



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued May 2, 2016

A Review of Guardian ad Litem Activity at the Bristol Division of the Juvenile Court Department For the period July 1, 2013 through December 31, 2014





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May 2, 2016

The Honorable John S. Spinale, First Justice
Bristol Division of the Juvenile Court Department
289 Rock Street
Fall River, MA 02730

Dear First Justice Spinale:

I am pleased to provide this performance audit of activities and expenses related to guardians ad litem in the Bristol Division of the Juvenile Court Department. This report details the audit objectives, scope, and methodology for the audit period, July 1, 2013 through December 31, 2014. My audit staff discussed the contents of this report with management of the agency.

I would also like to express my appreciation to the Bristol Division of the Juvenile Court Department for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMBump".

Suzanne M. Bump
Auditor of the Commonwealth

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LIST OF ABBREVIATIONS

AOJC	Administrative Office of the Juvenile Court
BJC	Bristol Division of the Juvenile Court Department
CJAM	Chief Justice for Administration and Management
CJTC	Chief Justice of the Trial Court
EOTC	Executive Office of the Trial Court
GAL	guardian ad litem
JCD	Juvenile Court Department

EXECUTIVE SUMMARY

The Bristol Division of the Juvenile Court Department (BJC) presides over areas such as delinquency, youthful offenders, care and protection, and children requiring assistance in its territorial jurisdiction of Bristol County.

BJC is responsible for scheduling and hearing cases and motions, as well as recordkeeping, in juvenile matters. In some cases, the court approves a motion to appoint a guardian ad litem (GAL) to protect the interests of a minor. In many of these cases, the child's parents are not able or willing to assist the child, and/or the custody of the child has been transferred to the state's Department of Children and Families. GALs are appointed for a maximum of 10 hours per case at \$50 per hour; this may be increased upon a motion to the court.

The audit was undertaken to review whether BJC had procedures in place regarding the selection, monitoring, and billings of GALs. After the audit period, the Administrative Office of the Juvenile Court developed the Uniform Practice and Procedure Regarding the Appointment of Guardians ad Litem (see Appendix). This document, effective July 6, 2015, sets forth the categories, descriptions, qualifications, and application process for the appointment of GALs in the Juvenile Court Department.

Based on our audit, we have concluded that for the period July 1, 2013 through December 31, 2014, BJC had established adequate controls regarding the selection, monitoring, and billings of GALs.

OVERVIEW OF AUDITED ENTITY

The Massachusetts Trial Court was created by Chapter 478 of the Acts of 1978, which reorganized the courts into seven Trial Court departments. The statute also created a centralized administrative office managed by a Chief Justice for Administration and Management (CJAM), who was also responsible for the overall management of the Trial Court. Additionally, the reorganization allowed for the appointment of a Commissioner of Probation with control and supervisory responsibility over the probation service.

Legislative changes that took effect July 1, 2012 eliminated the CJAM position and created two new Trial Court leadership positions: the Chief Justice of the Trial Court (CJTC) and the Court Administrator. Together, the CJTC and Court Administrator established the Executive Office of the Trial Court (EOTC) to facilitate communication and enable joint leadership of the Trial Court. The CJTC is considered the judicial head of the Trial Court, working from EOTC's Office of the Chief Justice of the Trial Court, and is responsible for all matters of judicial policy. The Court Administrator is the administrative head of the Trial Court, working from EOTC's Office of Court Management and collaborating with the CJTC, with overall responsibility for budget preparation and oversight, labor relations, information technology, capital projects, and personnel policy (thereby performing the many administrative functions of the former CJAM position).

Chapter 211B of the Massachusetts General Laws established the Juvenile Court Department (JCD), which has general jurisdiction over delinquency, youthful offenders, children in need of services, care and protection petitions, "adult contributing to the delinquency of a minor" cases, adoption, guardianship, and "termination of parental rights" proceedings. According to its website, the JCD's mission is "to protect children from abuse and neglect, to promote opportunities for children to reside in a safe, stable, permanent family environment, to strengthen families, to rehabilitate juveniles, to protect the public from delinquent and criminal behavior and to decide all cases fairly and impartially with dedication, integrity and professionalism." The Administrative Office of the Juvenile Court Department, headed by a Chief Justice, provides guidance and support to courts within the department.

The JCD has established 11 divisions, each with a specific territorial jurisdiction, to preside over the juvenile-related matters that are brought before it. The JCD has 41 judges, who sit in more than 40 locations. Each division is organized into three separately managed offices: the Judge's Lobby, headed by a First Justice; the Clerk-Magistrate's Office, headed by a Clerk-Magistrate; and the Probation Office,

headed by a Chief Probation Officer. The First Justice is the administrative head of the division and is responsible for preparing the division's budget and accounting for its revenue, and the Clerk-Magistrate and the Chief Probation Officer are responsible for the internal administration of their respective offices. The Bristol Division of the Juvenile Court Department's (BJC's) operations are funded by appropriations under the control of EOTC and the Office of the Commissioner of Probation. Expenditures at BJC for the audit period totaled \$3,116,030. BJC paid a total of \$116,116 to 31 guardians ad litem (GALs).

BJC has locations in Fall River, New Bedford, Taunton, and Attleboro and is staffed with four justices. During the audit period, BJC heard 3,352 cases, which were classified as "delinquency," "care and protection," or "child requiring assistance." Approximately 281 of these cases required the assignment of a GAL.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Bristol Division of the Juvenile Court Department (BJC) for the period July 1, 2013 through December 31, 2014.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer and the conclusion we reached regarding each objective.

Objective	Conclusion
1. Did the guardians ad litem (GALs) appointed by the court have appropriate qualifications, and was there a process for making assignments to cases that required GALs?	Yes
2. Does the court have a process in place to ensure that GALs submit reports to the court when required and that their billings are adequately documented, mathematically correct, and approved for payment by appropriate court personnel?	Yes

To achieve our objectives, we gained an understanding of the internal controls at BJC and tested the operating effectiveness of internal controls over the reimbursement of GAL expenses. In addition, we performed the following procedures:

- We interviewed BJC’s First Justice, administrators, and other staff members and reviewed statutes, court rules, and relevant documents as well as the court’s policies, procedures, and accounting records.
- We obtained a list of GAL appointments and reviewed the qualifications of all 48 appointees, provided to us by BJC. We reviewed the application process by examining applications, resumes, writing samples, and acceptance letters. We also queried the Board of Bar Overseers’ and the Division of Professional Licensure’s websites as necessary to determine whether GALs were appropriately licensed and whether their status was “active.” We then determined whether assignments to cases were made appropriately.

- We reviewed 25 of 281 GAL payments made during the audit period on a nonstatistical random basis for mathematical accuracy, certification (signature) of services provided, and approval by the appointing justice and court staff. We confirmed that the GAL information shown on the invoices agreed with the information noted in the case file and the docket report in MassCourts, the court's case-management system. We also verified the submission of reports by GALs when required by the court.

We obtained expenditure information generated from information systems maintained by the Commonwealth¹ and the Trial Court. We compared this information with source documents and interviewed knowledgeable Trial Court personnel about the data. When performing our audit, we relied on hardcopy source documents, which we tested for accuracy and completeness. We determined that the data were sufficiently reliable for the purposes of this report. Whenever sampling was used, we applied a nonstatistical approach, and as a result, we did not project our results to the population.

1. In 2014, OSA performed a data-reliability assessment of the Massachusetts Management Accounting and Reporting System. As part of this assessment, we tested general information-technology controls for design and effectiveness. We tested the accessibility of programs and data as well as system change management policies and procedures for applications, jobs, and infrastructure.

APPENDIX

On January 20, 2015, the Administrative Office of the Juvenile Court (AOJC) developed the *Uniform Practice and Procedure Regarding the Appointment of Guardians ad Litem* (Uniform Practice). The Uniform Practice sets forth the categories, descriptions, qualifications, and application process for the appointment of guardians ad litem (GALs) in the Commonwealth's juvenile courts. The issuance of the Uniform Practice caused all lists of GALs maintained by individual courts to become null and void as of July 6, 2015. Professionals interested in being appointed as GALs must now complete a uniform application, which is reviewed by the AOJC. The application requires a letter of interest, a resume, references, and qualifications for each GAL category. The applicant must also consent to a Criminal Offender Record Information check and indicate the court divisions within the Juvenile Court Department in which s/he would accept an appointment.

The Uniform Practice also requires GALs to participate in six hours of continuing legal education and provides a process for dealing with non-performing GALs, which includes remedial training and possible termination. The AOJC also intends to promulgate guidelines for GALs in fiscal year 2016.

The following information on types, descriptions, and qualifications of GALs includes excerpts from the Uniform Practice, which can be found on the Trial Court's website.

Guardian ad Litem / Extraordinary Medical Treatment

A guardian ad litem in this category is appointed to make recommendations regarding the authorization of extraordinary medical treatment. Extraordinary medical treatment includes administration of medical treatment and/or procedures not considered routine, refusal of medical treatment and/or procedures on religious or other grounds, administration of antipsychotic medication, and forgoing or discontinuing life sustaining medical treatment pursuant to GL. c. 119, § 38A.

To be appointed a GAL in this category, an applicant must be a member in good standing of the Massachusetts Bar with five years' experience in child welfare protective cases or five years' experience representing adults in extraordinary medical care matters.

Guardian ad Litem / Treatment Monitor

A guardian ad litem in this category is appointed after the judge has approved an extraordinary medical treatment plan ("plan") to monitor compliance with the plan and the effects of treatment.

To be appointed a GAL in this category, an applicant must be a member in good standing of the Massachusetts Bar with three years' experience in child welfare protective cases or three years' experience representing adults in extraordinary medical care matters.

Guardian ad Litem / Education Surrogate

A guardian ad litem in this category is appointed to stand in the place of the parent(s) to make all special education decisions on behalf of the child including, but not limited to, assessment of the Individualized Educational Plan ("IEP"), participation in all Team meetings, acceptance or rejection of the proposed IEP (in whole or in part), and filing complaints with the Department of Elementary and Secondary Education when necessary in accordance with the Individuals with Disabilities Education Act (IDEA 2004), Federal Regulation 34 CFR 300 and Massachusetts Regulation 603 CMR 28. A guardian ad litem in this category must satisfy the criteria set forth in Federal Regulation 34 CFR 300.519, to act as Special Education Surrogate Parent.

A guardian ad litem appointment under this section does not include the authority to litigate educational issues in federal or state courts.

Note: These appointments are limited to Care and Protection cases in which custody of the child has been transferred to the Department of Children and Families.

An applicant in this category must be (1) an individual who is not employed by an agency involved in the care or education of his/her assigned student; does not have personal or professional interests that conflict with the assigned student's interest; and has, or is willing to obtain, adequate knowledge in special education and Individualized Education Plans or (2) a member in good standing of the Massachusetts Bar with three years' experience representing the interests of children in educational matters.

Guardian ad Litem / Legal Rights

A guardian ad litem in this category is appointed to enforce and defend the child's legal rights and does not include appointment as the child's attorney. The scope of the appointment may include the authority to:

- 1. Legal Rights/Privilege. Assert or waive a statutory privilege (e.g., psychotherapist-patient privilege pursuant to G.L. c. 233, § 20B, social worker-client privilege pursuant to G.L. c. 112, §§ 135A & B, etc.);*
- 2. Legal Rights/Claims. Protect the child's legal claims including, but not limited to, the authority to consult with counsel or other experienced professionals in the field(s) to determine whether or not the child may have a tort, estate or other claim and if there is a reasonable basis to retain counsel, to retain counsel to initiate litigation on the child's behalf, where appropriate, and to approve settlements arising out of any claims and/or litigation on the child's behalf unless otherwise ordered by the judge. This appointment includes petitioning the appropriate court for the appointment of a conservator to manage*

the child's assets. A GAL in this category is not authorized to litigate any matters or file an appearance as an attorney for the child in any proceeding. A GAL in this category may not obligate the Commonwealth financially or in any other manner. A GAL in this category is not entitled to receive any funds or compensation from the resolution of any such claims(s) or litigation;

- 3. Legal Rights/Advisor. Advise the child on matters arising in delinquency and youthful offender cases (e.g., waiver of right to a jury trial, tender of plea), in the absence of a parent or interested adult, to the same extent and in the same manner as the parent(s) or interested adult whose responsibility it is to consult and advise the child. Therefore, the appointment does not extend to the actual assertion or waiver of the child's constitutional rights. The child asserts or waives his or her rights after consultation with the GAL.*

Categories 1, 2, and 3 above require candidates to be Massachusetts attorneys in good standing with three years' experience in child welfare protective cases. In category 3, three years' experience in delinquency and/or youthful offender cases may be substituted for child welfare case experience.

Guardian ad Litem / Evaluator

A guardian ad litem in this category is appointed to report on a narrowly defined issue where the judge deems an updated court investigation is not appropriate and where the appointment does not fall into one of the other categories of GAL appointments.

The following professionals would be eligible for appointments in this category: (1) a person with a master's degree or higher degree who holds a Massachusetts license in social work, counseling psychology, or clinical psychology; (2) a registered nurse with at least three years' experience in child welfare protective cases; or (3) an attorney who is a member in good standing of the Massachusetts Bar with at least five years' experience in child welfare protective cases.

Guardian ad Litem / Diminished Capacity

A guardian ad litem in this category is appointed, at the request of the attorney for an adult party, in civil matters to direct the attorney in the representation of the adult party after the judge has determined that the adult is unable to assist his/her attorney in the preparation and/or presentation of the case. This appointment does not extend to the actual assertion or waiver of the adult's constitutional rights (See Massachusetts Rules of Professional Responsibility S.J.C. Rule 3:07, Rule 1.14).

A person with a master's degree or higher degree who holds a Massachusetts license in social work, counseling psychology, or clinical psychology would be eligible for appointment in this category.