

# **CIP Quality Representation Committee L-GAL Report and Recommendations**

## **October 2009**

Michigan's Court Improvement Program (CIP) conducted an assessment in 2005 which indicated several areas in need of improvement in the Michigan child welfare system that are directly related to the legal component of the system. The report was drafted by the Muskie School of Public Service with the American Bar Association. In response to this assessment, several steps have been taken to improve Michigan's child welfare system, including updating protocols, legislative changes and publishing a parent attorney protocol. Additionally, the CIP state wide taskforce created several committees to look at further improvements based on the 2005 assessment. As new issues are raised, additional committees or workgroups have been formed to work toward positive improvements in child welfare.

The Michigan Supreme Court in 2002 commissioned a study by the American Bar Association, to examine how Lawyer-Guardians Ad Litem (L-GALs) were implementing new statutory requirements specific to their role in representing children. The ABA final report listed 20 recommendations to improve the representation of children in child welfare cases. Several of these recommendations were repeated in the 2005 CIP Reassessment Report.

The 2002 ABA Report, *A Challenge for Change: Implementation of the Michigan Lawyer-Guardian Ad Litem Statute* made several recommendations regarding allocating appropriate resources to assist counties and L-GAL's represent children, state level administrative oversight that would also be capable of providing standards for appropriate training and assessment of performance, pay and related issues. Additionally, they recommended additional judicial oversight, reduction of substitutions, clarification of the statute regarding what an "independent investigation" entails, and clarification that L-GAL's have access to agency files.

The 2005 Court Improvement Program Re-assessment Report stressed the importance of quality legal representation for all parties in child protection proceedings.<sup>i</sup> Further, the report stressed that each respondent be permitted legal representation at every stage of a child protective proceeding. The report made several recommendations regarding different areas of the court system. Most relevant to this report are the recommendations that were made regarding the representation of parties in child welfare proceedings. The recommendations included establishing statutory requirements and/or court rules setting minimum standards for attorney compensation, caseload standards, model contracts, oversight and enforcement of statutory requirements, mandatory training,

oversight to ensure accountability of attorneys representing parents and children and reducing the use of substitute attorneys.

The Quality Representation Committee (QR Comm) believes that counsel for respondent parents and children involved in child welfare proceedings play a critical role in achieving good outcomes for children and their families by protecting due process and statutory rights, presenting balanced information to judges, promoting the preservation of family relationships, and ensuring clients receive appropriate services.

The QR Comm meets on a monthly basis to address the issues and recommendations raised from the 2002 ABA report and the 2005 CIP report. The committee first focused on L-GALs. To address the issues regarding respondent parents, the QR Comm formed a subcommittee in August 2008 to specifically analyze this issue while the QR Comm continued to focus on L-GAL's. A separate report regarding Parent Representation has been prepared by the ABA.

A L-GAL survey (Attachment 1) was created to follow up with the ABA 2002 report to determine what positive changes were made and what areas still need to be addressed. The Committee completed the survey in August 2008 and have reviewed and analyzed the results. Several areas appear to have improved, such as training, level of involvement of the L-GAL and the creation of the Lawyer Guardian Ad Litem Protocol. However, several areas have not improved, including the availability of resources to complete an in-depth investigation, adequate compensation, and manageable caseloads limits.

The results of the survey show several things, including weak areas in which MCL 712A.17d is not being regularly adhered to or enforced. Two examples stuck out in this area. One, the use of substitute counsel, and two, the lack of visitation with child clients outside the county. Only 50% of attorneys stated they seek pre-approval for substitute counsel and a surprising 27% indicated they do not obtain court approval. The statute requires court approval prior to allowing a substitute for the L-GAL.

<b>16. Do you seek court approval before the substitution?</b>			
Yes		90	50%
No		49	27%
Sometimes		40	22%
Total		179	100%

**39. As an LGAL, do you receive adequate compensation?**

Yes		36	20%
No		148	80%
Total		184	100%

L-GAL's most common remark regarding meeting with their child clients referred to the lack of reimbursement for their time and travel expenses. One comment expressed frustration that the courts "make it clear" they are unwilling to pay travel expenses, mileage or time for visiting children who are sometimes placed up to 3 hours away.

**40. For which of the following activities or expenses are you reimbursed? Please check all that apply.**

Mileage		32	21%
Appearance before the Foster Care Review Board		47	31%
CPS expungement hearings		3	2%
Representing children in guardianship/custody/adoption cases		90	59%
Attendance at trainings		10	7%
Attendance at team decision making meetings (TDM's)		51	33%

On a more positive note, L-GAL's reported that they are engaging with both the child clients and other stakeholders. It was reported that 84% of L-GAL's are having 1- 2 conversations with caregivers between court hearings and 66% are having at least 1-2 conversations regarding the case with the caseworker between court hearings.

**18. On average, how many conversations do you have with the child's foster parents/caregivers before the day of each hearing?**

No conversations		8	4%
1-2 conversations		159	84%
3-4 conversations		20	11%
More than 4		3	2%
Total		190	100%

**19. On average, how many conversations do you have with the caseworker about the case before each hearing?**

No conversations		10	5%
1-2 conversations		122	66%
3-4 conversations		40	22%
More than 4		13	7%
Total		185	100%

**27. Please indicate your level of involvement in the development and monitoring of the child's case plan, court orders, and provision of services for the family. Please check all that apply.**

Not involved in the development and monitoring of case plan, court orders, and provision of services		26	14%
Attend case conferences/periodic assessment meetings		84	45%
Attend Foster Care Review Board meetings		73	39%
Receive and review reports about child's progress		179	95%
Receive and review reports about parents' progress		174	93%
Make inquiries about status of court order implementation		127	68%
Speak with child's caretakers directly		169	90%
Speak with child's caseworker directly		171	91%
Speak with school or other educational personnel		65	35%
Consult with adoption worker		99	53%
Consult with MCI Superintendent		20	11%
Participate in team decision making meetings		94	50%

A major issue that emerged involves communication between L-GAL's and the caseworker. L-GAL's reported that they rarely receive reports in a timely fashion and learn of most issues in the case from the foster parents before they hear anything from the caseworker. One L-GAL's comment summed up the issue regarding reports, "DHS MUST get the reports to the parties and counsel earlier. Normally, I am handed a report minutes before we go on the record. ... I don't know how we are supposed to be fully informed for the hearings when we're forced to review the report for the first time while the Judge is taking appearances for the record."

**28. Do you receive a copy of the updated report/service plan from the caseworker at least five days before each court hearing?**

Yes		22	12%
No		82	43%
Sometimes		85	45%
Total		189	100%

**30. ... from whom are you most likely to learn that there is a problem with services? Please rank in order 1-6, 1 being most likely to tell you about a problem and 6 being least likely.**

Top number is the count of respondents selecting the option. Bottom % is percent of the total respondents selecting the option.

	1	2	3	4	5	6
Foster parent	57	30	21	15	15	3
	40%	21%	15%	11%	11%	2%
Child-client	11	24	35	43	27	12
	7%	16%	23%	28%	18%	8%
Biological parent	11	17	27	27	49	18
	7%	11%	18%	18%	33%	12%
Other attorneys	19	40	37	33	24	8
	12%	25%	23%	20%	15%	5%
Caseworker	50	38	32	26	15	14
	29%	22%	18%	15%	9%	8%
CASA volunteer	13	20	13	14	16	91
	8%	12%	8%	8%	10%	54%

L-GAL's are also reported to be regularly involved in other issues such as delinquency matters and social security claims for their child clients.

**31. How frequently do you pursue issues on behalf of the child that do not arise directly from the scope of your court appointment?**

Top number is the count of respondents selecting the option. Bottom % is percent of the total respondents selecting the option.

	Very frequently	Regularly	Occasionally	Seldom	Never
Immigration matters	1	3	21	28	134
	1%	2%	11%	15%	72%
School disciplinary matters	2	15	57	56	58
	1%	8%	30%	30%	31%
Delinquency cases	17	37	75	31	27
	9%	20%	40%	17%	14%
Special education issues	7	28	70	48	32
	4%	15%	38%	26%	17%
Social services/general benefits	12	21	67	49	37
	6%	11%	36%	26%	20%
Social Security/disability claims	2	5	30	57	89
	1%	3%	16%	31%	49%

	3	9	22	36	115
Tribal issues	2%	5%	12%	19%	62%
	1	5	19	40	121
Inheritance issues	1%	3%	10%	22%	65%
	4	15	53	34	82
Adult care transition issues	2%	8%	28%	18%	44%

Although L-GAL's reported only occasional struggles with conflicts between the "best interest" of the child and the child's "wishes", L-GAL's are not shy about informing the court of this conflict. L-GAL's seem to have learned to balance these standards and are comfortable in this dual role.

**33. Have you ever had to inform the court of a conflict between a child's "best interests" and a child's wishes?**

Yes		158	83%
No		32	17%
Total		190	100%

**34. If your answer to question 33 was yes, please check the box that indicates the percentage of cases in which this has occurred.**

0%-25%		143	87%
26%-50%		16	10%
51%-75%		5	3%
76%-100%		0	0%
Total		164	100%

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The survey also inquired about compensation. A review of county plans regarding the appointment of counsel revealed that the rate of compensation varies significantly between counties. Survey responses overwhelming indicated that L-GAL's are underpaid. Eighty percent (80%) of respondents indicated they are not compensated adequately.

**39. As an L-GAL, do you receive adequate compensation?**

Yes		36	20%
No		148	80%
Total		184	100%

Additionally, reimbursable expenses related to representing children vary from county to county. Although several counties are willing to pay for these expenses it appears attorneys are unaware of this and do not bill for the additional services.

<b>40. For which of the following activities or expenses are you reimbursed? Please check all that apply.</b>			
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Attendance at trainings		10	7%
Attendance at team decision making meetings		51	33%
Other		49	32%

After reviewing the prior reports, the information obtained for the August 2008 L-GAL survey and several discussions with key stakeholders, the QR Comm believes there are several areas that still have room for improvement such as:

- a. The need to foster advocacy that helps families.
- b. Create a level playing field for all child welfare attorneys by addressing availability of resources such as investigators and experts to allow more effective representation.
- c. Facilitate authentic due process for families.
- d. Reduce attorney caseloads.
- e. Increase compensation.
- f. Encourage L-GAL representation as an area of law that attorneys will choose as a profession.
- g. Provide training to new attorneys entering the field.
- h. Create a support network of attorneys who can share information and practice experiences.
- i. Ensure that children are represented in the appeals process.

Therefore, the QR Comm makes the following five specific recommendations for immediate consideration and action in Michigan:

1. Consistent legal representation for children. To accomplish this, it is recommended that Michigan adopt a statewide model of L-GAL representation providing for minimum standards of practice, training, and compensation. MSC has taken steps similar to our recommendation to ensure adequate representation of indigent criminal defendants. Similar models have been implemented in a other states in recent years including Connecticut and Massachusetts.
2. L-GALs should be compensated adequately and uniformly for all time actually spent on efforts to represent their child client and comply with all the statutory requirements. They should also have equal access for expert witnesses, all expenses incurred during the course of investigation and representation.
3. Michigan should adopt a model contract for L-GALs. Contracts should include at a minimum, the specific expectations of the L-GAL, maximum caseloads, and compensation rates.
4. Michigan should require trainings for L-GALs both prior to obtaining a contract and on an ongoing basis. Trainings should include, among other topics:
  - How to effectively follow the L-GAL protocol
  - How to conduct an independent investigation
  - Joint trainings with DHS staff
  - Opportunities for mentorship/job shadowing
  - How to ensure effective age-appropriate interactions with clients
  - Federal and state legal updates
5. Family court judges should be provided trainings to improve:
  - Their understanding of the L-GALs role
  - L-GAL oversight
  - Enforcing L-GAL access to DHS case file, including case service plans

Michigan has shown national leadership in ensuring that effective counsel is provided for every child involved in child welfare proceedings. It is imperative that we follow that up to ensure that counsel for children are provided the resources necessary to provide strong advocacy for children. Given the consistency of the many recommendations over the last several years, now is the time to act. We have studied this issue several times in the last 9 years with similar results. Now is the time to take steps to act on the recommendations

made in numerous studies and further improve the quality of representation for our children.

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<sup>i</sup> The original CIP assessment report contained 12 recommendations addressing representation. In summary, the report recommended that the Michigan courts:

- a. Implement attorney quality control measures;
- b. Advocate for reasonable compensation for attorneys;
- c. Educate attorneys on juvenile court practice;
- d. Ensure attorney caseloads are reasonable;
- e. Appoint attorneys for parties in advance of the preliminary hearing with that representation continuing through the case;
- f. Appoint attorneys to independently represent each child and parent;
- g. Appoint attorneys to remain with one case through all its stages;
- h. Recruit attorneys based, in part, on their skill and knowledge related to child welfare;
- i. Monitor attorneys conduct; and
- j. Require children's attorneys to meet with the child they represent at least once before each proceeding or hearing.