent to the court whatever is in the best interest of the child. The primary obligation is to fully participate in any court proceeding, which includes protecting the child’s rights and interests (however, not as an attorney) and advising the court as to the course of action that will ensure that the child’s best interests will be served.

The primary duties of guardian *ad litem* include case investigation, participation in negotiations and hearings, development of dispositional recommendations, presentation of recommendations to court, regular contact with the child, protection of the child’s rights, participation in decision making meetings that affect the child, case monitoring, advocacy on behalf of the child to ensure their needs are met, and compliance with all statutory requirements... The guardian *ad litem* ... may also be in a unique position to facilitate the resolution of cases without litigation.⁷

Minnesota's *Guidelines* for guardians do not have the authority of statute or rule and are not widely or consistently used.

While Minnesota’s *Guidelines* articulate the roles of guardians, they are not codified into statute or rule. Consequently, the *Guidelines* do not carry the authority of statute or rule, and they are not binding. Our interviews with judges, court administrators, and guardians revealed that the implementation of the *Guidelines* has been uneven, at best. The *Guidelines* are not consistently distributed or used throughout the state. While judges and some guardians consider the *Guidelines* as “their bible,” others are not aware of their existence.

Based on our review, it appears the *Guidelines* have not been updated to include revised statutory language, and they appear to be inconsistent when compared to court rules. For example, the statutory references to “best interests of the child” criteria were out of date in the copy of the *Guidelines* we reviewed. While court rules require guardians to submit reports and recommendations in writing, the *Guidelines* instruct a guardian to make a “written or oral report” to the court.⁸

We found that the citations for guardian roles and responsibilities are scattered throughout statutes, court rules, and judicial guidelines. Some guardians, lawyers, and representatives of parents groups told us that the lack of clear role definition contributes to inconsistency and confusion about guardians’ duties and how they are carried out. However, representatives from MAGAL and certain guardian program administrators prefer that training courses outline guardians’ specific

⁷ Minnesota Judges Association, *Guidelines for Guardians Ad Litem* (St. Paul: June 1986), 23.

⁸ Family Court Rule 1.02. General Rules of Practice Rule 108.01 requires guardians “to submit any recommendations, in writing, to the parties and to the court at least ten (10) days prior” to the hearing; Juvenile Court Rule 62.03 subd. 3 requires guardians to “file the report forty-eight (48) hours prior” to the hearing; Minnesota Judges Association, *Guidelines*, 27.

Better role definition will increase guardians' ability to represent children's best interests.

duties, rather than codifying these duties in statutes or rules.⁹ They fear that if the guardians' duties were rigidly defined in statute, "the flexibility necessary to advocate for a specific child's best interest could be reduced."¹⁰

It is our opinion that clearer definition of guardian roles and responsibilities would increase understanding of guardian duties without impeding the flexibility of the system. For guardians to effectively represent and advocate for the best interests of children, they must have a clear understanding of their expected roles and responsibilities. During judicial proceedings, guardians will likely work with other professionals (social workers, court services staff, probation officers), clear and consistent role definition will help prevent conflict and confusion among the various professionals involved in family and juvenile court cases. We recommend that:

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

We think that clear definition of the guardian's primary roles in statute will increase the guardian's ability to effectively represent the child's interest and work with other professionals. We suggest that legislation, amending Minnesota Statutes § 260.155, subd. 4, and § 518.165, define guardian roles broadly to include responsibility to conduct an independent investigation, advocate for the child's best interests, and monitor the case and the child's circumstances.

THE ROLE OF JUDGES IN THE GUARDIAN *AD LITEM* SYSTEM

Judges told us that guardians play a crucial role in the judicial system, and that the court "couldn't operate without them." Well-trained guardians, working in appropriate roles, gather information from professionals, request additional information when necessary, help sort out issues in custody disputes or child abuse and neglect cases, determine whether children receive ordered services, and remind the court when children are waiting too long in impermanent situations. Judges play a crucial role in assuring that the guardians' work is useful and appropriate. Typically, the local court and the presiding judge define the scope of authority of the guardian *ad litem* on each case assigned. We found:

- **Judges have differing practices in their use of guardians *ad litem*, particularly in roles assigned and the nature of appointment orders and communications.**

Judges across the state assign a variety of duties to guardians. In some cases, guardians act solely as guardians *ad litem*, gathering data from appropriate

⁹ Undated letter from MAGAL to Senator Ember Reichgott-Jung regarding S.F. 2094 considered during the 1994 Legislative Session.

¹⁰ Deborah A. Randolph and Susanne K. Smith, "Advocates for Children: The Role of the Guardian *ad Litem*," in *Bench and Bar of Minnesota*, August 1991, 31.

Judges across the state assign a variety of duties to guardians.

sources and presenting the information and recommendations to the court. In other cases, guardians act as mediators, custody evaluators, or visitation expeditors. Some of these duties, such as mediation, may conflict with the job of advocating for the child's best interest. People told us that guardians working with victims of domestic abuse have routinely violated existing Orders for Protection which stipulate no contact between the abuser and the abused.¹¹ This multiplicity of roles can be confusing, especially to parents.

An example of differing judicial practices is the use of guardians as custody investigators. Although the *Guidelines* do not define custody investigation as a guardian duty, over half of all judges responding to our survey said that "conducting custody evaluations" should be a guardian responsibility. In contrast, the Goodhue County court has a formal policy which clearly differentiates the roles of guardian and custody investigator in family court proceedings. Goodhue County court officials argue that a guardian *ad litem* cannot also be a custody investigator because statute describes two separate functions with different responsibilities. In their view, a guardian is responsible for advocating for the child's best interest, while a custody investigator should maintain objectivity in order for the custody reports to be admissible as unimpeachable, credible evidence. A custody investigator must submit a report that follows an outline defined in statutes; there are no statutory outlines for guardian reports. The guardian possesses important procedural rights which a custody investigator lacks, such as the right to initiate and respond to motions, and make oral and written statements on behalf of the child.¹² We suggest that updated *Guidelines* for guardians clarify the roles of guardians *ad litem* and custody investigators.

We examined survey results from judges, court administrators, and guardians to determine how responsibilities are defined by each group, what responsibilities judges and court administrators think guardians should be fulfilling, and whether guardians are performing the responsibilities judges expect them to perform. Our analysis results indicated that there are many areas of agreement, but there is disagreement about several issues. For instance, as illustrated in Table 3.1, we found that high percentages of judges, court administrators, and guardians identified the following activities as guardian responsibilities:

- Be familiar with statutes and rules governing family and juvenile court
- Inform the court of the child's best interests
- Assess long-range effects on the child
- Report suspected abuse to child protection
- Maintain confidentiality
- Maintain accurate, organized records
- Consult and work with other professionals.

¹¹ We have not independently verified this complaint. However, numerous sources have expressed concern to us about the lack of guardian training related to domestic abuse and the cycles of family violence.

¹² Goodhue County, "Why a Guardian Ad Litem Under *Minn. Stat.* § 518.165 Cannot Also be a Custody Investigator Under *Minn. Stat.* § 518.167," October 27, 1994.

Table 3.1: Guardian Responsibilities For All Types of Cases

	Percent of Each Group Agreeing Function is a Guardian Responsibility		
	Judges	Court Administrators	Guardians
HIGH LEVEL OF AGREEMENT			
Be familiar with statutes/rules governing family and juvenile court	91%	91%	86%
Inform the court of the child's best interests	88	86	83
Assess long-range effects on the child	90	90	93
Report suspected abuse to child protection	92	90	88
Maintain accurate, organized records	85	87	91
Maintain confidentiality	90	99	97
Consult and work with other professionals	85	92	93
LOW LEVEL OF AGREEMENT			
Read Appellate and Supreme Court decisions	15	22	19
DISAGREEMENT			
Seek case consultation	51	76	87
Provide information on a "need to know" basis only	44	72	68
Maintain contact with community resources	71	67	81

Note: Judges were asked "Which of the following do you believe should be responsibilities of *all* Guardians *Ad Litem* who practice in your court?"

Court administrators were asked "Which of the following are identified by your program as responsibilities of *all* Guardians *Ad Litem* in your county?"

Guardians were asked "Which of the following describe your responsibilities for all types of cases?"

Table 3.2 shows that high percentages of judges, court administrators, and guardians identified the following activities as guardian responsibilities in family and juvenile court:

- Read case files
- Interview pertinent parties
- Make recommendations regarding child's needs
- Visit with child
- Keep current on progress of the case

Survey analysis also revealed activities that few judges, court administrators, and guardians considered guardian responsibilities. Responsibilities in this category include:

- Read Appellate and Supreme Court decisions
- Conduct mediation
- Supervise visitation
- Monitory child support order
- Facilitate service delivery

Table 3.2: Guardian Responsibilities in Family and Juvenile Court Appointments

	Percent of Each Group Agreeing Function is a Guardian Responsibility								
	Juvenile Court			Family Court Mandatory			Family Court Discretionary		
	Court Judge	Administrator	Guardian	Court Judge	Administrator	Guardian	Court Judge	Administrator	Guardian
HIGH LEVEL OF AGREEMENT									
Read case files	87%	96%	98%	94%	95%	84%	88%	91%	80%
Interview pertinent parties	83	97	98	91	96	85	85	92	77
Make recommendations regarding child's needs	88	97	96	94	93	81	89	89	75
Keep current on progress of the case	84	92	99	91	90	85	85	90	77
Visit with child	85	91	99	89	91	85	85	88	77
LOW LEVEL OF AGREEMENT									
Conduct mediation	6	4	14	11	9	20	11	13	23
Supervise visitation	23	24	32	31	37	35	28	34	28
Monitor child support order	4	7	9	7	9	13	6	9	13
Facilitate service delivery	32	24	33	34	26	34	30	29	32
DISAGREEMENT									
Research critical issues affecting child's situation	56	90	91	63	87	80	57	83	72
Collect relevant information during investigation	78	95	95	87	95	84	81	91	75
Make recommendations regarding visitation	69	76	85	92	90	81	90	85	75
Locate and recommend services for the child	49	63	63	56	65	59	51	66	54
Attend case staffings or conferences	62	79	87	61	68	66	54	68	58
Maintain contact with service providers	73	86	98	68	82	78	64	83	69

Note: Judges were asked "For each type of appointment, please indicate which of the following should be responsibilities of Guardians Ad Litem."

Court administrators were asked "Please indicate for each type of appointment, which of the following are responsibilities of Guardians Ad Litem."

Guardians were asked "For each type of appointment, please indicate which of the following describe your responsibilities."

Finally, our analysis revealed areas where the responses of judges, court administrators, and guardians do not agree. For example, in discretionary family court appointments, 90 percent of the judges reported that making recommendations regarding visitation should be a guardian responsibility; however, only 75 percent of the guardians consider that to be one of their responsibilities. Examples of other potential guardian responsibilities for which there appears to be disagreement among judges, court administrators, and guardians include:

- Research critical issues affecting the child's situation
- Collect relevant information during investigation
- Attend case staffings or conferences
- Maintain contact with service providers
- Seek case consultation

In some areas, judges and guardians disagree on guardian responsibilities.

- Provide information on a “need to know” basis only
- Maintain contact with community resources
- Locate and recommend services for the child

These differences indicate that expectations about guardian responsibilities and duties are not shared by all parties. Based on our research, some of these responsibilities are fundamental to the guardian’s role, such as researching critical issues and collecting relevant information. If different parties within the system are operating under different expectations, it could be difficult to provide guardian services in an appropriate manner. However, if guardian responsibilities and duties are clearly defined and communicated, then all guardians could more effectively represent the best interest of the child.

We recommend:

- **The Supreme Court should update and adopt the 1986 *Guidelines for Guardians Ad Litem*. The *Guidelines* should outline the roles and responsibilities guardians are expected to undertake to fulfill their duties. The *Guidelines* should clarify the roles of guardians *ad litem* and custody investigators, and develop procedures for how guardians *ad litem* should work with parents who have existing Orders for Protection.**

Guardian roles and responsibilities will be broadly defined in statutes. The *Guidelines* should articulate the specific responsibilities guardians are expected to undertake in order to fulfill their roles as defined in statutes. For example, to conduct an independent investigation, a guardian should interview the child’s parents, social workers, day care providers, and others with knowledge of the facts; visit with the child; and review school, medical and other pertinent records. The Supreme Court is currently in the process of revising the guidelines for guardians *ad litem*. The court is working with MAGAL to define guardian roles and responsibilities. We suggest that the court consider requiring that the guardian roles be implemented uniformly in all counties and court districts.

Communication

The *Guidelines* explicitly state that “to maintain the objectivity necessary in a judicial proceedings, the guardian *ad litem* should not initiate *ex parte* contact with the judge regarding case information.”¹³ Judges often call guardians “the eyes and ears of the court” and treat them as extensions of the judge. One of the most common complaints voiced by parents and attorneys is that guardians have too much power, and that they are too close to the judge. Attorneys frequently complained that because of this special relationship, guardians held inappropriate, *ex parte*,¹⁴ communications with judges, giving the appearance that the guardian had special status and undue influence in the courtroom. While the judges we spoke with universally agreed that *ex parte* communications should never happen,

¹³ Minnesota Judges Association, *Guidelines*, 33.

¹⁴ *Black’s Law Dictionary* defines *ex parte* as “on one side only.” *Ex parte* is a legal expression applied to a proceeding or communication in which only one side of the case is presented, and the opposing side is absent. There is a presumption of partisan testimony in an *ex parte* proceeding or communication.

Many guardians communicate improperly with judges.

both judges and guardians acknowledged that such communications and contacts do take place.

We asked guardians how they communicate with the judge if there is a problem with a specific case. As shown in Table 3.3, many guardians reported that they contacted judges directly by telephone or in person when they had problems or questions about cases. In our survey, 42 percent of the guardians responding acknowledged communicating directly with judges; 14 percent said they would call a judge and 28 percent would send a letter or note to the judge only. Two-thirds of those who said they would call a judge were paid non-attorney guardians, and most of the guardians who said they would contact a judge in writing were paid non-attorney guardians. Most paid attorney guardians and volunteer guardians reported that they would not call or write to a judge.

Table 3.3: How Do Guardians Communicate With the Judge If There Is a Problem With a Case?

	Percent ^a
Phone call to the judges	14%
Letter or note to the judge	28
Phone call or letter to judge's clerk	16
Phone call or note to guardian coordinator	47
Phone call to judge and all affected parties	11
Note to judge and all affected parties	37
Only communicate with judge in court	25

^aThese percentages represent total responses to a question with multiple answers.

Note: Guardians were asked "How do you communicate with the judge if you believe there is a problem with a case to which you are assigned?"

While it is likely that individual guardians may communicate directly with judges at times, we found nothing within any guardian model that would encourage such communication on a system-wide basis. However, we think that guardians could benefit from training in appropriate methods of communication with judges. We recommend that:

- **Training materials should address the issue of how to properly communicate with judges.**

Appointment Orders

The presiding judge in a case appoints the guardian and determines the nature of the guardian's duties for that particular case. The judge's order of appointment can be instrumental in defining the guardian's duties for a specific case. When guardians were asked how their duties for a specific case were defined, over 59 percent of the total respondents indicated that their duties were contained in the judge's written order of appointment, over 50 percent responded that their duties were listed in a statement of ethical conduct or training materials, and 41 percent said that their scope of duties was left flexible.

Guardians' scope of duties is not always clear.

In addition, we learned that judges often use general, “boilerplate” orders in appointing guardians, without specifying in detail the guardian’s charge for the specific case at hand. This practice can lead to misunderstandings by guardians, attorneys, other professionals, and parents as to what the guardian is expected to do in a specific case. We also found that many judges use detailed, case-specific written orders of appointment, such as the sample order summarized in Figure 3.1. We suggest that:

- **Judges should write more detailed appointment orders clearly defining their expectations for guardians’ roles and responsibilities in specific cases.**

Guardian Reports

Guardians submit reports to the court in the course of making recommendations. Advocates and some lawyers expressed concern to us that guardian reports are incomplete and that their recommendations were not adequately supported by facts from an investigation.¹⁵ There was also concern that reports may not be sent to all parties to a case. Survey results reveal that about 70 percent of guardians made written reports to all parties, and about 45 percent made oral reports. Nearly 20 percent of guardians told us that they made a written report to the judge

Figure 3.1: Sample Order for Resuming Visitation

1. _____ is appointed Guardian *ad litem* for the minor child.
2. The Guardian is directed to review the Court file, review law enforcement or Social Service agency files as appropriate, and then meet with the parents, the child, any significant friends and family members, and social workers with information that may be relevant, to conduct an investigation and make recommendations to the Court in writing by _____, 19____, on the following issues:
 - a. Whether contact by [father] should be re-established with [child]; what therapy or counseling needs to occur prior to or in conjunction with any resumed contact; what incremental steps or measures should be taken to gradually implement any visitation that is recommended; and what conditions should apply to the visitation, if contact is again to occur.
 - b. What visitation between [child] and [father] would be in her best interest; with respect to that visitation, whether it should be supervised; if supervised, who would provide the supervision.
 - c. With respect to visitation with [child], what arrangements would be appropriate as far as duration and frequency of visits, who would provide transportation for the visits, and any conditions that would attach to such visits.
 - d. If supervised visits are recommended, what steps [father] must take or what developments need to occur before the Guardian would possibly recommend that unsupervised visits be permitted.

Source: The Honorable Timothy J. Baland, 7th Judicial District.

¹⁵ We were told that many years ago in at least one jurisdiction guardians prepared dual reports, one public, and one given secretly to the judge. We found no evidence that this practice continued.

One-fourth of the guardians surveyed said there were no formal guidelines for their reports.

only. Paid non-attorney guardians were more likely to make a written report only the judge.

About 67 percent of the guardians responding to our survey reported that the format of their reports was defined in a training manual or model report form. About 25 percent said that expectations for report format were conveyed informally by supervisors. Almost one-fourth of guardians told us that there are no formal guidelines for their reports, and they were most likely to be from counties relying on paid attorney and non-attorney guardians. Nearly all guardians felt that reports should contain both recommendations and summary background information.

Nearly one-third of guardians said that judges occasionally question the support for a recommendation, but about half of all guardians, particularly paid non-attorneys, said reports are accepted as written unless formally challenged by a party. Guardians reported that their recommendations were accepted by the judge, on average, over 80 percent of the time.

Judges, lawyers, and public defenders disagreed on the quality of guardian reports. About 88 percent of judges rated guardians' reports as reasonably complete, accurate, and timely. Less than one-half of family practice lawyers and public defenders indicated that reports were reasonably complete and accurate. Only one-third of the lawyers and public defenders thought guardian reports and recommendations were timely.

We recommend that:

- **In its revised *Guidelines*, the Supreme Court should require written reports from all guardians, with background information to support any guardian recommendations. Reports should be submitted in advance to the court and all parties as required by court rules.**

PARENTAL CONFUSION ABOUT GUARDIAN ROLES

Parents often do not understand why guardians are assigned or what they are supposed to do.

Both parents and lawyers told us that parents often don't understand why a guardian is assigned to a specific case, what guardians are expected to do, and how parents can work with the guardians. Several calls and letters from parents were clearly based on misinformation or confusion. Several guardian coordinators and judges told us that they used parent information brochures and seminars to better inform parents. We recommend:

- **The Supreme Court should develop general written materials describing the purpose of guardians *ad litem* and guardian roles and responsibilities, and make them available to parents, lawyers, and other professionals. Information about specific programs should be developed at the local level.**

General information about the purpose and roles of guardians should be consistent statewide with the revised Supreme Court *Guidelines*. Individual guardian programs should supplement the general statewide materials with program-specific information including the name, phone numbers, and hours for the program coordinator or county contact person, and the local complaint process. Seminars for parents on the effect of divorce on children could also include information about guardian *ad litem* services.

SUMMARY

While Minnesota statutes require the appointment of guardians *ad litem* to represent or protect the interests of child in custody and abuse or neglect proceedings, they provide little direction on the roles and responsibilities of the guardian. The Minnesota Judges Association developed *Guidelines for Guardians Ad Litem* in 1986 to clarify the duties of guardians. However, the *Guidelines* are not codified into statute or rule, are not widely disseminated or uniformly applied, have not been revised or updated, and are inconsistent with some court rules related to guardians. References to guardian roles and responsibilities are scattered throughout court rules and procedures, statutes, case law, and judicial guidelines.

Judges assign guardians varying roles, and they differ in their expectations for communications and reporting. In some critical areas, the court and the guardians have different understandings of guardian responsibilities. People told us that the lack of clear role definition results in confusion for guardians, attorneys, parents, and other professional staff involved in family and juvenile case proceedings. In our view, clearer definition of the guardians' key roles and responsibilities will assist guardians in carrying out their duties in the most effective manner and will help parents and others understand the role that guardian's play in family and juvenile court proceedings. Clear information should be provided to parents so they may better understand why a guardian was appointed to a specific case and what to expect from the guardian.