

The Organization of Guardian *Ad Litem* Services in Minnesota

In this chapter we describe how guardian *ad litem* services are organized in Minnesota and estimate their cost. We also look at how judges and lawyers evaluate guardian programs. In our study we asked:

- **Why does Minnesota use guardians *ad litem*?**
- **How are guardian services organized in Minnesota?**
- **To what degree are judges, family practice lawyers, and public defenders satisfied with guardian programs?**

We surveyed Minnesota counties and asked court administrators to describe their programs for providing guardian services.¹ We asked judges, lawyers, and public defenders to evaluate their overall experience with guardians and rate guardians on specific characteristics.² We also asked for information on the costs of programs. Finally, we interviewed court administrators, program coordinators, judges, and guardians and we visited officials in eight counties.³

In general, we found variety. Counties use guardians in a wide variety of cases, and various types of people are used as guardians. We also found that costs vary. We are not surprised by the variety, because the programs are county based and the differences among them reflect the significant demographic, social, and economic variations that exist in Minnesota. Finally, we found that while volunteer programs are highly rated, it is difficult to implement volunteer programs in some areas.

WHY DO WE USE GUARDIANS *AD LITEM* IN MINNESOTA?

The underlying reason guardians are used is of course to protect children. In some situations judges have discretion to appoint or not appoint a guardian, but in others they are required by law to appoint a guardian.

¹ Guardian training, recruitment, selection, supervision, and evaluation are discussed in more detail in later chapters.

² The data analysis was complicated by the extensive comments offered by all groups we surveyed. Where possible, we attempted to include these comments in our evaluation.

³ We visited programs in Carlton, St. Louis, Kandiyohi, Washington, Goodhue, Olmsted, Ramsey, and Hennepin counties.

The underlying reason to use guardians is to protect children.

Under Minnesota law, guardians must be appointed in juvenile court for any child involved in a child abuse or neglect proceeding.⁴ Minnesota law also requires the appointment of a guardian in certain other juvenile court cases. For example, unless the court finds that the interests of the child are adequately protected—usually by the appointment of a lawyer for the child—the court may require the appointment of a guardian in cases where the court believes the parent is absent, incompetent, indifferent, or hostile to the child’s interests. The judge may also choose to appoint a guardian in other juvenile court cases, such as in cases of delinquency.⁵

In family court, Minnesota law requires the appointment of a guardian when the judge deems it likely that abuse has occurred in any proceeding where custody or visitation is an issue.⁶ The judge may also choose to appoint a guardian in other cases of divorce or separation where visitation or custody is an issue.⁷ In these cases, guardians may be asked to advise the court on issues related to custody, support, and visitation. Several judges told us that such appointments are usually made when the case is highly contentious, and guardians usually were not appointed when parents were able to cooperate. Some program coordinators told us that they select only the most experienced guardians for family court cases.

Judges told us that they want guardians to give them an independent assessment of a case, from the perspective of an outsider who has nothing to gain, but always putting the needs of the child first. Judges and others told us that guardians often have lighter caseloads than county protective services workers and can help monitor the progression of a case through the system. By using guardians, judges hope to prevent cases, particularly cases involving children in need of protective services, from getting lost in the system. Finally, judges told us they want cases settled outside of court, and they often perceive guardians as neutral parties who can help facilitate consensus.

Judges want guardians to give them an independent assessment of a case.

GUARDIAN SERVICE DELIVERY IN MINNESOTA

Minnesota’s 87 counties are organized into ten judicial districts, as shown in Figure 2.1. As shown in Figure 2.2, the number of cases likely to use guardians is unevenly distributed across these ten districts. It is also worth noting that we were

⁴ *Minn. Stat.* §260.155, subd. 4. A petition may be filed in juvenile court in a case when the complainant believes there is a Child In Need of Protection or Services (CHIPS). We did not attempt to determine if guardians were appointed to all CHIPS cases. However, the Health and Human Services study surveyed 15 of 87 Minnesota counties, and they estimated that about 95 percent of Minnesota CHIPS cases were assigned guardians. The report also indicated that 14 of the 15 counties appointed guardians to all abused and neglected children. Hennepin County reported assigning guardians to about 80 percent of these mandatory cases. U.S. Department of Health and Human Services, *Appendix A: National Study of Guardian Ad Litem Representation*, 10, 142.

⁵ Guardians may also be appointed for a variety of other purposes, including delinquency, consent for neuroleptic medications (so-called Jarvis hearings), probate, adoption and paternity proceedings.

⁶ *Minn. Stat.* §518.165, subd. 2.

⁷ *Minn. Stat.* §518.165, subd. 1.

told by several court administrators and judges that, as cases have become increasingly complex, guardian use has increased faster than the number of juvenile and family court cases.

As with most other aspects of court cases, judges play a key role in the appointment of guardians. In fact, historically, the process has been quite informal and personal, with judges left to find a person who fit the judge's image of the ideal guardian. This has been especially true in rural Minnesota, where the number of cases, and opportunities for guardian use, is relatively low. Judges

Figure 2.1: Minnesota Judicial Districts

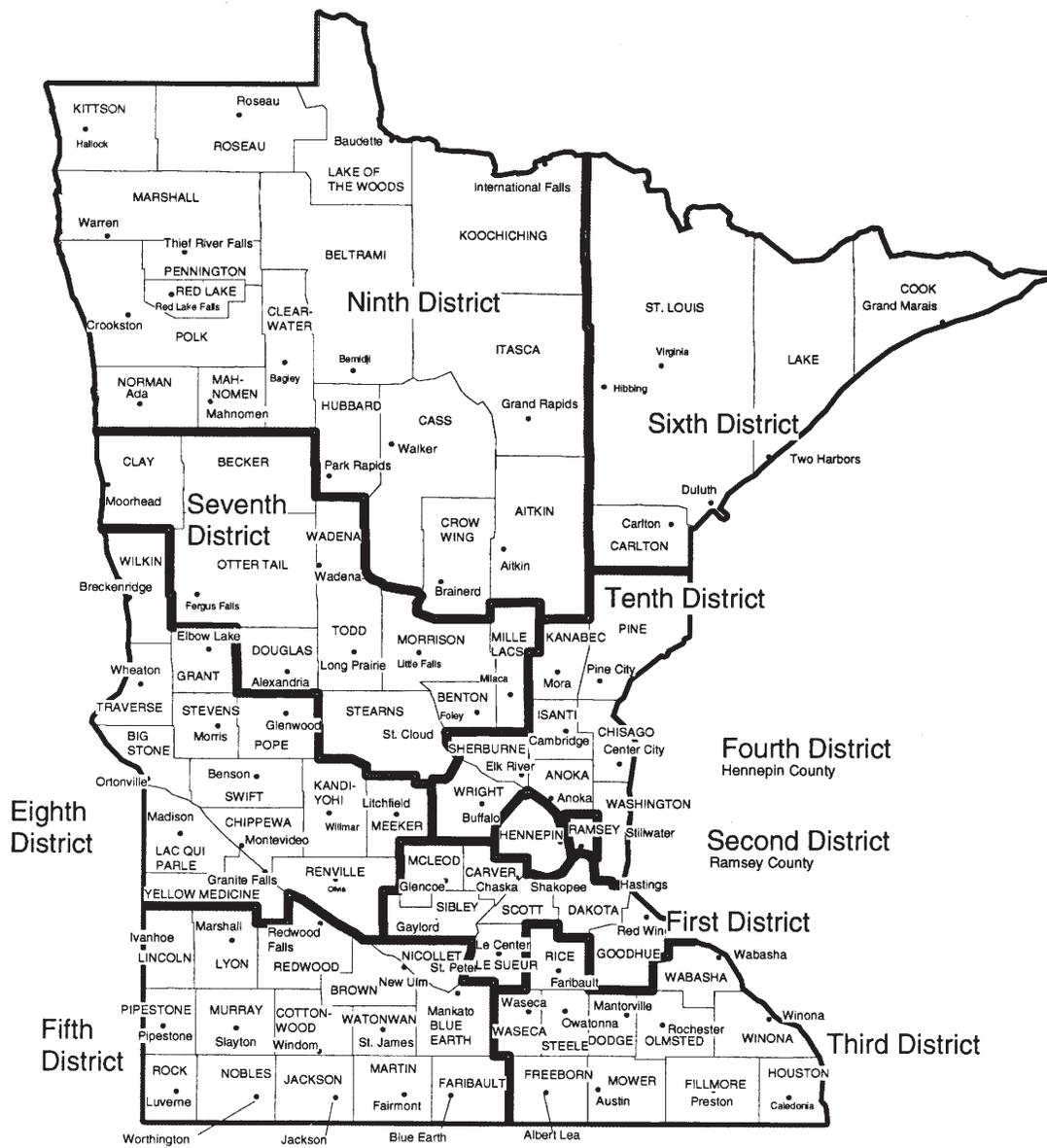
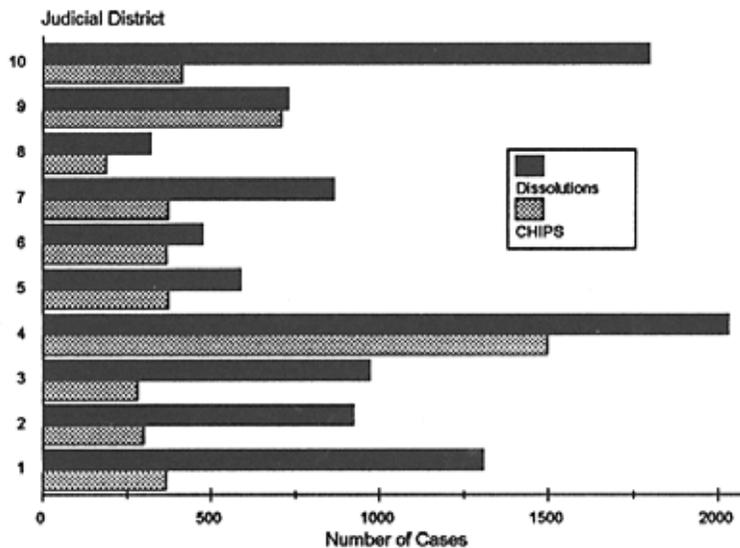


Figure 2.2: Case Filings for Dissolutions with More Than One Child and Children in Need of Protection or Services by Judicial District, 1993



Note: Dissolutions are divorces with one or more children. Cases of Children in Need of Protection or Services are also referred to as CHIPS cases.

Source: Minnesota Supreme Court.

In 1986, the Minnesota Judges Association developed a set of guidelines for guardians ad litem.

were, and in some places still are, highly involved in the selection and supervision of guardians.⁸

During the 1970s and early 1980s guardian programs in Minnesota developed sporadically. At the same time, as described in Chapter 1, the number of volunteer programs in other states increased. In Minnesota, the Minnesota Association of Guardians Ad Litem (MAGAL) organized to serve guardians throughout Minnesota. In 1986 the Minnesota Judges Association adopted a 70 page document, *Guidelines for Guardians Ad Litem*.⁹ The guidelines provide information about guardian appointment, roles, screening, training, and supervision, but they are not set in rule or statute and the Judges Association has not recommended that they should be.¹⁰ The *Guidelines* are currently being revised by the Supreme Court.

⁸ Recruitment, selection, supervision, and evaluation of guardians is discussed in Chapter 4.

⁹ Minnesota Judges Association, *Guidelines for Guardians Ad Litem* (St. Paul: June 1986).

¹⁰ The *Guidelines* did recommend defining guardian absolute immunity in statute. This recommendation accompanied a suggestion that guardians acquire liability insurance for errors and omissions, even though the doctrine of absolute immunity existed in Minnesota case law. The *Guidelines* have been cited in several Minnesota cases, primarily related to immunity, and to that extent they have authority, but this is not well understood in many counties or by most guardians.

Types of Programs for Delivering Guardian Services

The majority of Minnesota's guardians are volunteers.

Based on our survey of court administrators, we categorized programs by the type of guardian predominantly used in the program: paid attorneys, paid non-attorneys, and volunteers. But, it is worth emphasizing that some programs are mixed. For example, at the discretion of the judge, volunteer programs occasionally use attorneys as guardians for certain types of cases. If court administrators indicated that both paid attorneys and paid non-attorneys were used but did not indicate which type of guardian was used most frequently, the program was classified as a paid attorney program.¹¹ Figure 2.3 shows the type of guardian program by county. Hennepin County uses paid attorney guardians for family court cases and volunteer guardians in juvenile court and is treated as a unique system in this figure. Table 2.1 summarizes Supreme Court case data and the number of guardians by type of guardian program. We found:

- **Most county guardian programs use paid non-attorney guardians, but the majority of guardians in Minnesota are volunteers.**

Programs using volunteer guardians account for about 15 percent of all programs, but about 60 percent of all guardians. The 13 volunteer programs have, on average, significantly more guardians, more cases, and larger budgets than other types of guardian programs.

Although we classified programs into one of three categories by the type of guardian, we determined that guardian programs also differed on other factors,

Table 2.1: Case Filings for Cases of Dissolutions With Children and Children in Need of Protection or Services By Type of Guardian Program, 1993

| Attorney | Paid Attorney | Paid Non-Attorney | Volunteer | Ramsey Volunteer | Hennepin Attorney | Hennepin Volunteer | Minnesota |
|--|---------------|-------------------|-----------|------------------|-------------------|--------------------|-----------|
| Dissolutions With Children | 689 | 4,047 | 2,282 | 919 | 2,024 | — | 9,961 |
| Children in Need of Protection or Services | 368 | 1,833 | 832 | 296 | — | 1,493 | 4,822 |
| Number of Guardians | 85 | 315 | 239 | 173 | 45 | 185 | 1,042 |
| Number of Guardian Programs | 13 | 62 | 11 | 1 | 1 | 1 | 89 |

Note: Number of guardians is a duplicated count. St. Louis and Hennepin counties each have two programs for a total of 89 programs in 87 counties.

Source: Program Evaluation Division analysis of data from the Minnesota Supreme Court and survey of county court administrators.

¹¹ For most analyses, we treated as separate programs the guardian systems operated for Hennepin County juvenile court, Hennepin County family court, northern St. Louis County and southern St. Louis County. Northern and southern St. Louis County have separate programs and coordinators, and court statistics are reported separately for the two jurisdictions.

Some county guardian programs have recently changed.

including the type and extent of supervision and program coordination, training requirements, and other factors. We concluded that:

- **The type of guardian program a county uses depends on the case volume, local resources, history, and philosophy of the court.**

Supreme Court data indicate that counties with paid attorney programs reported a somewhat smaller number of Child in Need of Protection or Services (CHIPS), other juvenile, and divorce cases, on average, than counties with paid non-attorney and volunteer programs. Judges and court administrators told us that it was not necessary to maintain a formal guardian program in counties with low numbers of cases, and that they could always find a lawyer, if needed, to serve as a guardian. Moreover, they said, lawyers needed no training or supervision to act as a guardian.

Judicial districts are not homogeneous, and counties that are within a multi-county district are likely to use different types of guardians. We did not attempt to review historical files, but we were told by judges and court administrators that each Minnesota county, in large part driven by the philosophy of the court or an administrator, determined which type of guardian program best suited its needs. However, the system is not static. One county recently abandoned volunteer guardians in favor of paid non-attorney guardians, in part because of the difficulty of finding volunteers. Another county told us that they were abandoning the paid non-attorney model in favor of paid attorneys, because of high guardian turnover. Another county recently contracted with a non-profit organization to provide, coordinate and supervise paid non-attorney guardians. At least ten counties use three external organizations to provide coordinators or guardians.

About 25 percent of all guardians responding to our survey were independent contractors, while 15 percent were county or court district employees. The remaining 60 percent of respondents to our survey said they were volunteers. Some paid non-attorney guardians expressed concern about their status as independent contractors, and felt it was simply a way for counties to avoid granting them benefits. Any changes to the guardian program to increase supervision and adopt training requirements might affect the ability of counties to classify guardians as independent contractors.

PAYING FOR GUARDIANS *AD LITEM* IN MINNESOTA

Most counties were unable to provide detailed cost data for guardian programs.

We asked each county to provide detailed information on costs for guardian programs, specifically for training, salaries, and contract services, for 1993 and budgeted 1994. Most counties were unable to provide detailed cost data, five counties provided data for only one year, and four provided no data at all. In addition, we were told that some supervisory and other costs were often

commingled with other court functions, and, thus, were not completely reported. We also asked each county for the total number of juvenile and family court cases assigned guardians during 1993, and just over two-thirds of all guardian programs provided these data.

Table 2.2 shows the 1993 total guardian budget by type of guardian program. Where budget data were not reported by the county, we made estimates.¹²

According to our estimates:

- **In 1993, almost \$3 million was spent providing guardian services statewide, using the services of about 850 different guardians.¹³**

Table 2.2: Estimated Guardian Program Costs By Type of Guardian Program, 1993

| | <u>Paid Attorney</u> | <u>Paid Non-Attorney</u> | <u>Ramsey Volunteer</u> | <u>Hennepin Volunteer</u> | <u>Hennepin Attorney</u> | <u>Volunteer</u> | <u>Minnesota</u> |
|-----------------|--------------------------|------------------------------|-----------------------------|-------------------------------|------------------------------|------------------|------------------|
| Program Average | \$ 8,728 | \$ 21,329 | \$ 50,106 | \$218,339 | \$182,625 | \$418,183 | — |
| All Programs | \$113,467 | \$1,322,460 | \$551,170 | — | — | — | \$2,806,243 |

Relatively few guardians are from minority groups, and most are women.

Court administrators told us that few guardians are from minority groups (we estimate less than 10 percent statewide), although this varies by county. Almost three-fourths of all guardians statewide are women. The Hennepin County volunteer program estimated that about 13 percent of their guardians are minorities, and only 11 percent are men.

We were told that the number of children provided guardian services is likely higher than the number of cases, since divorces often involve more than one child. It is also likely that the real costs are larger, since many counties record the costs of operating guardian *ad litem* programs in the budgets of other departments. Over \$800,000 was spent in Hennepin and Ramsey counties alone.

We found that program administration varied widely among counties. In almost three-fourths of the counties, court services or the court administrator's office administered the guardian program. In other counties, guardian programs are administered by community corrections departments, staff guardians, guardian program coordinators, judges, or external agencies. At least three private organizations provide and/or coordinate guardian services in ten counties—Catholic Charities in Winona County, a law firm in southern St. Louis County,

¹² Where data for 1993 expenditures was missing, we used 1994 data if available. For the four counties with no financial data, we estimated 1993 expenditures using a model based on the total number of dissolutions with children filings reported by the Supreme Court, whether the program reported using attorney guardians, and the estimated total number of guardian cases. We excluded Ramsey and Hennepin counties' data from the estimation process.

¹³ Counties told us they used just over 1,000 guardians, but about 15 percent of these names were provided by more than one court administrator. On the basis of our surveys and by cross-referencing names given to us by counties, we estimated that about 850 different individuals acted as guardians in 1993.

More than half of all guardian programs reported using five or fewer guardians.

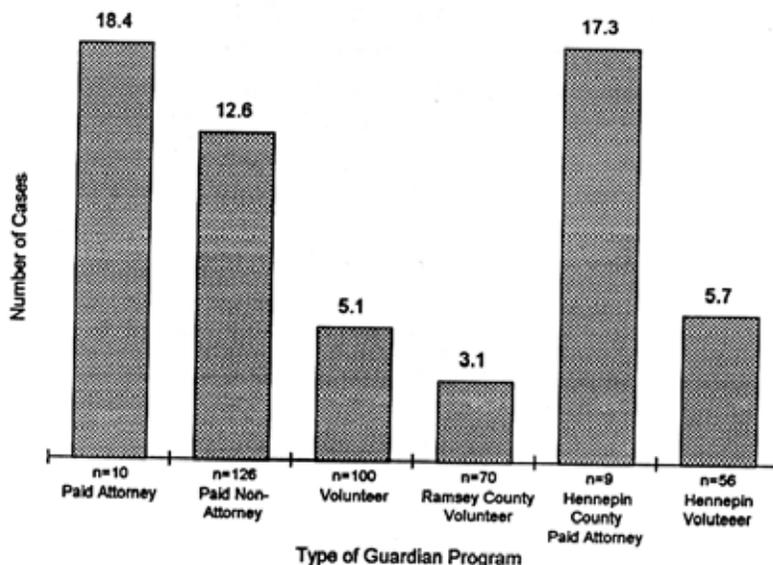
and Guardian Services, Inc. in Anoka, McLeod, Sibley, Carver, Scott, LeSueur, Rice, and Dakota counties.¹⁴ Several counties told us that they share guardians, sometimes because they share judges, and ten programs said they sent their guardians for training to another county. Most counties' guardian programs are small, especially outside the Twin Cities' metropolitan area, and more than half the programs reported using five or fewer guardians. The guardian programs in the 8th district are state funded (Kandiyohi, Meeker, Renville, Yellow Medicine, Lac Qui Parle, Chippewa, Swift, Big Stone, Pope, Stevens, Grant, Traverse, and Wilkin counties, as shown in Figure 2.3); counties fund all other guardian programs.

We found that the hourly rate for paid-attorney guardians was about the same for any type of guardian program, approximately \$50 to \$55 per hour. Non-attorney hourly rates were much more variable, ranging from \$8 to \$40 per hour, but may include the cost of coordination and supervision for counties that use an external agency to provide guardian services.

We asked guardians how many active and inactive juvenile and family court cases they carried on average. As shown in Figure 2.4, paid attorney guardians told us that they were assigned about 18 cases on average, compared to almost 13 for paid non-attorney guardians and about 5 for volunteer guardians.

We asked each county to tell us the number of cases carried by their guardians during 1993. Only 46 percent of counties using paid attorneys reported the

Figure 2.4: Self-Reported Guardian Caseload by Type of Guardian Program, 1991



Note: Data from Ramsey and Hennepin counties are evaluated separately from other types of guardian programs. Numbers were reported by guardians for active and inactive juvenile and family court cases.

¹⁴ In addition, the Family Resource Center will run the Chisago County guardian program beginning in 1995.

number of cases, compared to 74 percent of counties with paid non-attorney guardians and 64 percent of counties using volunteer programs. The lower reporting rate may be due to a lack of county oversight for attorney programs and incomplete records. We estimated the number of guardian cases for 27 programs with missing data, and calculated the cost per case as shown in Tables 2.3.¹⁵

- **We estimate that across Minnesota in 1993 guardians carried just over 6,300 cases and costs averaged \$450 per case statewide, ranging from a low of \$63 to a high of \$1,500 per case.**

Table 2.3: Estimated Cost Per Guardian Case By Type of Guardian Program, 1993

| | <u>Paid Attorney</u> | <u>Paid Non-Attorney</u> | <u>Volunteer</u> | <u>Ramsey Volunteer</u> | <u>Hennepin Attorney</u> | <u>Hennepin Volunteer</u> | <u>Minnesota</u> |
|---------------------------|----------------------|--------------------------|------------------|-------------------------|--------------------------|---------------------------|------------------|
| Average Cost Per Case | \$ 257 | \$ 456 | \$ 435 | \$448 | \$525 | \$486 | \$ 445 |
| Program Low | \$ 65 | \$ 63 | \$ 115 | — | — | — | \$ 63 |
| Program High | \$1,500 | \$1,327 | \$1,303 | — | — | — | \$1,500 |
| Estimated Number of Cases | 442 | 2,899 | 1,266 | 487 | 348 | 860 | 6,302 |

Note: Guardian case data for 27 programs was estimated. Average cost was calculated by dividing total expenditures by the estimated number of cases.

Estimated cost per guardian case varied widely.

Cost per guardian case varied widely, and we could not measure case complexity, time spent on each case, and other factors affecting case cost. Paid attorney guardians were criticized for the limited amount of time they spent on each case. Also, as stated above, incomplete reporting of supervisory costs may be a factor.¹⁶ While the rates paid to attorney guardians appear high, the cost per case is similar to that for paid non-attorneys and volunteer guardians, largely due to relatively large caseloads for attorney guardians and the costs of providing supervision and training for paid non-attorney and volunteer programs. Volunteers are technically unpaid, but some programs have liberal policies for expense reimbursement such as mileage and meals, and some even cover child care. Volunteer program costs are also increased by higher costs for recruiting and training. Almost all volunteer programs have coordinators who help assign, supervise, and evaluate guardians. Other program costs may include newsletters and recognition programs.

¹⁵ We estimated the number of 1993 juvenile court cases for those counties with missing data using a model based on data reported by the counties for the number of CHIPS, other juvenile, and termination of parental rights filings reported by the Supreme Court, and court administrator's estimate of the total number of juvenile court cases, if available.. We estimated the number of 1993 family court cases using the number of dissolutions with children, CHIPS, adoption, and termination of parental rights filings reported by the Supreme Court, the number of guardians, whether any paid guardians were used, and the court administrator's estimate of the total number of family court cases, if available.

¹⁶ In many counties, some guardian fees were recovered from parents, usually in divorce cases, and we were told that these revenues were deposited into the county general fund.

EVALUATION OF DIFFERENT TYPES OF GUARDIAN PROGRAMS

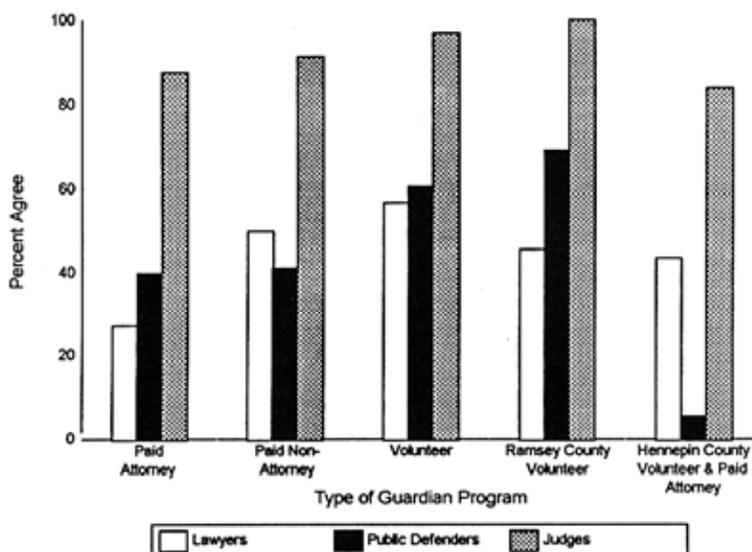
Guardian programs get mixed reviews.

We asked judges, lawyers, and public defenders to rate their overall experience with their guardian programs, and we then analyzed their responses by type of guardian program. Public defenders are more likely to work with guardians in juvenile court; family practice lawyers are more likely to work with guardians in family court.¹⁷ As we analyzed responses from family practice lawyers and public defenders, we also examined their previous experience as guardians. We also reviewed complaints we received about individual guardians. Finally, we asked judges, lawyers, and public defenders to rate guardians with whom they work on a list of characteristics and analyzed responses by type of guardian program. We separated responses from Hennepin and Ramsey counties from the rest of the volunteer and paid attorney programs and analyzed them separately. We found:

- **Judges are generally satisfied with their guardian programs, but family practice lawyers and public defenders may disagree.**

As shown in Figure 2.5 the vast majority of judges who responded to our survey told us they were satisfied with their guardian programs, but family practice lawyers and public defenders gave guardian programs much lower ratings. Lawyers and public defenders with previous experience acting as a guardian were apparently more sympathetic to guardians, and were more likely to rate any

Figure 2.5: Percent of Lawyers, Public Defenders, and Judges Rating Guardian Programs Positively



Note: Data from Hennepin and Ramsey counties were evaluated separately from other types of guardian programs. Family practice lawyers, public defenders, and judges were asked: "How would you describe your overall experience with guardians *ad litem*?"

¹⁷ Several counties contract with public defenders to act as guardians in juvenile court.

We heard many complaints about guardians.

program positively compared to lawyers and public defenders with no previous guardian experience. Family practice lawyers and public defenders expressed similar satisfaction with guardian programs, except in Hennepin County.

Parent advocates and lawyers told us about problems with individual guardians, including bias toward either mothers or fathers, ignorance about legal procedure, and failure to adequately investigate a child's situation. There was a feeling that some guardians were narrowly focused on their own power and ability to control others. We heard many reports of guardian impropriety, and these reports came from counties throughout the state. While much of the criticism came from programs within the metropolitan area, the number of complaints seemed in agreement with the relatively large number of juvenile and family court cases that come from this area.

Programs Using Paid Attorneys

Judges responding to our survey expressed slightly less satisfaction with guardian programs using paid attorneys, but some judges believe that lawyers make the best guardians, particularly in contentious family court cases.¹⁸ Hennepin County is one of several programs that uses paid attorneys almost exclusively in family court.¹⁹ Lawyers know the court system, and this was important to judges concerned about legal process. In our survey, judges had a clear preference for attorney guardians in cases involving complex legal issues, as shown in Figure 2.6.

The average hourly rate for attorneys across the state was nearly \$55, and some administrators told us it was difficult to justify this rate when other nearby jurisdictions used less expensive non-attorney guardians. However, in counties where attorney guardians had higher juvenile and family court caseloads, differences in rates of pay were less important.

One national study indicates that guardians who are attorneys spend less time on cases than non-attorneys.²⁰ The study found that attorneys tend to spend less time with the child, their family and other professionals, and do not develop a full picture of child's situation.²¹ In Minnesota, attorney guardians were also criticized by some of our survey respondents for a lack of training in child development and family dynamics. Others commented that there is an inherent conflict of interest when an lawyer practicing before a court also acts as a guardian in the same court, and the relationship with the judge may be perceived as too familiar. We can find no reason to require that all counties use paid

¹⁸ We were often unable to distinguish which Hennepin County guardian program judges evaluated, and analyses using judges' ratings may apply to either program.

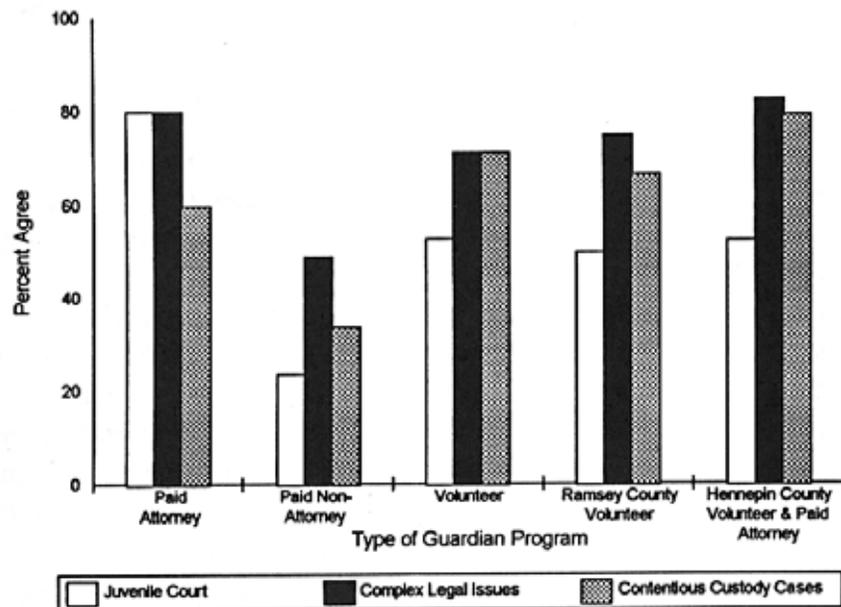
¹⁹ Hennepin County uses either one of the four attorneys under contract to the county or refers cases to one of the 42 attorneys in a guardian pool. Other counties refer cases to one or more local attorneys.

²⁰ U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *Final Report on the Validation and Effectiveness of Legal Representation through Guardian ad Litem*, (Washington: October 1990), 4-10.

²¹ We did not study time spent on each case.

Judges may prefer attorney guardians for complex or contentious cases.

Figure 2.6: Percent of Judges Saying that Guardian Should be an Attorney in Different Types of Cases



Note: Data from Hennepin and Ramsey counties were evaluated separately from other types of guardian programs. Judges were asked to rate how often guardians should always or sometimes be attorneys for five types of cases.

attorney guardian programs. However, we also recognize that in some sparsely populated counties with small caseloads, paid attorney guardian programs may be the most practical way to provide services.

Programs Using Paid Non-Attorneys

About 91 percent of judges rated paid non-attorney programs positively. Paid non-attorney programs are seen as a compromise between paid attorney and volunteer programs. Supporters of paid non-attorney programs believe such programs are relatively easy to develop and administer, that these programs are easier to coordinate and supervise than volunteer programs, that professionals should be paid for their services, and that an employment or contractual relationship increases accountability.

Lawyers generally rated paid non-attorney programs fairly low, and compared to other programs, lawyers rated non-attorney guardians less experienced, less informed about the legal system and unwilling to question witnesses. Public defenders rated programs using paid attorney and paid non-attorney about the same, although there was some variability due to previous experience as a guardian. The paid non-attorney program is an alternative to the paid attorney program in those counties with relatively small caseloads.

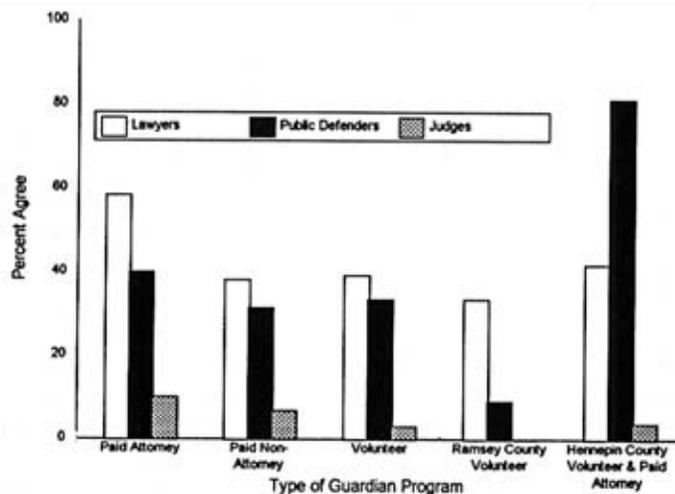
Programs Using Volunteers

As shown in Figure 2.5, most judges from counties with volunteer programs rated them positively and, excluding Ramsey and Hennepin counties, family practice lawyers rated volunteer guardians highest overall. Judges and particularly public defenders rated the Hennepin County program less positively. Volunteers often told us that volunteering shows a deep commitment to the children they serve. They also noted that volunteers tend to carry smaller caseloads, and we were told that volunteer guardians spend more time on each case, as found in one national study.

The Ramsey County program was rated as highly as any other program, and 100 percent of judges responding to our survey rated it positively. Judges and lawyers did rate guardians from Ramsey County as less likely to attend court hearings, compared to guardians from other types of programs.

In Figure 2.5, 84 percent of Hennepin County judges rated their programs positively, somewhat lower than ratings for other types of guardian programs.²² Public defenders from Hennepin County were very critical of that county's guardians. As illustrated in Figure 2.7, public defenders reported that guardians in Hennepin County do not adequately investigate cases. Hennepin County public defenders commented frequently in attached written comments about the unwillingness of volunteer guardians in juvenile court to oppose the opinions of social workers and other professionals. We were told by others within the system

Figure 2.7: Percent of Lawyers, Public Defenders, and Judges Agreeing that Guardians Do Not Adequately Investigate Their Cases



Note: Data from Hennepin and Ramsey counties were evaluated separately from other types of guardian programs. All respondents were asked to indicate how strongly they agreed with the statement, "Guardians generally do not adequately investigate their cases."

²² Fewer judges from counties using attorney programs responded to our survey, and this could affect those results.

that guardians may be appointed late to these cases, and may rely on investigative work done by other professionals.²³ Conversely, we were told that, unlike Ramsey County, public defenders in Hennepin County are no longer under contract to act as attorneys for guardians. Ramsey County officials told us that guardians are often appointed to a case relatively late, and that the issue is one of limited resources. We were told that in Hennepin County, if all parties agree, appointments are often delayed until pre-trial.

Volunteer programs are not a cost-saving alternative to other types of guardian programs.

Many volunteer programs do a good job, but they are moderately expensive. As discussed above, most volunteer programs provide training and have supervisory expenses for recruiting, evaluation, and program coordination. It is vital that any type of guardian program fit the community needs and economic constraints of the county or judicial district. In some communities, it may be difficult to develop a volunteer program. The volunteer programs we observed possess strong, committed coordinators, but such individuals may be difficult to recruit and train. The benefits can be substantial, but volunteer programs should not be considered as a quick fix or cost-saving alternative to other types of guardian programs. In cases where guardians with special skills are needed, such as lawyers or specific cultural advocates, guardians may need to be paid to ensure availability.

SUMMARY

Judges use guardians in various ways to ensure that children and their needs get adequate attention. Minnesota law requires the appointment of a guardian *ad litem* for several types of cases, and allows discretionary appointment in others. Guardian use is likely to increase in the near future, since judges value the extra voice and independent perspective that guardians are expected to provide.

We categorized programs by the type of guardian predominantly used in the program—paid attorneys, paid non-attorneys, and volunteers—but some programs are mixed. We estimated that in 1993 about 850 people served as guardians in one or more counties, at a cost of almost \$3 million dollars. Most guardians were women, and relatively few were minorities. Currently, the guardian programs in the eighth judicial district are state funded; all others compete for county resources. Most programs are administered at the county level, but cooperation among programs does exist. At least three non-public organizations contract to provide guardian services to programs in ten counties.

County needs and resources vary considerably, and guardian use reflects these differences. The differences among counties makes it nearly impossible to identify one type of program that would best serve all jurisdictions. While we could find no reason that guardians must be attorneys, we also recognize that in some sparsely populated rural counties with small caseloads, paid attorney guardians may be the most practical choice.

²³ Appointment of guardians is discussed in more detail in Chapter 4.