



Colorado Office of the State Auditor

**Office of the Child's Representative
Guardians ad Litem
Judicial Branch
Performance Audit
June 2007**



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June 29, 2007

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Office of the Child's Representative Guardians ad Litem Program. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the Colorado Office of the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The Colorado Office of the State Auditor contracted with Clifton Gunderson LLP to conduct this performance audit in accordance with generally accepted government auditing standards. The report presents our observations, findings, and recommendations.

Very truly yours,

Clifton Gunderson LLP

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Report Summary

Office of the Child's Representative

Authority, Purpose, and Scope

Clifton Gunderson LLP conducted this performance audit under contract with the Colorado Office of the State Auditor pursuant to Section 2-3-103, C.R.S. This audit reviewed the State's Guardians ad Litem Program, as overseen by the Office of the Child's Representative (OCR). Audit work was completed in May 2007 in accordance with generally accepted government auditing standards. We acknowledge the assistance and cooperation extended by management and staff at the OCR, State Court Administrator's Office, and Colorado State Judicial Districts.

Background

Colorado law requires the court to appoint an attorney as a Guardian ad Litem (also referred to as a "guardian" or "guardians" in this report) to represent the best interest of children in all dependency and neglect judicial proceedings. A dependency and neglect case is initiated by a county department of human services and alleges one of the following (1) a child has been abandoned or mistreated; (2) a child lacks proper parental care; (3) a child's environment is injurious to his or her welfare; (4) a child has not been provided with proper subsistence, education, medical care, or other care; (5) a child is homeless, without proper care, or not living with his or her parent, guardian, or legal custodian; or (6) a child has run away or is beyond the control of his or her parent, guardian, or custodian. The court may also appoint a Guardian ad Litem in delinquency, probate, paternity, and other types of judicial proceedings involving children.

The OCR, an independent agency within the Judicial Branch, oversees the provision of Guardian ad Litem services in Colorado's 22 judicial districts. According to the statute (Section 13-91-105, C.R.S.), the OCR's responsibilities include assisting the Colorado Supreme Court in establishing standards for Guardians ad Litem and overseeing the practice of guardians to ensure compliance with all relevant statutes, orders, rules, directives, policies, and procedures. The OCR is also responsible for contracting with attorneys who are qualified to serve as Guardians ad Litem and maintaining a list of those attorneys for the courts to use when making appointments. In Fiscal Year 2006, the OCR contracted with 169 attorneys to provide Guardian ad Litem services in dependency and neglect cases. In addition, the OCR manages the 4th Judicial District's Office of Guardians ad Litem which is staffed with 15 salaried attorneys. In Fiscal Year 2006, the OCR was appropriated about \$9.8 million and 4 four full-time equivalents (FTEs), and had expenditures of about \$9.4 million. During this time period, about 6,800 new cases requiring Guardian ad Litem services were filed with the courts. Of these 6,800 cases, about 3,800 (56 percent) were dependency and neglect cases.

Summary of Audit Findings

Guardians ad Litem

We reviewed the effectiveness of the OCR in ensuring that Guardians ad Litem in Colorado provide high-quality representation to children in dependency and neglect cases and found that overall, the OCR has improved the provision of Guardian ad Litem services since the Office of the State Auditor's last audit in 1996. However, we identified areas where the OCR could further improve its oversight:

- **Representation.** Chief Justice Directive 04-06 (Directive) sets forth specific standards that guardians must follow when providing quality representation to children in dependency and neglect cases. These standards require, among other things, that guardians visit with the child within 30 days of the guardians' appointment, have contact with the parents or foster parents, and attend all court hearings. We reviewed a sample of 30 cases in six judicial districts for compliance with the Directive and found that overall, the Guardians ad Litem in our sample fully complied with only one of the six factors evaluated. For example, we found that all of the guardians in our sample met with the child or children in person at least one time. However, 8 of the 30 (27 percent) initial visits were outside of the Directive's 30-day requirement. For these eight cases, visits ranged from 31 to 89 days after the guardian was appointed to the case. In addition, we reviewed a sample of 152 court files to determine if the Guardians ad Litem appointed to these cases attended all court hearings. These 152 files had a total of 866 hearings. We found that the guardians assigned to these cases did not attend about 9 percent (74 of the 866 hearings) of the hearings.
- **Contract Renewals.** We evaluated the effectiveness of the OCR's process for reviewing Guardians ad Litem performance and found that the OCR lacked information and documentation to support its contract renewal decisions. More specifically we found that (1) not all judicial districts returned Guardians ad Litem performance evaluation forms; (2) the evaluation format could be improved to provide more objective and useful information; and (3) the OCR does not sufficiently document support for its contract renewal decisions, particularly when attorneys receive negative performance evaluations from judicial districts. Finally, we found that the OCR needs a more robust audit process to evaluate the performance of guardians.
- **Selection.** We reviewed the OCR's selection and hiring process and identified several areas in which the process can be strengthened. Specifically, we found (1) 5 of the 12 renewal applications we reviewed were not complete and were missing evidence of compliance with OCR application requirements (i.e., an affidavit of compliance with the Directive or proof of liability insurance); (2) the OCR could not provide evidence that it had reviewed references for the 12 new attorney applicants in our sample that were under contract with the OCR; (3) no evidence that the OCR verified the licensure status or disciplinary history for either the 25 new applicants or 12 renewal applicants in our samples; (4) the OCR has not formally established desired qualifications for Guardians ad Litem; and (5) the OCR does not consistently document interview results and recommendations for new applicants when making contract decisions.

- **Appointments.** We reviewed the Guardians ad Litem appointment process and found that, in some cases, courts are appointing attorneys who are not on the OCR's approved list. Specifically, we found that of the approximately 4,500 dependency and neglect cases that received guardian appointments in Fiscal Year 2005, 134 cases (3 percent) had guardians appointed who were not on the OCR's approved list. Similarly, of the approximately 4,100 dependency and neglect cases that received guardian appointments in Fiscal Year 2006, 73 cases (2 percent) had guardians appointed who were not on the OCR's approved list.
- **Evaluation of OCR Performance.** The General Assembly has charged the OCR with conducting an annual outcome-based evaluation of its performance to determine whether the OCR is effectively and efficiently improving child and family well-being. We found that the OCR's annual report, which is prepared in response to the statutory mandate, does not include an outcome-based evaluation of the OCR's performance. Additionally, the report does not include an evaluation of how well Guardians ad Litem are complying with Directive requirements and performance standards.

Our recommendations and the responses of the OCR and the State Court Administrator's Office can be found in the Recommendation Locator and in the body of the report.

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Recommendation Locator

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
1	21	Expand the audit process to cover a broader scope of guardians and to collect additional information on guardian performance, evaluate options for streamlining the review process, and establish standards for the supporting documentation that guardians should maintain to support their billings.	Office of the Child's Representative	Agree	November 2007
2	22	Review the Chief Justice Directive 04-06 performance requirements to determine if they are still appropriate and work with the Chief Justice, as needed, to make necessary changes.	Office of the Child's Representative	Agree	November 2007
3	25	Incorporate the results of a more robust audit process in the contract renewal decision-making process, continue to work with the State Court Administrator's Office to help improve the performance evaluation process, and reevaluate the contract renewal process.	Office of the Child's Representative State Court Administrator's Office	Agree Agree	November 2007 As determined by the OCR
4	28	Ensure applicants provide all required information and attachments before approving an application; verify and document references, licensure status, and disciplinary history before contracting with an attorney; formally establish the desired qualifications to be considered when evaluating applicants; and consistently document interview results and other information used to make contracting decisions.	Office of the Child's Representative	Agree	November 2007

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
5	30	Track court requests for non-approved attorney appointments and OCR approvals, periodically analyze ICON data to identify districts that appoint non-approved attorneys without contacting the OCR, and continue to work with the State Court Administrator's Office to emphasize the importance of appointing OCR-approved attorneys.	Office of the Child's Representative	Agree	November 2007
			State Court Administrator's Office	Agree	May 2007
6	33	Establish specific quantifiable performance measures, collect and analyze data to address these measures and support an overall evaluation of the OCR and the Guardians ad Litem program, and consider working with the General Assembly to propose statutory change to eliminate the requirement that OCR conduct an outcome-based evaluation to assess the effectiveness of the OCR in improving child and family well-being.	Office of the Child's Representative	Partially Agree	November 2007

Overview

Background

The Colorado General Assembly has recognized the importance of protecting children and has implemented several mechanisms to help the State provide this protection. Title 19 of the Colorado Revised Statutes (C.R.S.), also known as the Colorado Children’s Code, was established to protect the best interests of children involved in dependency and neglect judicial proceedings. In addition, in the Office of the Child’s Representative Act (Section 13-91-101, et seq., C.R.S.), the Colorado General Assembly recognized that the legal representation of children is a critical element in giving children a voice in the Colorado court system. The General Assembly also recognized that the representation of children is unique in that children often have no resources with which to retain the services of an attorney, they are unable to efficiently provide or communicate to an attorney the information needed to effectively serve their own best interests or desires, and they lack the ability and understanding to effectively evaluate and, if necessary, voice concerns about the quality of representation they receive. The General Assembly stated in Section 13-91-102, C.R.S., that, “to date, the State had been sporadic, at best, in the provision of qualified services and financial resources to this disadvantaged and voiceless population.”

With these concerns in mind, the General Assembly established the Guardians ad Litem program to represent children in need. A Guardian ad Litem (also referred to as a “guardian” or “guardians” in this report) is a licensed attorney appointed by the court to act in the best interests of children involved in judicial proceedings. It is the guardians’ responsibility to ensure that children’s rights and needs are met through competent, independent, and zealous advocacy. Rather than taking direction from the child client, as happens when an attorney represents an adult, Guardians ad Litem are responsible for using their own judgment to determine the legal position that is in the child’s best interest and to advocate the position, accordingly. Guardians ad Litem represent children in dependency and neglect, delinquency, probate, paternity, and other legal matters involving children.

The General Assembly established the Office of the Child’s Representative (OCR) in 2000. The OCR began to oversee the provision of all Guardian ad Litem services in Colorado in Fiscal Year 2002. Prior to Fiscal Year 2002, Guardian ad Litem services were overseen by the State Court Administrator’s Office.

Dependency and Neglect Proceedings

According to the statute (Section 19-1-111, C.R.S.), the court *must* appoint a Guardian ad Litem to represent the children involved in every dependency and neglect case. A dependency and neglect case is initiated by a county department of human services and alleges one of the following:

- A parent, guardian, or legal custodian has abandoned a child, subjected him or her to mistreatment, or allowed others to subject him or her to mistreatment.
- The child lacks proper parental care due to actions or omissions of the parent, guardian, or legal custodian.
- The child's environment is injurious to his or her welfare.
- A parent, guardian, or legal custodian fails to provide the child with proper subsistence, education, medical care, or other care necessary for his or her health, guidance, or well-being.
- The child is homeless, without proper care, or not living with his or her parent, guardian, or legal custodian.
- The child has run away or is otherwise beyond the control of his or her parent, guardian, or legal custodian.

If the court determines that a preponderance of evidence supports one of the above criteria, the court will adjudicate the child *dependent or neglected*. There are several different parties involved in dependency and neglect proceedings. First, the court appoints a Guardian ad Litem to represent the child at the time a petition is filed by the county department of social services alleging that the child is dependent or neglected. Once appointed, a guardian participates and advocates for the child's best interests through all court phases, including hearings, treatment plans, mediation, permanency plans, trials, and subsequent review hearings until the case is dismissed or the court's jurisdiction terminates. The State pays for a Guardian ad Litem in all dependency and neglect cases, regardless of whether the respondents (usually the parents) are indigent. For other types of cases requiring Guardian ad Litem services (e.g., domestic relations, adoption, paternity, etc.), at least one respondent must be indigent for the State to pay for the guardian. If neither respondent is indigent, the respondents are responsible for paying the costs associated with providing the Guardian ad Litem services.

In addition to the Guardians ad Litem, there may be a number of other parties involved in the child's dependency and neglect case. For example, a court-appointed special advocate (CASA) may also be appointed when the judge or magistrate believes it is appropriate, or at the request of a Guardian ad Litem or another party. A CASA is a trained volunteer who is appointed by the court

either to serve as a friend of the court and conduct independent investigations or to work under the direction of a Guardian ad Litem to serve the child's best interests. In Colorado, CASAs do not replace guardians on dependency and neglect cases; the Guardian ad Litem retains full responsibility for the legal representation of the child's best interests. A family court facilitator may also be involved in dependency and neglect cases. The family court facilitator, who is employed by the court, provides case management over all dependency and neglect cases within the facilitator's particular judicial district. Finally, there are attorneys representing the county department of human services and the parents.

As discussed previously, a guardian *may* be appointed in cases involving delinquency, probate, paternity, or other matters. However, this audit focuses on Guardian ad Litem services provided in dependency and neglect cases only.

Office of the Child's Representative

The OCR, an independent agency within the Judicial Branch, oversees the provision of Guardian ad Litem services in Colorado's 22 judicial districts. The OCR was created in 2000 and according to the statute (Section 13-91-104, C.R.S.), the OCR is responsible for "working cooperatively with the local judicial districts, attorneys, and any contract entity in order to form a partnership between those entities and persons and the State for the purpose of ensuring the provision of uniform, high-quality legal representation and non-legal advocacy to children involved in judicial proceedings in Colorado." The statute (Section 13-91-105, C.R.S.) lists numerous OCR responsibilities that are intended to help the OCR enhance the provision of Guardian ad Litem services in Colorado. These responsibilities include:

- Assisting the Colorado Supreme Court in establishing standards for guardians (Chief Justice Directives) and overseeing the practice of guardians to ensure compliance with all relevant statutes, orders, rules, directives, policies, and procedures.
- Ensuring the provision and availability of high-quality training for guardians and judges and assisting the Colorado Supreme Court in establishing minimum training requirements.
- Establishing fair and realistic compensation rates sufficient to attract high-quality, experienced attorneys.

Further, Directive 04-06 directs the OCR to: ensure and enhance competent representation of children in a cost-effective manner; select and contract with guardians; train and monitor the guardians; provide oversight and accountability for State-paid guardians; and investigate and resolve complaints regarding contract guardians. Under the Directive, the OCR must maintain a list of qualified attorneys who can serve as Guardians ad Litem for the courts to use when making appointments. To compile this list, the OCR contracts with attorneys who are

required to possess the knowledge, expertise, and training necessary to perform the court appointment.

In Fiscal Year 2006, the OCR contracted with 169 attorneys to provide Guardian ad Litem services in dependency and neglect cases in each of the State's 22 judicial districts. These 169 attorneys are independent contractors and are not required to work exclusively for the OCR. The OCR also manages the El Paso County Office of Guardian ad Litem in the 4th Judicial District. The El Paso County Office of Guardian ad Litem is based on a law firm model and is staffed with attorneys, case workers, case managers, and other support staff. These employees are all salaried non-classified state employees. In Fiscal Year 2006, there were 15 salaried attorneys providing Guardian ad Litem services in the El Paso County Office of Guardian ad Litem. The OCR also contracts with eight additional attorneys in the 4th Judicial District to provide Guardian ad Litem services when there is a conflict of interest with the El Paso County Office of Guardian ad Litem. For example, if two children in the same family require separate attorneys to ensure that both children's best interests are represented, there would be a conflict of interest for both attorneys to be with the Office of Guardian ad Litem. In this example, one of the eight additional attorneys that the OCR contracts with in the district would be appointed to represent one of the children.

Child's Representative Board

In addition to the OCR, the statute (Section 13-91-104, C.R.S.) directs the Colorado Supreme Court to appoint a nine-member Child's Representative Board (Board). According to the statute, the Board's responsibilities include providing governance to the OCR, providing fiscal oversight of the OCR's general operating budget, participating in funding decisions related to the Guardians ad Litem program, and assisting the OCR with providing training to guardians. The Board is also responsible for appointing the director of the OCR. The statute requires that Board members serve four-year terms, no more than five members may be from the same political party, and each congressional district in the State must have at least one member on the Board. Three members of the Board are required to be attorneys admitted to practice law in Colorado and who have experience representing children as Guardians ad Litem or as legal representatives of children. Three members must be Colorado citizens who are not attorneys, but who have experience advocating for children in the court system. The final three members must be Colorado citizens who are not attorneys and who have not served as CASA volunteers or child and family investigators.

Budget and FTE

The OCR was appropriated \$9.8 million and four full-time equivalents (FTEs) for Fiscal Year 2006. As the following table shows, the OCR's budget has increased 24 percent over the past four fiscal years. According to the OCR, this change has

been due to several reasons, including an overall increase in the size and complexity of the dependency and neglect caseload, which represented about 56 percent of the new cases requiring Guardian ad Litem services filed between Fiscal Years 2002 and 2006. In addition, in Fiscal Year 2004 the Joint Budget Committee approved the OCR's conversion from a flat fee payment system to an hourly rate system. As discussed below, guardians are now paid \$57 per hour for services provided rather than a flat fee of \$1,040 per dependency and neglect case. This conversion resulted in an increase to the OCR's budget and expenditures.

Office of the Child's Representative Appropriations, Expenditures, and FTE Fiscal Years 2002 Through 2006						
	2002	2003	2004	2005	2006	Percent Change 2002-2006
Appropriations (In Millions)	\$7.9	\$7.9	\$8.9	\$9.3	\$9.8	24%
Expenditures (In Millions)	\$7.9	\$7.7	\$8.5	\$9.2	\$9.4	19%
FTEs	4.0	4.0	4.0	4.0	4.0	0%
Source: Appropriations and FTE data from the Office of the Child's Representative's Fiscal Years 2002 through 2006 Long Bills. Expenditure data from Colorado Financial Data Warehouse.						

The OCR's contract attorneys bill the OCR for attorneys' fees. Subsequent to the OCR's conversion to an hourly rate payment system in Fiscal Year 2004, the OCR paid guardians on an hourly basis at rates established by the Joint Budget Committee (JBC) ranging from \$45 per hour for out-of-court work to \$55 per hour for in-court work. Effective July 1, 2006, the General Assembly increased the OCR's funding again, enabling the OCR to pay contract attorneys for all legal services at a flat rate of \$57 per hour. The July 1, 2006 budget increase did not include wage increases for the El Paso County Office of Guardian ad Litem salaried attorneys. According to the Guardians ad Litem contract, the OCR will also reimburse attorneys for costs incurred for expert witnesses, depositions, interpreters, and other court costs normally paid for by the State in indigent cases, only if the OCR approves such expenses in advance. According to the OCR guidelines, the maximum payment amount allowed for attorneys fees and other costs in a dependency and neglect case is \$2,000, unless prior approval is obtained from OCR management. In Fiscal Year 2006, the OCR reimbursed its Guardians ad Litem approximately \$8.8 million for attorney services and related costs for all types of cases (e.g., dependency and neglect, juvenile delinquency, truancy, probate, etc.). This includes about \$1.4 million paid to the 4th Judicial District for the salaries and benefits of the 15 attorneys in the El Paso County Office of Guardian ad Litem. In addition, the OCR spent about \$600,000 on administration and operating costs, \$28,000 on training, and transferred \$20,000 to the CASA program as mandated by statute. The appendix lists the OCR's total expenditures related to Guardian ad Litem services for dependency and neglect cases in each judicial district and the average expenditure per case for Fiscal Year 2006.

Caseload

In Fiscal Year 2006, about 6,800 new cases were filed requiring Guardian ad Litem services through the OCR. Of the 6,800 cases, approximately 3,800 (56 percent) were dependency and neglect cases. As discussed previously, expenditures have increased over the past four years. As the table below shows, the overall number of cases requiring Guardian ad Litem services has decreased about 6 percent since Fiscal Year 2002, while the number of dependency and neglect cases has increased by about 18 percent. According to the OCR, an increase in the number of dependency and neglect cases and the complexity of these cases has contributed to higher program costs. The following table shows the distribution of cases among the different case types during Fiscal Years 2002 through 2006.

Office of the Child's Representative New Guardians ad Litem Cases Filed by Case Type Fiscal Years 2002 Through 2006						
Case Type	2002	2003	2004	2005	2006	Percent Change 2002-2006
Dependency & Neglect	3,200	3,490	3,920	3,740	3,780	18%
Juvenile Delinquency¹	2,900	2,720	2,620	2,840	2,350	-19%
Truancy²	410	290	270	180	320	-22%
Probate³	240	230	250	230	150	-38%
Other⁴	480	480	350	250	220	-54%
TOTAL	7,230	7,210	7,410	7,240	6,820	-6%
<p>Source: Auditor's analysis of the Integrated Colorado On-line Network (ICON) case management system data from the Colorado Judicial Branch, Division of Planning and Analysis for Fiscal Years 2002 through 2006.</p> <p>¹ Juvenile Delinquency includes cases in which a juvenile is alleged to have committed or is found guilty of violating any statute, ordinance, or order. In juvenile delinquency cases, a Guardian ad Litem is assigned when no parent, guardian, or custodian appears on behalf of the child, there is a conflict of interest between the child and parent, or if the court determines that it serves the best interests of the child.</p> <p>² Truancy includes all proceedings under the School Attendance Law of 1963.</p> <p>³ Probate includes cases where the court, following a person's death, establishes the legal validity of a will or other documents and conducts an inventory and distribution of assets, and a child is a party to the case.</p> <p>⁴ Other includes criminal (e.g., cases in which a child is charged as an adult), civil (e.g. cases in which a minor is suing someone or being sued), juvenile relinquishment (e.g., cases in which the legal rights of a child's parents are terminated), mental health (e.g., cases in which there is an application for hospitalization on behalf of a child under the age of 15 who is a ward of the Department of Human Services), paternity (e.g., cases to establish paternity and enforce child support), and domestic relations (e.g., cases in which there is a family dispute involving custody, support, and welfare of a child) cases.</p>						

Audit Scope and Methodology

This audit, which was conducted in accordance with generally accepted government auditing standards, reviewed the performance of the State's Guardians ad Litem program and the OCR. Specifically, we reviewed the OCR's oversight and monitoring processes for assessing the performance of Guardians ad Litem appointed to dependency and neglect cases. In addition, we reviewed the selection and appointment processes for guardians in dependency and neglect cases. As part of our audit work, we reviewed attorney applications, contracts, performance evaluation forms, license and disciplinary history, as well as OCR documents. We interviewed the OCR's director and staff, guardians, and judicial officers and court staff in the 1st (Jefferson, Gilpin), 2nd (Denver), 4th (El Paso, Teller), 18th (Arapahoe, Douglas, Elbert, Lincoln), 19th (Weld), and 21st (Mesa) Judicial Districts. We also interviewed staff at the El Paso County Office of Guardian ad Litem in the 4th Judicial District. Additionally, we interviewed the executive directors of the National Association of Counsel for Children and the National Counsel for Juvenile Family Court. Finally, we researched the Guardians ad Litem practices in California, Washington, Maine, and Florida. On the basis of information obtained from these other organizations and states, we determined that Colorado's directives for delivering Guardian ad Litem services mirror nationally recognized guidelines. After conducting the audit, we also determined that the OCR has implemented a majority of the best practices for providing Guardian ad Litem services.

During the audit, we also reviewed the OCR's complaint process, training program, and billing and payment records. Specifically, we reviewed a sample of complaints, a sample of billing and payment records and the OCR's controls over the billing process, and examined the trainings and training materials provided by the OCR. We did not identify findings in any of these areas.

The audit scope did not include the review of other types of cases requiring Guardian ad Litem services, such as cases involving delinquency, probate, paternity, or other matters. In addition, the audit scope did not include a review of the Child's Representative Board, local oversight committees, attorney child and family investigators, or child's representatives which may be appointed in domestic relations cases involving custody disputes.

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Guardians ad Litem

Background

In the statute (Section 13-91-101, et seq., C.R.S.) the Colorado General Assembly has recognized that children are the most vulnerable and voiceless population in the courts and created the Office of the Child's Representative (OCR) to help protect children's interests. The OCR's statutory directive is to ensure that children receive competent and effective attorney services throughout the State and that Guardians ad Litem in dependency and neglect cases advocate zealously for the best interest of the children. To fulfill this directive, the OCR has been given the responsibility for overseeing the provision of Guardian ad Litem services throughout the State. The statute (Section 13-91-105(1)(a), C.R.S.) states "the Office of the Child's Representative shall enhance the provision of [Guardians ad Litem] services in Colorado by overseeing the practice of Guardians ad Litem to ensure compliance with all relevant statutes, orders, rules, directives, policies, and procedures." Additionally, according to Chief Justice Directive 04-06 (Directive), "The OCR's authority and responsibilities include, but are not limited to: ensur[ing] and enhanc[ing] competent representation of children in a cost effective manner, which includes training and monitoring of services rendered...and the responsibility to provide oversight and accountability for the state-paid [Guardians ad Litem]...services for the benefit of Colorado's children, including investigation and resolution of complaints regarding attorneys who contract with the OCR."

The OCR's specific responsibilities include selecting qualified attorneys and providing a list of those attorneys to the courts for appointments, compensating only those attorneys who are approved by the OCR, ensuring the availability of training directly related to enhancing the attorneys' knowledge of children's law and best interest representation, monitoring the performance of the guardians to ensure compliance with the standards set forth by the Colorado Supreme Court, and renewing the contracts of only those attorneys who provide high-quality representation.

Overall, we found that the OCR has significantly improved the provision of Guardian ad Litem services in dependency and neglect cases. The Office of the State Auditor last conducted a performance audit of Guardian ad Litem services in dependency and neglect cases in 1996 when guardians were overseen by the State Court Administrator's Office. At that time, the audit identified significant issues with the quality and levels of Guardians ad Litem representation provided to children, guardian funding and compensation, and guardian oversight.

We reviewed the effectiveness of the OCR in ensuring that the Guardians ad Litem in Colorado provide high-quality representation to children in dependency and neglect cases. Although the OCR has improved the provision of Guardian ad Litem services statewide, we identified areas where the OCR could improve its oversight of the quality of representation provided by guardians; the contract renewal, selection, and appointment processes; and the OCR's assessment of its own performance. We discuss these issues in the remainder of this report.

Representation

Chief Justice Directive 04-06 includes specific requirements regarding Guardians ad Litem performance in dependency and neglect cases. According to the Directive, “a Guardian ad Litem in a dependency and neglect case shall specifically”:

- Attend all court hearings and provide accurate and current information to the court.
- File written or oral reports at the court's direction and in compliance with statutes.
- Take actions within the scope of his or her statutory authority and ethical obligations necessary to represent the best interests of the child.
- Conduct an independent investigation in a timely manner which shall include at a minimum:
 - Personally interviewing the child and meeting with and observing the child in his or her placement as soon as is reasonable, but, in no event, later than 30 days following the guardian's appointment.
 - Personally meeting with and observing the child's interaction with parents, proposed custodians, and foster parents.
 - Reviewing court files and relevant records, reports, and documents.
 - Interviewing, with consent of counsel, respondent parents and other people involved in the child's life, including foster parents, caseworkers, relatives, school personnel, court appointed special advocate (CASA) volunteers, and therapists.
 - Confirming that the county department's investigation included a search for any prospective kinship for placement and/or adoption, or personally conduct this investigation if reunification with the parents fails.
 - Visiting the home from which the child was removed, when appropriate.

- Continue to perform an ongoing investigation as is necessary to represent the best interest of the child for the duration of the case. The investigation shall include, but shall not be limited to:
 - If the child's placement is changed, personally meeting with and observing the child in each new home or placement as soon as is practicable after the placement, but no later than 45 days after the subsequent placement.
 - Maintaining contact and ongoing communication with the child, foster parents, caseworker, CASA, and any other parties necessary to ensure the child's best interests are continually met.

The OCR monitors guardian performance related to the requirements of the Directive in several ways. Primarily, the OCR reviews guardian performance evaluation forms submitted annually by each judicial district and conducts annual site visits to judicial districts to discuss guardian performance with judges, magistrates, guardians, and other individuals involved in dependency and neglect cases. Effective January 2006, the OCR began auditing a sample of dependency and neglect cases to determine if guardians were complying with the Directive requirement that guardians visit with a child within 30 days of their appointment to a case. Finally, if the OCR receives a complaint against a guardian, the OCR will investigate and review case documentation to make sure the guardian complied with Directive and contractual requirements. Once the investigation is completed, the OCR will provide a written report to the guardian and the individual who submitted the complaint.

We reviewed guardian compliance with the performance standards set out in the Directive and found that some guardians were not complying with these minimum requirements. More specifically, we reviewed a sample of 30 cases across six judicial districts (1st, 2nd, 4th, 18th, 19th, and 21st). These 30 cases were open an average of about five months and the guardians met with the children in these cases an average of two times during the case. Overall, we found that the guardians in our sample fully complied with only one of the six factors evaluated - - to meet with the child in person at least one time -- as illustrated in the following table. Case files did not contain sufficient information to assess all of the minimum requirements in the Directive. This issue is addressed later in the report.

Office of the Child's Representative Guardians ad Litem Compliance with Chief Justice Directive Minimum Requirements (for a sample of 30 cases)			
Chief Justice Directive Requirement ¹	Number of Cases Requiring Compliance	Number of Cases in Compliance	Percent of Cases in Compliance
Visit child in person at least one time	30	30	100%
Initial visit with child within 30 days of appointment	30	22	73%
Visit child in subsequent placements within 45 days of placement ²	10	8	80%
Communications (e.g. phone calls) with child other than initial visit/placement ³	24	8	33%
Contact with parent ⁴	30	16	53%
Participate in at least one staffing, case management, or team decision meeting	30	19	63%
Source: Auditor's analysis of data obtained from the 30 tested case files maintained by the appointed Guardians ad Litem.			
¹ The case files did not contain sufficient information to assess all of the minimum requirements in the Chief Justice Directive 04-06.			
² The OCR has interpreted the Chief Justice Directive 04-06 to allow guardians 45 days in which to visit a child in placement subsequent to the original placement; there were 10 cases where the child was moved to a subsequent placement.			
³ Additional communication with the child was possible in only 24 of the 30 cases because six of the cases had either just started, were of a short duration, or involved children under the age of six years.			
⁴ Contact includes visits at home or other locations, phone calls, or letters. Case file information was not consistently detailed to determine if the contact included observation of the child's interaction with parents and/or foster parents. Contact with parent(s) requires permission of the parents' attorney(s). If the guardian requested permission to contact a parent, the case was considered to be in compliance. If there was no contact with a parent and no documentation to show that a request to contact a parent was made, the guardian was considered to be out of compliance.			

Although all of the guardians in our sample met with the child or children in person at least one time, 8 of the 30 (27 percent) initial visits were outside of the 30-day requirement. For these eight cases, visits ranged from 31 to 89 days after the guardian was appointed to the case. In addition to the requirements listed above, we also looked at whether the guardians in our sample complied with other Directive requirements, such as having contact with the child's foster parents or school in those cases where these factors were applicable. We found that the guardians had contact with the foster parents, other than during the initial placement visit, in 18 of the 26 (69 percent) cases reviewed where the child had foster parents, and contact with the child's school in 5 of the 23 (22 percent) cases reviewed with school-age children. According to the OCR, it may not be

appropriate for the guardian to comply with all of the Directive requirements in all instances. However, the Directive specifically states that Guardians ad Litem in dependency and neglect cases shall comply with these requirements.

The OCR's recent audits of a sample of guardian case files also identified problems with guardian compliance. From January through May 2006, the OCR evaluated a random sample of 90 cases in three districts to determine if the guardians assigned to those cases met with the child within 30 days of the guardian's appointment. There were a total of 37 guardians assigned to these 90 cases; some of the guardians in this sample were responsible for multiple cases. Of the 90 cases reviewed, the OCR found that in 14 cases (16 percent) the guardian did not meet with the child within the 30-day time requirement. There were a total of six different guardians for these 14 cases. As a result of this review, the OCR terminated one guardian's contract and decided not to renew the contracts for three guardians who did not respond to the OCR's information requests and who chose not to reapply. The remaining two guardians were temporarily removed from the OCR's list of approved guardians, but were reinstated after providing additional information from other cases which demonstrated that the guardian had complied with the 30-day requirement in other cases.

In addition to the 30 cases described above, we reviewed a sample of 152 court files to determine if the guardians appointed to the dependency and neglect cases attended all of the court hearings. As discussed above, the Directive requires guardians in dependency and neglect cases to "attend all court hearings and provide accurate and current information directly to the court." The Directive goes on to provide that "in exceptional circumstances another qualified attorney who has sufficient knowledge of the issues and status of the case may substitute for some hearings, with permission of the court." For the 152 court files in our sample there were a total of 866 hearings. As the following table shows, the guardians assigned to the cases did not attend about 9 percent of the hearings.

Office of the Child's Representative Guardians ad Litem Attendance at Court Hearings (for a sample of 152 cases)		
Attorney Providing Representation	Number of Hearings Attended	Percent of Total
Guardian	792	91%
Substitute	67	8%
Neither	7	1%
Total	866	100%
Source: Auditor's analysis of a sample of 152 court files.		

In the 67 hearings where a substitute attended, the files did not indicate whether the judge or magistrate gave permission for the substitution. (We discuss additional issues related to judges' approval of substitutes later in the report.) According to information in the court file for one case, the judge was concerned

about the quality of representation being provided because the substitute was not prepared and did not appear to have knowledge of the case. Finally, in the seven hearings where no guardian or substitute was present, the child did not receive any representation. Attending hearings is a critical component of guardian performance due to the vulnerability of children and the population being served.

The child's circumstances will dictate what actions a Guardian ad Litem should take in a particular case to comply with the Directive minimum performance requirements. For example, if there are no foster parents the guardian cannot meet with the foster parents, or if the child is an infant, the guardian cannot meet with school personnel. Our findings indicate, however, that there are expected activities that guardians may not be performing which could compromise the quality of representation provided by Guardians ad Litem. Currently the OCR has a limited process for reviewing the activities of guardians for compliance with the Directive and for assessing the quality of representation provided. The OCR only reviews guardian compliance with two of the requirements of the Directive as part of the audit process - that guardians conduct an initial visit with the child within 30 days of the guardian's appointment or within 45 days of a subsequent placement. Additionally, there are only two ways in which these reviews will occur. First, if concerns about a guardian's performance are raised through a formal complaint or by someone in the guardian's judicial district, the OCR will review a sample of the guardian's cases to verify that the guardian has met with the child. Second, as discussed above, the OCR reviews a sample of cases through its audit process to determine if the guardians assigned to the selected cases met with the child within 30 days of the guardian's appointment.

A combination of both objective and subjective information is needed to sufficiently assess Guardians ad Litem performance. Obtaining both types of information provides a more accurate representation of how well guardians are actually performing. For example, the OCR informed us of an attorney who had been serving as a guardian for several years. The judges, magistrates, and other attorneys in the district in which this individual practiced had indicated through performance evaluations and interviews that the individual was an excellent Guardian ad Litem and provided high quality representation to the children in his cases. However, as a result of the OCR's audit of a random sample of the guardian's cases, the OCR found that this guardian had not been visiting with the children as required by the Directive. In this case, the performance evaluations and interviews did not provide a complete representation of the quality of services provided by this individual. This example shows the importance of a robust monitoring process to assess performance.

The OCR needs to expand its audit process to cover a broader scope of guardians in each judicial district and to collect additional information on guardian performance. To allow the OCR to develop a more comprehensive audit process within existing resources, the OCR will need to identify alternatives to conducting detailed, time-consuming case file reviews. One alternative the OCR could consider to streamline the review process would be to require guardians to report their performance information through the automated billing system. The OCR's

current billing system is Web-based, and guardians can access the system to submit their bills and supporting documentation, including work activity, number of hours worked, and any other expenses. The OCR could run reports on the information submitted through the billing system and collect more robust data related to guardian performance. The OCR could then analyze these data electronically and using a risk-based approach, periodically compare data with the Integrated Colorado On-line Network (ICON) system to verify the accuracy and completeness of the information submitted. As part of this process, the OCR should establish requirements detailing the types of documentation that guardians should maintain to support their billing, such as phone records and meeting notes.

Finally, the OCR should review the Directive to determine if the performance requirements contained in the Directive are still appropriate or if changes are needed. Although the Directive lists specifically the actions that all guardians in dependency and neglect cases must take, the OCR has indicated that some of the requirements may not be appropriate in every case. The results of our review also seem to indicate that some guardians are not uniformly complying with all of the minimum performance requirements. The Directive has been in place for more than two years – enough time for the OCR to have sufficient data to assess which performance requirements are appropriate in every case and which requirements may only be appropriate in some cases. The OCR should work with the Chief Justice to revise the Directive to distinguish between the actions that should be taken in all dependency and neglect cases and those that will only apply in certain cases.

Recommendation No. 1:

The Office of the Child’s Representative should ensure the quality of the representation provided by Guardians ad Litem in dependency and neglect cases by:

- a. Expanding the audit process to cover a broader scope of guardians in each judicial district and to collect additional information on guardian performance, including whether they are complying with Chief Justice Directive 04-06 and attending hearings, following up as appropriate.
- b. Evaluating options for streamlining the review process, such as using the information submitted through the electronic billing system to analyze the data electronically.
- c. Establishing standards for the supporting documentation that guardians should maintain to support their billings and using a risk-based approach to periodically review ICON on a random basis to verify the accuracy of the information submitted through the billing system, following up as appropriate.

Office of the Child's Representative Response:

Agree. Implementation Date: November 30, 2007.

- a. Expanding the audit process to cover a broader scope of guardians in each judicial district and to collect additional information on guardian performance, including whether they are complying with Chief Justice Directive 04-06 and attending hearings, following up as appropriate.

The OCR will expand the sample population to cover a broader scope of guardians to ensure that each Guardian ad Litem in a district is selected for review. We will also incorporate other items from the Chief Justice Directive in the review criteria. The OCR appreciates the need for expansion of the process and will submit a decision item for additional staff to aid in these duties in its Fiscal Year 2009 budget request.

- b. The OCR will make modifications to its billing system to enhance the reporting capabilities. The system will be able to generate ad hoc and exception reports based on the 130+ billing codes already programmed. The OCR will use these reports as tools for investigation of Guardians ad Litem performance and compliance.
- c. The OCR will work with the Chief Justice to amend the Directive to include a specific requirement that all attorneys must maintain sufficient documentation to support hours billed and to provide that information to the OCR upon request.

Recommendation No. 2:

The Office of the Child's Representative should review the performance requirements contained in Chief Justice Directive 04-06 to determine if the requirements are still appropriate and work with the Chief Justice, as needed, to make necessary changes.

Office of the Child's Representative Response:

Agree. Implementation Date: November 30, 2007. The practice of pediatric law is continually evolving and the OCR will review the current Directive for areas that may be improved or updated. The intent of Chief Justice Directive 04-06 was never to create a laundry list of activities that an attorney must apply in each case. Attorneys are professionals and must use their independent judgment to determine what steps should be taken in the child's best interest. While there are certain items, such as visiting a child in placement, that are required for every case, other items may not be applicable. It is not always appropriate for an attorney to go to the child's school or to have additional contact with foster parents. The

OCR will review the current requirements with an eye toward including certain core duties for each case and other items that may not be applicable every time.

Contract Renewals

Currently the OCR contracts with Guardians ad Litem for one year with an option to renew. To determine whether to renew a contract with a guardian, the OCR sends out performance evaluations annually to some of the parties that worked with the guardian, including judges, magistrates, family court facilitators, and CASAs. Additionally, the OCR conducts site visits at each judicial district and meets with judges, magistrates, guardians, and other parties to discuss the guardians' performance. Finally, the OCR reports that it maintains regular contact with judicial districts regarding guardian performance through telephone calls and email exchanges.

We evaluated the effectiveness of the OCR's process for reviewing guardian performance to support its contract renewal decisions and identified areas for improvement. First, as discussed previously, the OCR needs to expand its use of audits and other documentation to evaluate guardian performance and make contract renewal decisions. As discussed in Recommendation No. 1, the OCR uses the audit process only to determine whether guardians have met with the child within 30 days of appointment or within 45 days of a subsequent placement and to investigate complaints. An expanded, more robust audit process would improve the quality of information the OCR has available to support its review of guardian performance and its contract renewal decisions.

Second, we found that data collected through performance evaluations is not sufficiently complete to comprehensively assess guardian performance or support contract renewal decisions due to the lack of response from some judicial districts. More specifically, we found that during Fiscal Year 2005:

- Four districts (the 3rd, 9th, 12th, and 14th districts) did not return evaluations for any of the guardians practicing in those districts.
- Sixteen districts returned evaluations for some of the guardians practicing in their districts.
- Two districts (the 8th and 21st districts) returned evaluations for all of the guardians practicing in their districts. All of the guardians in these two districts were evaluated by a judge, magistrate, and a CASA.

In addition to the problems with poor response rates on guardian performance from judicial districts, we found that the evaluation form needs improvement. Currently the form asks the reviewer to assess the guardian's performance against some of the performance standards contained in the Directive, such as whether the guardian attended all court hearings and whether the guardian completed an

independent investigation. Reviewers are asked to rate the guardians' performance for each of these factors as "exceeds expectations," "meets expectations," or "below expectations." The form, however, does not explain the level of performance necessary to justify a rating of "exceeds expectations." For example, if the guardian attends all court hearings, as required by the Directive, the guardian would "meet expectations." The evaluation form is not clear as to what additional actions a guardian could take to justify a rating of "exceeds expectations." Additionally, the forms do not include a signature line to clearly identify the parties completing the evaluation. Some evaluation forms are completed jointly by all of the judges, magistrates, and CASAs in the district. However, it is not possible to tell from review of the evaluation form whether the evaluation is the opinion of only the individual completing the evaluation or whether the evaluation is the consensus of multiple reviewers. The OCR needs to know who participated in evaluating the guardian when determining how much weight to give a particular evaluation and to determine who has provided input.

Third, we found that the OCR lacks documentation supporting its contract renewal decisions. We identified 142 attorneys whose contracts were renewed during Fiscal Year 2006. Of these 142 attorneys, 25 (18 percent) had received negative performance evaluations from at least one of their evaluators. There was no documentation in the files to explain why the contracts for these 25 attorneys were renewed, or whether there were mitigating factors that supported the OCR's decision to renew the contracts.

The OCR needs to take several steps to improve the information used to assess guardian performance and establish standards for documenting contract renewal decisions. First, the OCR should continue to ensure that the results of its audits, as discussed in Recommendation No. 1, are incorporated into its contract renewal decision-making process. Second, the OCR should continue to work with the State Court Administrator's Office to improve the performance evaluation process by revising the form to clarify evaluation criteria, including a signature line(s), and contacting judges and magistrates directly to increase response rates.

Finally, the OCR should re-evaluate its contract renewal process to determine if an annual renewal is still appropriate or if a longer contract period would be more reasonable. The annual renewal process for more than 160 attorneys may be overly burdensome for the OCR's limited staff resources. For example, the OCR currently schedules its site visits to judicial districts for the two months prior to awarding guardian contracts. This makes it difficult for the OCR to actually visit all 22 districts during the two-month period. One alternative would be to extend the contract period to two or three years and to stagger renewal dates, which would allow the OCR staff more time to fully evaluate guardian performance. Other options include reviewing guardians in the largest districts annually and reviewing the smaller districts on an extended regular cycle or reviewing performance throughout the year rather than in the two months prior to contract renewal. Regardless of the option selected, the OCR should ensure that it maintains sufficient documentation to support contract renewal decisions.

Recommendation No. 3:

The Office of the Child’s Representative should improve the information used to assess guardian performance and establish standards for contract renewal decisions by:

- a. Incorporating the results of a more robust audit process, as discussed in Recommendation No. 1, in the contract renewal decision-making process.
- b. Continuing to work with the State Court Administrator’s Office to coordinate with judges and magistrates to help improve the performance evaluation process. This may include revising the evaluation form, adding a signature line(s), and working with the State Court Administrator’s Office to help increase response rates.
- c. Re-evaluating its contract renewal process. Options may include using a risk-based approach to stagger contract renewal dates over two or three years or scheduling site visits throughout the year. The OCR should also maintain sufficient documentation to support contract renewal decisions.

Office of the Child’s Representative Response:

Agree. Implementation Date: November 30, 2007.

- a. As stated in the response to Recommendation No. 1, the OCR will enhance its audit process through the use of billing information it receives and incorporate these results in the contract renewal process.
- b. The OCR will make revisions to the evaluation form as agreed. The OCR solicits feedback from a variety of stakeholders including judges and CASA volunteers regarding the performance of its Guardians ad Litem. This is done through both a formal written evaluation process, as well as face-to-face meetings during site visits, and through ad hoc communications during the year. The OCR will continue to work with the State Court Administrator’s Office to explore ways of improving the response rate.
- c. The OCR currently contracts with approximately 250 attorneys statewide (including 169 attorneys for dependency and neglect cases) to provide best interests representation to the children of Colorado. Each contract runs on a fiscal year basis and is reviewed annually to determine whether an attorney will be hired or retained. Renewal decisions are part of a statewide process that ensures each district has enough attorneys to meet its needs. Consequently, it would be difficult to change from an annual

renewal and still be able to fill enough slots across the state. The OCR will re-evaluate its current process to determine the most effective way to handle contract renewals. The OCR will also maintain sufficient documentation to support contract renewal decisions.

State Court Administrator’s Office Response:

Part “b”: Agree. Implementation Date: As determined by the OCR. The State Court Administrator’s Office will work with the OCR, as it may request, to improve the performance evaluation process.

Selection

As discussed previously, according to the statute (Section 13-91-104, C.R.S.), the OCR is responsible for ensuring that uniform, high-quality legal representation is provided to children involved in judicial proceedings in Colorado. This statutory charge is reinforced by Chief Justice Directive 04-06 which states that attorneys appointed as Guardians ad Litem must possess the knowledge, expertise, and training necessary to perform the court appointment and requires the OCR to maintain a list of *qualified* [emphasis added] attorneys who can serve as Guardians ad Litem for the courts to use when making appointments. The Directive provides the OCR with the exclusive authority and discretion to select and contract with attorneys to provide state-paid Guardian ad Litem services. This includes the authority to reject attorneys for any reason and to terminate contracts at will. To fulfill the statutory and Chief Justice mandates, the OCR must ensure that the attorneys with whom it contracts are licensed, competent, and possess the knowledge, training, and expertise necessary to perform the appointment, as required by the Directive.

The OCR requires its attorneys, including both attorneys seeking to renew their contracts and attorneys who are new applicants, to submit a completed application each year. New applicants must provide information related to their legal education and experience and renewal applicants must provide proof of professional liability insurance. (New applicants are not required to have professional liability insurance at the time of application, but must obtain it before entering into a contract with the OCR.) In addition, as part of the application process, the Directive requires that applicants provide proof that they have obtained 10 hours of continuing legal education in areas that are relevant to the appointment and that enhance the attorneys’ knowledge of the issues. The Directive also requires that an attorney wishing to renew a contract submit a signed affidavit attesting to his or her compliance with the Directive requirements, including that the attorney attended all hearings, conducted an independent investigation in a timely manner, and continued to perform all of the listed duties

in order to represent the best interests of the child. Along with the affidavit, attorneys are required to attach a list of the case numbers and counties in which they were appointed guardians for the previous year.

We reviewed the OCR's selection and hiring process and identified several areas in which the process can be strengthened. First, we reviewed a sample of 12 renewal applications and found that while all of the applications were approved, five were missing at least one of the required attachments or provided incomplete information. More specifically:

- For 2 of the 12 renewal applications, the attorneys did not provide an affidavit of compliance with the Directive or a list of their previous year's cases. For one of these two renewal applications, the attorney also did not provide the number of continuing legal education credits earned.
- For 3 of the 12 renewal applications, the attorneys did not provide proof of professional liability insurance. For one of these three renewal applications, the attorney also did not provide the number of continuing legal education credits earned.

Second, we reviewed a sample of 25 new attorney applications and found that the OCR could not provide evidence that it had reviewed applicants' references prior to hire. According to the OCR, staff verify references once a decision is made to contract with a new attorney, but prior to the offer. Out of our sample of 25 new applications, the OCR decided to contract with 12 of the attorneys. We found no documentation to show that the OCR verified references for any of the 12 attorneys prior to contracting with them.

Third, we found no evidence that the OCR verified the licensure status or disciplinary history of either the 25 new applicants or the 12 renewal applicants in our sample. One option for verifying licensure status and disciplinary history is to use the Attorney Regulation Counsel's Web site. We used this site to verify that all 25 new and 12 renewal applicants had an active license at the time of application and none had been disciplined.

Fourth, we found the OCR has not established the qualifications desired in a Guardian ad Litem. When the OCR advertises for guardians, the announcement does not list any specific requirements other than to indicate that the attorney would be responsible for representing the best interest of children under the age of 18. A list of desired qualifications is needed to implement the Directive which requires that Guardians ad Litem possess the knowledge, expertise, and training necessary to perform the court appointment. The Directive does not define these characteristics or provide direction on what qualifications would satisfy these requirements. According to the OCR, it looks for certain qualifications, such as experience working as a guardian; litigation experience; a history of no disciplinary action; special skills, such as teaching or mental health counseling; knowledge or experience in a related area such as a foreign language or child development; training in areas of law or work experience related to representing

children; an understanding of and willingness to comply with Directive requirements; knowledge of Colorado Rules of Juvenile Procedure and the Colorado Rules of Evidence; and a passion for representing children. However, the OCR has not formally established the desired qualifications for someone applying to serve as a Guardian ad Litem. Establishing desired qualifications would provide notice to potential applicants of the OCR's expectations when making contracting decisions.

Finally, we found the OCR does not consistently document interview results and recommendations for new applicants when making contracting decisions. According to the OCR, staff interview all new attorney applicants as part of the selection process. However, we found that the OCR did not have documentation that it interviewed seven of the 25 new attorney applicants in our sample. For the 18 new applicants for whom the OCR did have interview evidence, there was no documentation to show the results of the interviews or recommendations as to whether the OCR should contract with the applicant for guardian services.

The OCR has a statutory responsibility to ensure the attorneys selected to serve as Guardians ad Litem are qualified to represent children in dependency and neglect proceedings. As a result, the OCR needs to strengthen its Guardians ad Litem hiring and selection processes to ensure that quality individuals are selected and that contracting decisions are supported by documentation.

Recommendation No. 4:

The Office of the Child's Representative should strengthen its Guardians ad Litem hiring and selection process by:

- a. Ensuring that applicants provide all required information and attachments before approving an application.
- b. Verifying and documenting references, licensure status, and disciplinary history before executing an initial or renewal contract with an attorney.
- c. Formally establishing the desired qualifications to be considered when evaluating applicants.
- d. Consistently documenting interview results and the results of other information reviewed to support contracting decisions.

Office of the Child's Representative Response:

- a. Agree. Implementation Date: Implemented. The OCR has implemented a procedure whereby its Office Manager tracks each piece of required information and follows up on any incomplete applications.

- b. Agree. Implementation Date: November 30, 2007. The OCR currently calls references on all new applications but will document such contacts going forward. The agency has begun reviewing the licensure status with this new application cycle.
- c. Agree. Implementation Date: November 30, 2007. Every attorney who contracts with the OCR must be licensed to practice law in the State of Colorado and be in good standing with the Colorado State Bar. The OCR will develop a list of desired characteristics that an ideal candidate would possess. However, we are also mandated to provide best interest representation to children in all 22 judicial districts. At a state rate of \$57 per hour, the pool of prospective Guardians ad Litem is very limited. The OCR must work with candidates who may fall short of a list of desired qualifications. The agency works with such candidates by providing mentors, necessary training, and support so that they may provide effective representation.
- d. Agree. Implementation Date: November 30, 2007. As noted in the report, all applicants were interviewed by the OCR. We will ensure that interview information is summarized and the results of the interview are documented and maintained.

Appointments

The statute (Section 19-3-203, C.R.S.) requires the court to appoint a Guardian ad Litem in dependency and neglect cases when a petition alleging abuse and neglect is filed. As previously discussed, the Directive requires the OCR to provide the courts a list of qualified attorneys to serve as Guardians ad Litem, and the courts must appoint guardians from this list. The purpose of this requirement is to ensure that only those attorneys who are qualified to serve as a Guardian ad Litem are appointed to that position. According to the Directive, courts are only allowed to appoint an attorney who is not on the approved list when there are unusual, exceptional, or emergency circumstances and then *only* with prior permission from the OCR. For example, the court may request to appoint an attorney who is not on the approved list when the attorney has developed a prior relationship with the family in order to provide continuity for the child. The OCR is not required to pay guardians with whom the OCR does not have a contract and who are not on the approved list. However, the OCR can pay a non-approved attorney if the OCR has granted prior permission for the appointment.

We reviewed the Guardians ad Litem appointment process and found that in some cases courts are appointing attorneys who are not on the OCR-approved list. More specifically, we reviewed ICON data to determine if the attorneys who were appointed to serve as Guardians ad Litem in all of the dependency and neglect cases that received guardian appointments during Fiscal Years 2005 and 2006

were on the list of attorneys approved by the OCR. Although we found that a majority of the dependency and neglect cases requiring guardian services during Fiscal Years 2005 and 2006 had guardians appointed who were on the OCR-approved list, there were still some cases where the court appointed attorneys who were not on the list. For Fiscal Year 2005, 134 cases of the approximately 4,500 dependency and neglect cases requiring an appointment (3 percent) had guardians appointed who were not on the OCR's approved list. This number decreased in Fiscal Year 2006 when 73 of the approximately 4,100 dependency and neglect cases requiring an appointment (2 percent) had guardians appointed who were not on the OCR's approved list. The OCR reports that it does not keep a record of court requests to appoint attorneys who are not on the approved list. As a result, OCR cannot confirm whether it gave permission for the courts to appoint the 54 attorneys appointed to the 134 cases in Fiscal Year 2005 or the 33 attorneys appointed to the 73 cases in Fiscal Year 2006. The OCR paid fees and costs for 8 of the 54 attorneys appointed in Fiscal Year 2005 and 4 of the 33 attorneys appointed in Fiscal Year 2006 who were not on the OCR's approved list. There was no documentation for us to determine how the other appointed attorneys who were not on the OCR's approved list were paid.

In addition, as discussed previously, we identified instances where a substitute attorney attended a hearing on behalf of the appointed guardian. The Directive allows, in exceptional circumstances, for another qualified attorney who has sufficient knowledge of the issues and status of the case to substitute for the guardian at some hearings, with the permission of the court. We identified 67 hearings where a substitute attended the hearing on behalf of the guardian. Although the court may have approved these substitutions, the court files did not reflect that the court's permission was given for the substitution.

The OCR needs to take steps to improve its oversight of the Guardians ad Litem appointment process to ensure the best interests of the child are represented from the point at which a case is filed. To accomplish this task, the OCR should track court requests for the appointment of non-approved attorneys and periodically analyze ICON data to determine if there are certain districts that appoint non-approved attorneys without the OCR's approval. The OCR should also continue to work with the State Court Administrator's Office to emphasize to courts the importance of appointing only those attorneys who have been approved by the OCR and requesting prior approval from the OCR if a non-approved attorney is to be appointed.

Recommendation No. 5:

The Office of the Child's Representative should help ensure that only qualified attorneys are appointed to serve as Guardians ad Litem in dependency and neglect cases by:

- a. Tracking court requests and OCR approvals for the appointment of an attorney who is not on the OCR's approved list to serve as a Guardian ad Litem in a dependency and neglect case.
- b. Periodically analyzing ICON data to identify judicial districts that may be appointing attorneys who are not on the OCR-approved list without contacting the OCR.
- c. Continuing to work with the State Court Administrator's Office to emphasize to courts the importance of appointing only those attorneys who have been approved by the OCR and requesting prior approval from the OCR if a non-approved attorney is to be appointed.

Office of the Child's Representative Response:

- a. Agree. Implementation Date: Implemented. The OCR has begun tracking these requests and their approval by agency staff.
- b. Agree. Implementation Date: November 30, 2007. The OCR does not currently have access to ICON reporting, but will work with State Court Administrator's Office to receive a monthly report of all Guardians ad Litem appointments. The OCR will review this report to determine if any non-approved attorneys are appointed and will follow up with the district in question as applicable.
- c. Agree. Implementation Date: November 30, 2007. Since oversight of Guardian ad Litem services transferred from the State Court Administrator's Office to the OCR, both agencies have worked closely to ensure that only approved attorneys are appointed. The OCR will continue to meet with the State Court Administrator's Office to determine the best means of accomplishing this result. It should be pointed out that the audit determined compliance rates of 97 and 98 percent during the test work for Fiscal Year's 2005 and 2006 respectively. While both agencies will strive toward 100 percent compliance, this is a goal that will be difficult to achieve given the human element involved.

State Court Administrator's Office Response:

Part "c": Agree. Implementation Date: May 25, 2007 and on-going. The State Court Administrator's Office (SCAO) will continue working with the OCR. To ensure that the best interests of children are represented, it is sometimes necessary to appoint an attorney who is not on the OCR's list. The SCAO has notified all courts that the OCR must approve such appointments.

Evaluation of OCR Performance

The General Assembly has charged the OCR with conducting an annual outcome-based evaluation of its performance (Section 13-91-105(1)(h), C.R.S.). The purpose of this evaluation is to determine whether the OCR is effectively and efficiently meeting the goals of improving child and family well-being and accomplishing its duties as set out in statute. In response to this mandate, the OCR prepares an annual report that is presented to the General Assembly.

We reviewed the OCR's Fiscal Year 2006 annual report to determine if the report fulfills the statutory mandate and adequately assesses OCR performance. We found the OCR's annual report addresses how the OCR is meeting its statutory duties by providing a narrative description of the OCR's activities and including some statistical information related to the program. However, the report does not include an evaluation of how well guardians are complying with Directive requirements and performance standards. Additionally, the report does not include an outcome-based evaluation of the OCR's performance and does not assess whether the OCR is effectively and efficiently improving child and family well-being, also required by the statute.

Currently the OCR does not collect sufficient data to evaluate its compliance with established standards or to assess the State's performance. We discussed the need for the OCR to develop more robust information on the performance of guardians and improve its monitoring of guardian performance in Recommendations Nos. 1 and 2. Additionally, according to the OCR, the statutory requirement that the OCR measure the impact of guardian services on child and family well-being may not be a reasonable expectation. The OCR notes that many factors, including the court, social services system, and the family support system, in addition to the role of the guardian, may contribute to the well-being of children and families in a dependency and neglect case.

Although the OCR may not be able to objectively measure and demonstrate the impact of guardian services on child and family well-being, it can identify and assess several measures that provide meaningful information on guardian performance and report on these measures in its annual report. For example, the OCR could collect data to measure guardian performance related to the duties set forth in the Directive, such as the percent of guardians who visit a child within 30 days of appointment to a case, the percent of guardians who conduct an independent investigation in a timely manner (these measures could be calculated using a statistically valid sample), or the percent of guardians rated outstanding on specific criteria by judges. These measures would improve the information available to the OCR for assessing its own performance, demonstrate guardian compliance with established standards, and provide a more comprehensive picture of how well the OCR and the State, as a whole, are performing. However, these measures will not be sufficient for the OCR to be able to determine whether guardians are improving child and family well-being, as required by this statute. During our audit we could not identify any other states or research organizations

that had developed valid methods for assessing the impact of guardian services on child and family well-being. As discussed previously, there are many factors, in addition to the services provided by the guardian, that may impact a child's or family's outcomes. Considering the lack of research conducted on the impact of guardian services on child and family outcomes, the OCR may want to consider proposing statutory change to eliminate this requirement. This would allow the OCR to focus on reporting on the quality of representation provided by guardians, as measured by the performance criteria set out in the Directive.

Recommendation No. 6:

The Office of the Child's Representative should improve its annual evaluation process by:

- a. Establishing specific quantifiable performance measures that are based on the Directive performance criteria.
- b. Collecting and analyzing sufficient data to address these performance measures and support an overall evaluation of the OCR and the Guardians ad Litem program as a whole.
- c. Consider working with the General Assembly to propose statutory change to eliminate the requirement that the OCR's outcome-based evaluation determine whether the OCR is effectively and efficiently improving child and family well-being.

Office of the Child's Representative Response:

- a. Agree. Implementation Date: November 30, 2007. The OCR has worked with the Joint Budget Committee to create performance measures as part of a five-year plan and its budgeting process. Such measures will focus on quantifiable items such as whether the Guardian ad Litem saw the child, attended hearings, conducted an independent investigation, etc. As noted in the previous responses, the OCR will use the information collected through its billing system to develop these measures.
- b. Agree. Implementation Date: November 30, 2007. The OCR will use the 130+ time codes in its billing system to evaluate attorney performance as mentioned above.
- c. Disagree. The OCR does not interpret the statute in the same manner as the auditors. Section 13-91-105 (1)(h), C.R.S., states that that the OCR shall... "Cause a *program review* and *outcome-based* evaluation of the performance of the office of the child's representative to be conducted annually to determine whether the

office is effectively and efficiently meeting the goals of improving child and family well-being and the duties set forth in this section.” (Emphasis added). The OCR interprets this to mean a review of all of its mandates which it accomplishes through the submission of its annual report to the General Assembly.

Implementing a more robust audit process will provide the agency with quantifiable data and more information regarding the desired outcome, which is high quality representation for Colorado’s children. The leading experts in the child welfare system who conduct research on this topic have empirical evidence showing that it is not feasible to use the outcome of a case to judge quality of representation. The outcome to be judged and reviewed is the quality of service provided by an attorney in a given case. We will incorporate the results of the performance evaluations and our audits as noted in the responses to a) and b) above as part of the evaluation, but we do not believe that statutory change is necessary.

Auditor’s Addendum: The statute specifically requires an outcome-based evaluation to determine whether the OCR is effectively and efficiently improving child and family well-being. The OCR does not complete this type of evaluation, and neither we nor the OCR have identified research methods that measure the impact of guardian services on child or family well-being. As a result, the OCR cannot demonstrate compliance with the current statute.

Appendix

Office of the Child's Representative Guardians ad Litem Dependency and Neglect Cases Total Expenditures and Average Expenditures per Case Fiscal Year 2006			
Judicial District	Counties	Total Expenditures	Average Expenditures/ Case
1 st	Jefferson, Gilpin	\$809,750	\$810
2 nd	Denver	\$459,470	\$590
3 rd	Huerfano, Las Animas	\$ 38,690	\$670
4 th	El Paso, Teller	\$367,010*	\$930
5 th	Clear Creek, Eagle, Lake, Summit	\$ 73,700	\$1,450
6 th	Archuleta, La Plata, San Juan	\$ 47,110	\$770
7 th	Delta, Gunnison, Hinsdale, Montrose, Ouray, San Miguel	\$162,290	\$1,150
8 th	Jackson, Larimer	\$318,940	\$640
9 th	Garfield, Pitkin, Rio Blanco	\$58,350	\$660
10 th	Pueblo	\$375,790	\$890
11 th	Chaffee, Custer, Fremont, Park	\$143,490	\$760
12 th	Alamosa, Conejos, Costilla, Mineral, Rio Grande, Saguache	\$136,330	\$970
13 th	Kit Carson, Logan, Morgan, Phillips, Sedgwick, Washington, Yuma	\$185,020	\$760
14 th	Grand, Moffat, Routt	\$ 99,690	\$1,880
15 th	Baca, Cheyenne, Kiowa, Prowers	\$ 60,450	\$1,440
16 th	Bent, Crowley, Otero	\$ 75,460	\$880
17 th	Adams	\$655,260	\$830
18 th	Arapahoe, Douglas, Elbert, Lincoln	\$482,220	\$960
19 th	Weld	\$389,190	\$690
20 th	Boulder	\$143,790	\$690
21 st	Mesa	\$126,200	\$430
22 nd	Delores, Montezuma	\$13,530	\$540
Total		\$5,221,730	

Source: The Office of the Child's Representative (OCR) billing system - payments made in Fiscal Year 2006 for dependency and neglect cases.

* Expenditures are the amount paid by the OCR for contract attorney fees in dependency and neglect cases; it does not include the expenditures for the El Paso County Office of Guardian ad Litem (OGAL) attorney fees. The OGAL does not track costs by type of case.

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