

Bearing the Best Interest:

The Guardian ad Litem and the "CASA" Volunteer in Juvenile Court Proceedings

by Chris Costantakos, J.D.



In my many discussions with professionals who are actively involved in the representation of children, I continue to hear two arguments. The first is that the "CASA" (court-appointed special advocate) volunteer should replace the guardian ad litem in juvenile court proceedings. The second is that the appointment of a CASA volunteer is completely unnecessary, because it is the exclusive charge of the guardian ad litem to represent the best interests of the juvenile involved in juvenile court proceedings.

In my experience, both approaches are wrong. They usually signify either a lack of understanding of the role of the CASA volunteer or of the guardian ad litem, or else they represent purely political self-preservation. Indeed, I am aware of guardians ad litem who resent the involvement of CASA

volunteers for no other reason except that the advocacy rendered by the volunteers has in some way illuminated the shortcomings of their own performances as guardians ad litem. I am also aware of CASA volunteers who believe that because guardians ad litem are lawyers, they should be limited to representation of the legal rights of the child, and leave matters of the best interest of the child to the CASA volunteers.

This article explores how the guardian ad litem and the CASA volunteer offer independent value for children in juvenile court proceedings in Nebraska. There are differences in the stature and the duties imposed upon the guardian ad litem and upon the CASA volunteer, and well as differences in the manner in which each of their respective roles is carried out. Finally, suggestions are offered for fostering a cooperative relationship between the guardian ad litem and the CASA volunteer, without having to eliminate the one in order to achieve the benefit of the other, or merge the role of one into the other.

Christine Costantakos, J.D.

Christine Costantakos, J.D., is an attorney in private practice. She graduated from Creighton University School of Law and has practiced extensively in the area of juvenile law for over 25 years. She is the author of *Juvenile Court Law and Practice*, published by Thomson-West, a practice manual specifically devoted to juvenile court practice in Nebraska. Costantakos has served as a guardian ad litem for children in juvenile court proceedings, adoption proceedings, and in district court domestic relations cases. She has also represented the CASA program in juvenile court proceedings and participated in CASA training sessions. Costantakos is a member of the Legislation Committee of the Nebraska State Bar Association. She was also a member of the Guardian ad Litem subcommittee of the Nebraska Supreme Court Commission on Children in the Courts.

Why Should More Than One Person Investigate the Child's Best Interests?

A juvenile court judge's ability to make good decisions that will affect the lives of children and their families depends upon the *information* presented to the court. This information typically takes the form of reports prepared by professionals whose task it is to investigate the juvenile's circumstances and any other material factor that impacts the health, safety and welfare of the child. Who submits these reports? Certainly, the Department of Health and Human Services case manager is one person who has a legal duty to prepare and provide case plans to the court for each child committed to the Department's custody. The guardian ad litem appointed for the juvenile also is legally required to discharge investigatory and

reporting functions, and to make recommendations to the court regarding the juvenile's best interests.

If they are performed correctly, these tasks can absorb a significant amount of time in each case. Just to get up to speed in certain cases can require a professional to review voluminous background materials and history, which can include court documents, professional evaluations and summaries, and documents and reports from interrelated or previous cases involving the same children or parents, and that is just the reading alone. In order to be in a position to effectively advocate for a child throughout the life of a case, a competent guardian ad litem or case manager must conduct multiple interviews with children, parents, foster parents, teachers, clergy members, and other persons who have pertinent information. To be effective, it is imperative for the guardian ad litem and the case manager to leave their desks in order to attend meetings and conferences relating to the child or the case, and to conduct visits to the parental home, and to the child's placement and/or school. Countless hours can be spent in driving to and from home visits and other meetings; monitoring compliance with court orders; arranging for or advocating for necessary services; writing and distributing reports to the court and to other parties in the case; and preparing for court hearings.

As more juveniles come under the jurisdiction of the juvenile court, depending upon the size of their respective caseloads, departmental case managers and guardians ad litem can become overburdened, making it more challenging for them to obtain and provide the court with accurate and comprehensive information in a timely manner. While the increase in juvenile court filings can signify improved prosecutorial vigilance regarding the protection of children, the downside of increased caseloads is the likelihood that the quality of the investigation, reporting, and recommendations submitted to the court by the guardian ad litem and/or departmental case manager will become diluted. This is a factor that adversely impacts the court's ability to make fully informed decisions regarding the best interests of the children under its jurisdiction.

The Court-appointed Special Advocate program operates in Nebraska pursuant to the Court Appointed Special Advocate Act.¹ The "CASA" volunteer constitutes one more person trained and authorized by law to participate in the task of investigating and making recommendations to the court regarding the best interest of children and their families involved in juvenile court proceedings.

Guardian ad Litem and CASA Volunteer: Who Are They?

A guardian ad litem is appointed by the judge to advocate for the best interest of a party who is unable to represent his or her own best interests in connection with a legal action. Historically, this has included those who lack capacity to make

decisions regarding their own best interest, by reason of infancy, minority, illness or advanced age. Juvenile court cases are not administrative proceedings, but they are *lawsuits*, in which fundamental liberty interests and substantial rights of parents, children and the public are intertwined. While the focus of juvenile court proceedings is rehabilitative, the fact remains that the parties can sustain losses in these cases, especially where parental rights are terminated, liberty is curtailed, or other aspects such as visitation or placement of a child are determined or affected by the rulings of the court.

Because the legal rights of each juvenile are implicated in juvenile court proceedings, each child is entitled to legal representation at every step along the way in a juvenile court proceeding.² Thus, under Nebraska law, every guardian ad litem appointed for a juvenile must be a lawyer in order to be able to effectively assert and protect not only the juvenile's best interests, but also the juvenile's legal interests in the context of the proceeding.³ Even if the juvenile is incapable of directing the representation in the sense of a traditional attorney-client relationship due to factors such as infancy or illness, the lawyer-guardian ad litem may exercise statutory authority to advance the juvenile's best interests, including the protection of the juvenile's legal rights, by performing attorney functions in the case such as filing motions, adducing evidence, initiating and participating in appeals, obtaining records, etc. Thus, through his or her guardian ad litem, a juvenile can confront and cross-examine witnesses, even those, for example, who are testifying in favor of terminating the rights of the juvenile's parents. Through the guardian ad litem, the juvenile can subpoena and call witnesses to testify on behalf of the juvenile; the juvenile can obtain medical records or other pertinent information; and the juvenile can appeal the final rulings of the juvenile court.

On the other hand, a CASA volunteer is not required to be an attorney in order to advocate for the juvenile's best interests. That is because the statutory charge of the CASA program in Nebraska does not include the legal representation of the juvenile. There is absolutely no authority for a CASA volunteer to function as a guardian ad litem in juvenile proceedings brought under the Nebraska Juvenile Code. The Nebraska CASA statutes require the court order of appointment of a CASA volunteer to "specify the volunteer as a friend of the court acting on the authority of the judge."⁴ The CASA volunteer operates, then, as a type of *amicus curiae* at the trial level. Thus, unlike the guardian ad litem, the CASA volunteer is not a true legal party to the proceedings, nor does the volunteer represent the legal interests of the juvenile, but functions more in the nature of an advisor to the court on the issue of best interests, and the propriety of services provided to the juvenile and to his or her family.⁵



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While the CASA program does not prohibit attorneys from becoming volunteers, the majority of volunteers in Nebraska are non-lawyers. Even where a CASA volunteer is, in fact, licensed as a lawyer, that fact does not transform the CASA volunteer's role into one of an attorney, nor can such lawyer-CASA discharge a lawyer role in the context of the juvenile court proceeding. That is not to say that the CASA volunteer could not make recommendations to the court regarding any matter that could impact the juvenile's legal rights, if the consideration of such matter were germane to the assessment of the juvenile's best interests. However, national CASA standards clearly prohibit a CASA volunteer from "giving legal advice" to anyone involved in the case.⁶

Furthermore, the investigation conducted by a CASA volunteer must be "independent."⁷ In other words, unlike an attorney who renders "legal services" on behalf of one party in a juvenile court case, the CASA volunteer cannot represent the partisan interests of any one individual in the case and, in fact, is prohibited by statute from having any association that creates a conflict of interest with his or her duties, or from employment in a position "that could result in a conflict of interest or give rise to the appearance of a conflict."⁸

Guardian Ad Litem or CASA Volunteer: What Does The Law Require of Each?

Appointment and Status

The law requires the juvenile court to appoint a guardian ad litem for virtually every juvenile involved in a juvenile court proceeding. This is usually determined by the nature of the proceeding itself, or else by the specific circumstances surrounding the case.⁹ The appointment of a guardian ad litem usually occurs at or near the very beginning of the case and the appointment endures until the end of the case. On the other hand, a CASA volunteer is not required to be appointed in every juvenile case, but appointment of the volunteer must result from an order entered by the court when, in the opinion of the judge, a child affected by a juvenile court proceeding requires the services that a volunteer can provide, and the court finds the appointment to be in the best interests of the child.¹⁰ This can be initiated upon the court's own motion, or upon request by a party in the case. A CASA volunteer can be appointed at the front end of the case, or at any time during the life of the case, as the judge sees fit. Many juvenile court cases are processed from beginning to end, without the involvement of a CASA volunteer.

The guardian ad litem is paid for his or services rendered in connection with the case just as any other court-appointed counsel is paid in a juvenile court proceeding.¹¹ On the other hand, an individual appointed to serve from the CASA program is a volunteer and, by law, cannot "accept any compensation for the duties and responsibilities of his or her appointment."¹²

Under Nebraska law, each CASA volunteer must participate in pre-service training and a minimum of 10 hours of in-service training each year.¹³ This training is designed to orient the volunteer in areas such as the roles and responsibilities of a CASA volunteer, an overview of relevant laws, child development and other psychological, cultural and behavioral aspects of families, information gathering, communication, and aspects of confidentiality.

Effective January 1, 2008, attorneys must complete six hours of initial specialized guardian ad litem training in order to be appointed by the juvenile court as a guardian ad litem in juvenile proceedings. To maintain eligibility for appointment, such attorneys must also complete three hours of training every year thereafter.¹⁴ Because a guardian ad litem must be an attorney, the guardian ad litem for a juvenile will also have obtained a legal education, which would likely include training in areas such as constitutional and civil rights, legal procedure, client counseling, trial practice, discovery, and evidence, including matters of confidentiality and privilege, and possibly some experience as a law clerk or intern. Those who have taken additional courses in juvenile and family law, criminal procedure, and alternative dispute resolution bring the benefit of those specific areas as well, to their practice. An experienced attorney appointed as a guardian ad litem will now have the new specialized training as well as bring to the role legal education and training in these areas as well as skills refined in daily practice.

Duties Upon Appointment

Where a guardian ad litem is appointed for a juvenile, the guardian ad litem must consult with the juvenile within two weeks of his or her appointment, and no less than once every six months thereafter.¹⁵ These are the minimum contacts prescribed by statute.

The Nebraska CASA statutes do not directly require the CASA volunteer to meet with the juvenile, but clearly contemplate the necessity of such contact as an integral part of the CASA volunteer's duty to "conduct an independent examination regarding the best interests of the child."¹⁶ Indeed, the CASA volunteer is legally authorized to conduct "interviews with and observations of the child."¹⁷ While the Nebraska statutes do not impose any minimum requirement, regarding either the number or frequency of contacts between the CASA volunteer and the juvenile, national CASA standards clearly require the volunteer to meet with the juvenile once every 30 days at a minimum.¹⁸

The guardian ad litem is also required by law to interview the child's foster parents as well as the Health and Human Services case manager.¹⁹ In addition, the guardian ad litem has legal authority to make inquiry of others such as parents, physicians, teachers, or clergy members, who may have pertinent information about the case or about the juvenile.²⁰ In conducting his or her independent examination regarding the best interests of the juvenile, the CASA volunteer is also

legally authorized to interview “other appropriate individuals,” which would normally include the foster child’s foster parents and the Health and Human Services case manager, as well as others.²¹

Both the guardian ad litem and the CASA volunteer are statutorily mandated to attend all court hearings.²² Both are required to conduct an independent investigation regarding the best interests of the juvenile. The guardian ad litem is required by law to submit a written report to the court at every dispositional or review hearing, expressing recommendations regarding the temporary and permanent placement of the juvenile.²³ The guardian ad litem’s report should also include any other matter considered by him or her as warranted by the nature and circumstances of the case, that would bear upon the best interest of the juvenile.²⁴ The CASA volunteer is also required by Nebraska law to prepare a written report containing his or her recommendations regarding the best interests of the child, and to provide such report to the court and to the parties to the proceeding.²⁵ The written CASA report may be offered as evidence, “subject to all pertinent objections.”²⁶

The CASA volunteer may be called to testify as a witness in the case.²⁷ The guardian ad litem may also testify, but in the event that such act would result in an actual conflict of interest, the juvenile court has authority to appoint separate legal counsel for the guardian ad litem, or for the juvenile, or for both, as the court sees fit.²⁸

Guardian ad Litem and CASA Volunteer: Manner of Advocacy

According to national CASA program standards, each CASA volunteer may not be assigned more than two cases at a time.²⁹ This permits the volunteer to have ample time within which to become familiar with and monitor the case, and to spend more quality time with each child involved in the case. The frequency with which the CASA volunteer sees the child allows the volunteer to establish a significant relationship with the child and to have multiple opportunities to observe and interview the child.

Presently, there is no limit imposed by law upon the number of cases or the number of children that the guardian ad litem may represent at any given time. A guardian ad litem who seeks to have an active juvenile court practice will likely have more than two cases at a time. One guardian ad litem in a small county in Nebraska acknowledges handling about four cases per year. Another attorney who was part of a group of lawyers that contracts with Douglas County to provide guardian ad litem services, describes handling about 100 cases at any one time, which translated into an average of 180 children represented by one guardian ad litem at the same time. This guardian ad litem found the experience overwhelming and admitted to having difficulty keeping up with just the minimal statutory requirements imposed upon guardians ad litem, and

particularly the duty to consult with the juvenile at regular six-month intervals.

Only the juvenile is the focus of the guardian ad litem’s representation. The guardian ad litem “is not appointed to defend the parents or other custodian of the protected juvenile.”³⁰ While the CASA volunteer investigates and makes recommendations regarding the juvenile’s best interests, the volunteer is not appointed to “represent” the juvenile, strictly speaking, but is appointed in the capacity of “friend of the court.” The matters inquired into and the recommendations made to the court by a CASA volunteer can and sometimes do exceed the scope of advocacy by the guardian ad litem, whose sole charge is the juvenile. For example, the CASA volunteer is required to provide factual information to the court not only about the child’s best interests but also regarding *the child’s family*; to determine if appropriate services are being provided not only to the child but also to *the child’s family*; and to make recommendations to the court reporting on whether the services in place are appropriate for the child as well as for *the child’s family*.³¹ While such information, determinations and recommendations clearly would include the best interest of the child, they may also be directed to the benefit of persons other than the child.

The guardian ad litem has the right to obtain records, reports and other documentation pertinent to the case. This can often be accomplished simply upon the request of the guardian ad litem, but where such a request is not honored, either because it is legally insufficient in relation to the nature of the information sought or due to outright refusal to cooperate, the guardian ad litem can exercise traditional attorney functions to obtain such materials and information through appropriate techniques of discovery, subpoena power, or through securing an order of the court.

The CASA volunteer is entitled to review “relevant records and reports.”³² In addition, the CASA volunteer also has a statutory right to receive information from the other agencies and professionals involved in the case. Specifically, “all government agencies, service providers, professionals, parents and families” are required to cooperate with all “reasonable requests” of the CASA volunteer.³³ This mandate would include requests by the volunteer for information, documentation, records and reports, and access to the child that are necessary in order for the CASA volunteer to fulfill his or her statutory duties to conduct an independent examination, to determine the appropriateness of the permanency plan and services being provided, to monitor the case to assure that the child’s essential needs are being met, and to make recommendations to the court consistent with the best interests of the child.

Thus, where a child is in the custody of the Nebraska Department of Health and Human Services, which is a



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“government agency,” the Department has a statutory duty to provide the CASA volunteer with pertinent information when reasonably requested by the volunteer, including the case manager’s court report. Similarly, because the CASA volunteer is entitled to review relevant reports, where the CASA volunteer reasonably requests a copy of the guardian ad litem’s report, then the guardian ad litem, as a “professional” in the case, would be under a statutory duty to cooperate with such request. Where the CASA volunteer encounters lack of cooperation with reasonable requests for records, information, documents, or reports from government agencies, service providers, other case professionals, or parents or families, the volunteer should be able to raise this concern directly with the court, given that the volunteer functions in the capacity of a “friend of the court.”

Cooperation Between the Guardian ad Litem and the CASA Volunteer

The polar star around which every juvenile court proceeding revolves is the best interest of the child, but what that is, and the road to determining it, can be matters of some debate. One concept discussed by some professionals involves the creation of a “team” to jointly represent the child’s best interest in juvenile court proceedings, which would consist of an attorney working in tandem with a volunteer guardian ad litem, such as a CASA volunteer. When asked how this would work, one individual endorsing this approach indicated that the volunteer would go out and do the actual “legwork” (such as visiting and observing the child, attending school meetings and conferences of professionals, obtaining medical and other pertinent records, interviewing persons with pertinent information and submitting recommendations to the court) while the attorney would do the “law-work,” (such as filing motions, entering into stipulations, or litigating matters) all undertaken for the purpose of representing the best interests of the juvenile, but there are serious problems with this concept.

First, an attorney is ethically prohibited from “teaming” up with a non-lawyer for the purpose of the joint representation of a client.³⁴ Furthermore, to the extent that the “team” model includes a volunteer (such as a CASA volunteer) as one of the professionals engaged in activities that include the legal representation of the child, it encourages the unauthorized practice of law on the part of the volunteer. Finally, it is unethical for a lawyer to practice law in a situation involving an association where a non-lawyer has the right to “direct or control” the professional judgment of the lawyer.³⁵ To the extent that the CASA volunteer is an integral member of the “team,” and the opinions, perceptions and judgments of the volunteer could direct or control the professional judgment of the lawyer in the representation of the child, this would be prohibited.

Second, one member of the “team” will receive compensation

for the rendition of his or her services, while the other member of the “team” is legally prohibited from doing so. There is something ethically untenable about an attorney being compensated for services that have actually been performed by an unpaid volunteer. This is especially troublesome in situations where compensation is predicated upon the payment of one flat fee per case, without reference to the actual hours of service expended by the attorney.

Third, what happens under the “team” approach if the recommendations of the CASA volunteer happen to be at odds with the recommendations of the attorney? One individual with whom I discussed the “team” proposal stated that the matter must be resolved in favor of the attorney’s point of view, precisely because he or she is the attorney, and the volunteer is not. This approach not only discounts the value of the efforts, experience and judgment of the CASA volunteer, but conflicts with the law. The guardian ad litem and the CASA volunteer are statutorily required to conduct their own separate and independent investigation, and to formulate their own separate and independent recommendations regarding the best interests of the child. “Independent” means that the views and recommendations of one professional are not subjugated to those of another.

Finally, under the “team” approach, there is no assurance that the juvenile’s legal rights would be represented at every step of the juvenile proceeding. Best interests and legal interest do not always align. For example, if the juvenile wants to leave her placement and the volunteer guardian ad litem believes it is in the juvenile’s best interest to remain in the placement, who protects the juvenile’s legal interests with respect to her preferences regarding placement? Clearly, the volunteer guardian ad litem cannot do so. While the “team” would also include an attorney, who does that attorney *actually* represent? The juvenile? Or the volunteer? If the attorney represents the juvenile, then there is a need for the volunteer to obtain separate legal counsel in order to effectively assert the volunteer guardian ad litem’s position regarding the juvenile’s best interests. If the attorney represents the volunteer guardian ad litem, then the juvenile’s legal rights will be unrepresented throughout the case, unless the court appoints separate legal counsel for the juvenile *from the very outset of each case*. Such an arrangement can be expensive and impractical.

While I do not endorse the concept of forming a CASA-attorney “team” to jointly represent the best interests of the child, there are ways in which the guardian ad litem and the CASA volunteer can strengthen the effectiveness of their respective roles by increasing their cooperation with one another. There is no reason why the guardian ad litem and the CASA volunteer cannot exchange the product of their investigations, or perform certain duties at the same time with each other, with the end goal of increasing and improving the level of information

available to the court in order to make the best decision for the child. For example:

1. The CASA volunteer and the guardian ad litem can and should provide copies of their respective court reports to each other.

The exchange of reports between the CASA volunteer and the guardian ad litem is legally authorized. The CASA volunteer has the right to review all relevant reports, and the guardian ad litem's report would certainly qualify as a relevant report. Furthermore, as a professional in the case, the guardian ad litem would be required to cooperate with all reasonable requests of the CASA volunteer, including the request for the guardian ad litem's report. Conversely, the CASA volunteer is required to provide copies of his or her report to all parties in the proceeding, which would clearly include the guardian ad litem.

Where there is agreement between the findings or recommendations made by the CASA volunteer and the guardian ad litem, there is nothing wrong with signifying such concurrence in each of their respective reports. However, any arrangement whereby the guardian ad litem merely "signs off" on the CASA report as a single document that purports to stand as "the report of the guardian ad litem" is contrary to the law, given that the CASA volunteer and the guardian ad litem each are under a statutory duty to prepare and submit a separate report to the court which reflects the independent examination or investigation conducted by each.

2. Where possible, the guardian ad litem and the CASA volunteer should exchange information, documents, and records relating to the case.

The contents of any document to which the CASA volunteer has access are confidential and may not be disclosed, subject to certain exceptions. The CASA volunteer is entitled to disclose such information to the court, to persons who are parties, and to other persons authorized by the court.³⁶ Because the guardian ad litem is a party, the CASA volunteer would be authorized to provide the guardian ad litem with copies of records, documents, and reports that have been obtained by the CASA volunteer. For example, if the CASA volunteer has obtained school attendance records of the child, why not share them with the guardian ad litem rather than require the guardian ad litem to duplicate efforts in order to obtain the same information?

As a professional in the case, the guardian ad litem is also under a duty to cooperate with "all reasonable requests" of the CASA volunteer.³⁷ Whether a request for records, documents and reports obtained by the guardian ad litem would be regarded as reasonable, would likely turn upon an assessment of whether the information is needed by the volunteer in order to fulfill his or statutory duties in relation to the case. However, a request for information by the CASA volunteer does not defeat the protection of the attorney-client privilege.³⁸ To the extent that

any records, documents or other information obtained by the guardian ad litem are protected by such privilege, the guardian ad litem would not be required to provide them to the CASA volunteer, unless the privilege were waived, or unless the disclosure of such information to the volunteer is necessary to avoid harm or injury to the child.

3. Where appropriate, the guardian ad litem and the CASA volunteer together can visit the juvenile's foster care placement, home, school, or other relevant sites.

Joint visits can sometimes produce additional and valuable information. The guardian ad litem might note one thing during a visit, while the CASA volunteer might focus attention upon an entirely different aspect. Or, a statement or condition that is perceived by one, might be confirmed by the other. Based upon the frequency of contact between the CASA volunteer and the child, the child might feel more comfortable with the volunteer and tend to open up more in the presence of the volunteer. Or, the guardian ad litem might be more skilled at interviewing and be able to produce more information from the child or other persons being interviewed. If both are present at the same visit, this permits corroboration and verification of observations and communications. The guardian ad litem should consider the benefit of using the CASA volunteer to testify to events or facts of which the volunteer has personal knowledge or first-hand observation.

4. The guardian ad litem and the CASA volunteer should notify each other when special problems, concerns or situations arise that impact or endanger the child's health, safety or welfare.

It sometimes happens that either the CASA volunteer or the guardian ad litem will become aware of a new problem or situation affecting the child of which the other professional might not be aware. For example, the child might have become hospitalized, or something might have occurred at a visitation that has a negative impact upon the child. For the guardian ad litem and the CASA volunteer, why not inform each other of the change in the situation as soon as reasonably possible? This practice assists both the volunteer and the guardian ad litem in keeping abreast of developments that have an impact upon the child.

Conclusion

The role and duties of the guardian ad litem and a CASA volunteer are similar but not co-extensive. Under the Nebraska Juvenile Code, a guardian ad litem is an attorney who is appointed to represent the best interests of the juvenile, and is also the juvenile's legal counsel. The CASA volunteer is not an attorney and does not represent any party in the case, but functions as a "friend of the court" by advising the court on the issue of the best interests of the juvenile. The guardian ad litem




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and the CASA volunteer each offer value in a juvenile court proceeding. The efforts of one can reinforce the efforts of the other without having to establish a formal “team” between them, or without having to replace one with the other.

In the last analysis, there is nothing wrong with having more than one trained person or professional investigate, assess, and submit recommendations to the Court regarding the juvenile’s best interests. If the resulting investigations, assessments and recommendations tend to harmonize with each other, then this only serves to strengthen the basis upon which the Court makes its rulings. But what if there is not agreement between the findings and recommendations submitted to the Court by the departmental case manager, the guardian ad litem, and the CASA volunteer? This is not necessarily a bad thing. For example, I am aware of a case in which the departmental case manager did not discover a very crucial factor impacting the case until she read certain information contained in the guardian ad litem’s report. As a result, she changed a material recommendation in her own report. Had the court charted its course along the horizons of the case manager’s knowledge at that point in time, the case would have proceeded in the wrong direction. One must ask: can a judge ever have too much information regarding the needs or circumstances of the child or the family about whom he or she is required to make decisions that could have a long-term impact on the child and the family? Too much information is a good problem to have, as compared with the alternative.

Divergence in the information reported or the recommendations endorsed should not spawn animosity between the reporters, based some kind of upon competition for “supremacy.” Indeed, the point of having many “eyes” focused upon the case is to provide the court with as much pertinent and accurate information as possible, and then allow the court to sort it all out, assigning to the various findings and recommendations, such evidentiary weight or credibility as may be appropriate. In this manner, the court is placed in the best possible position to determine the best possible outcome for the child.

Ideally, the more trained “eyes” that are focused upon the case, the child, the family and its needs, as well as upon the appropriateness and quality of services in place, the more valuable the information that can be made available to the court. To increase the depth and accuracy of the information to which the court has access, is to increase the likelihood that the court will make a well-informed and therefore, a better decision for the child than it otherwise might, without the benefit of such information. 

Endnotes

¹ Neb. Rev. Stat. §§43-3701-434-3716

² The legislative history of the guardian ad litem statutes of the Nebraska Juvenile Code makes it clear that the children involved in juvenile proceedings are entitled to legal representation of their interests throughout the proceeding and that the juvenile’s

guardian ad litem should be an attorney.

³ Neb. Rev. Stat. §43-272(3)

⁴ Neb. Rev. Stat., §43-3710(2)

⁵ An amicus curiae, or “friend of the court” is traditionally regarded as an advisor to the court who provides information to the court with respect to a particular issue.

⁶ Standard 7.E.7.b, Standards for Local CASA/GAL Programs, 2006 Ed.

⁷ Neb. Rev. Stat. §43-3712(1)(a)

⁸ Neb. Rev. Stat. §43-3711(2) and (5)

⁹ The court is not required to appoint a guardian ad litem in delinquency and status offense proceedings, unless: 1) the juvenile has no parent or guardian, or neither can be located or brought before the court; 2) the parent or guardian has been excused from participation in all or any part of the proceeding; 3) the juvenile’s parent is incompetent or a minor; 4) the parent is indifferent to the interests of the juvenile. See Neb. Rev. Stat. §43-272(2).

¹⁰ Neb. Rev. Stat. §43-3710(1) and (2)

¹¹ Neb. Rev. Stat. §43-273

¹² Neb. Rev. Stat. §43-3711(1)

¹³ Neb. Rev. Stat. §43-3708. Also, Standard 7.C.2, of the Standards for Local CASA/GAL Programs, (2006 Ed.) specifies that volunteers must undergo 30 hours of initial training and 12 hours of in-service training annually.

¹⁴ See Rule Regarding Guardian ad Litem Training for Attorneys, approved by Nebraska Supreme Court, and published at: www.supremecourt.ne.gov/rules/pdf/attygaltraining-37.pdf. The sole exception to the training requirement is in that situation where an attorney with training is unavailable within the county. In that event, the judge may then appoint an attorney as a guardian ad litem without such prior training.

¹⁵ Neb. Rev. Stat. §43-272.01(2)(d)

¹⁶ Neb. Rev. Stat., §43-3712

¹⁷ Neb. Rev. Stat., §43-3712(1)(a)

¹⁸ Standards 1.A.4, and 7.E.5.f, Standards for Local CASA/GAL Programs, 2006 Ed.

¹⁹ Neb. Rev. Stat. §43-272.01(2)(d)(i)

²⁰ Neb. Rev. Stat. §43-272.01(2)(d)(ii)

²¹ Neb. Rev. Stat. §43-3712(1)(a)

²² Neb. Rev. Stat. §§43-272.01(2)(a); 43-3712(4)

²³ Neb. Rev. Stat. §43-272.01(2)(f)

²⁴ Neb. Rev. Stat. §43-272.01(2)(h)

²⁵ Neb. Rev. Stat. §43-3712(2)

²⁶ Neb. Rev. Stat. §43-3710(2)

²⁷ Neb. Rev. Stat. §43-3712(5)

²⁸ Neb. Rev. Stat. §43-272(3); In re Interest of J. K., 265 Neb. 253, 656 N.W.2d 253 (2003)

²⁹ Standard 7.E.6, Standards for Local CASA/GAL Programs, 2006 Ed.

³⁰ Neb. Rev. Stat. §43-272.01(2)(b)

³¹ Neb. Rev. Stat. §43-3712

³² Neb. Rev. Stat. §43-3712(1)(a)

³³ Neb. Rev. Stat. §43-3713

³⁴ Rule 5.4(b), Nebraska Rules of Professional Conduct prohibits a lawyer from forming a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.

³⁵ Rule 5.4(d)(3), Nebraska Rules of Professional Conduct

³⁶ Neb. Rev. Stat. §43-3714

³⁷ Neb. Rev. Stat. §43-3713

³⁸ See Neb. Rev. Stat. §43-3715 which provides “Nothing in the Court Appointed Special Advocate Act affects the attorney client privilege.”

Comparison of Guardian Ad Litem and CASA Volunteer

	GUARDIAN AD LITEM	CASA VOLUNTEER
Appointed by Judge	Yes	Yes
Basis for Appointment	Required by statute; or as result of exercise of court's discretion. <i>See §§43-272; 43-272(1); 43-292.01</i>	Permitted by statute as the result of exercise of court's discretion, if court finds that child needs such services and that appointment is in the best interests of the child. <i>See §43-3710(1)</i>
Status in the Case	Attorney at law. <i>See §43-272(3)</i>	"Friend of the court." <i>See §43-3710(2)</i>
Scope of Charge	Protection of best interests and legal interest of juvenile. <i>See §43-272(2); §43-272.01</i>	Examination of best interest of juvenile; determine appropriateness of permanency plan & services to juvenile and family; recommendations consistent with juvenile's best interest. <i>§43-3712</i>
Basis Upon Which Services are Rendered	Paid for services rendered. <i>See §43-273</i>	Volunteer; cannot accept payment. <i>See §43-3711(1)</i>
Training/Education	Must be licensed as a lawyer. As of <i>January 1, 2008</i> , must complete specialized guardian ad litem training. <i>See §43-272(3); and Nebraska Supreme Court Rule.</i>	Formal and regular training provided by CASA program. <i>See §43-3708</i>
Tenure on Case	Usually appointed at outset of case; appointment continues to end of case	May or may not be appointed at all on any given case; can be appointed at any time during a case.
Duty to Prepare Written Court Report	Must submit written report to court at every dispositional or review hearing. <i>See §43-272.01(2)(f)</i>	Must submit written report to court and to parties. <i>See §43-3712(2)</i>
Required by Law to Have Contact with Juvenile	Yes. Must consult with the juvenile within two weeks of appointment and at least once every six months thereafter. <i>See §43-272.01(2)(d)</i>	No; but expected to conduct independent examination and has authority to interview juvenile. National CASA program standards require volunteer to visit the child <i>once every 30 days</i> .
Caseload Limit	None.	Two cases at any given time.
Required to Interview Foster Parents or Other Custodians, and Current HIS Case Manager	Yes. <i>See §43-272.01(2)(d)(ii)</i>	No, but <i>authorized</i> to interview "Other appropriate individuals" as part of independent examination. This can include foster care providers and HIS case managers. <i>See §43-3712(1)(a)</i>
Authorized to Interview Others Such as Parents, Teachers, Physicians, etc.	Yes. <i>See §43-272.01(2)(d)(ij)</i>	Yes. <i>See §43-3712(1)(a)</i>
Required by Law to Attend Hearings	Yes, unless excused by the court. <i>See §43-272(2)(a)</i>	Yes; must "make every effort to attend all hearings." <i>See §43-3712(4)</i>
Right to Access Records, Reports & Information	Yes. <i>See §43-272.01(2)(c) and discovery rules.</i>	In general, yes, upon reasonable request by the volunteer. <i>See §43-3713</i>
Duty to Provide Court Report to GAL or to CASA Volunteer	Yes, if requested by the CASA volunteer. <i>See §§43-3712(1)(a) and 43-3713</i>	Yes. <i>See §43-3712(2)</i>