

**Office of
the Child's Representative
2001 Report**



**Presented to
the Colorado General Assembly
September 1, 2001**

I. Introduction

Over sixty percent of all Colorado court cases involve families. The majority of these cases directly affect children. These children who are exposed to the court system are typically the subject of dependency and neglect (D&N), domestic relations (dissolution or paternity), delinquency, truancy, adoption and relinquishment, probate and mental health cases. In many of these cases, the court appoints a Guardian ad Litem (GAL), child's representative or special advocate for the child who is an attorney charged with representing the child's best interest. In addition, judicial districts that have an existing court-appointed special advocate (CASA) program may also appoint a CASA volunteer to advocate for the child.

In a D&N petition, the allegation is that the child has been abused, neglected or is otherwise dependent on the state. In domestic relations cases, the child is usually the subject of a high conflict parental responsibility (formerly known as custody) dispute. If a child has criminal charges pending, he or she is the subject of a delinquency case. In all D&N cases, a GAL is appointed for the child. In the other case types listed above, a GAL, child's representative or attorney special advocate is appointed if it is necessary to serve the child's best interest.

Recommendations made by parents, state agencies and other interested parties concerning children subject of litigation usually serve the child's best interest. However, history has shown that well-intended recommendations may be harmful to a child. In these cases, the child must have his or her own attorney or advocate zealously protecting their unique interests.

Effective legal representation and advocacy is a critical element in giving children a voice in the Colorado court system. Understandably, children do not have the resources to retain the services of an attorney or advocate and they lack the ability and understanding to evaluate, assess and communicate their needs. Recognizing that the representation of children is unique and requires significant expertise, the Colorado General Assembly adopted legislation in 2000 creating a new state agency, the Office of the Child's Representative (OCR) singularly devoted to enhancing children's representation in the court system. The purpose of the statute authorizing OCR, Section 13-91-101, C.R.S., is to empower Colorado's most vulnerable children with uniform, high-quality counsel and non-legal advocacy.

Effective July 2001 OCR's responsibilities include enhancing the legal representation of children, establishing fair and realistic rates of compensation, setting minimum practice and training standards, determining maximum caseloads, setting up judicial oversight committees throughout the state, and working collaboratively with the state CASA to develop local CASA programs in each judicial district. The statute also requires that the OCR report to the General Assembly on the activities of the OCR by September 1 of each year commencing September 1, 2001. This report satisfies that requirement.

II. Mandated Duties of Office

The legislation enacting OCR, House Bill 00-1371, was created to address the perception that the model for appointing attorneys to represent children in Colorado could be improved to better represent the unique needs of children. Concerns raised regarding the provision of legal representation of children include: attorneys who represent children are not as competent as other attorneys in the court room; the attorneys lack necessary and special training in children and family issues; they are underpaid and/or carry too high of a caseload to effectively represent the children; the attorneys frequently do not meet with the children they represent; they do not have time or choose not to participate in all of the different agency staffings concerning the child; they do not conduct an independent investigation on the children but instead rely on reports from caseworkers or other professionals involved; and they regularly adopt all recommendations made by the department of social services for the children without conducting an independent investigation.

Nonetheless, OCR recognizes that although these concerns are pending and will be further assessed, there are many high-quality, dedicated court appointed attorneys who represent children's best interest.

The statute creating OCR contains comprehensive, statewide mandates for OCR designed to assess whether the above-mentioned perceptions are accurate and, if so, address and resolve these issues. The office's central mandate is to improve the provision of services provided by GALs, child representatives and attorney special advocates. Mandates for OCR include the administration, oversight and training of the provision of these services as described in detail below.

New and improved training for persons responsible for the legal representation and advocacy of children in the courts is an essential component of enhancing provision of legal services for children. The office is charged with developing statewide training programs to improve the quality of legal representation and advocacy of children in the court system. The OCR must ensure that high-quality, accessible training is provided to attorneys seeking to serve as GALs and persons choosing to serve as court appointed child representatives. The OCR makes recommendations to the chief justice concerning the establishment of minimum training requirements for attorneys wishing to serve as a GAL or as a child representative. Lastly, the OCR must provide training to the judges and magistrates who regularly hear cases involving children and families.

The office is also required to make recommendations to the chief justice regarding minimum standards to which GALs shall be held, including establishing minimum duties and responsibilities of GALs and determining an appropriate maximum caseload limit for GALs. Similarly, OCR must make recommendations to the chief justice concerning the standards that attorneys serving as child representatives shall be held.

The OCR is responsible for the statewide oversight of the practice of GALs and child representatives to ensure the provision of high-quality services and compliance with all relevant statutes, orders, rules, directives, policies and procedures. The office is required to work with the

chief judge in each judicial district or group of judicial districts to jointly establish local oversight entities that will operate and report directly to the OCR director concerning the practice of GALs, child representatives and attorney special advocates in that judicial district, subject to the oversight procedures established by OCR.

Recognizing the important role that the GAL, child representative and attorney special advocate serve in the lives of children and in the court system, the statute acknowledges the need to compensate GALs at a rate designed to attract and retain highly-qualified attorneys. The office is required to set fair and realistic compensation for state-appointed GALs. The rates must be established in accordance with the caseload limitations placed on GALs developed by the OCR and must be sufficient to hire expert and experienced attorneys to serve as GALs.

The office is also required to enhance existing funding sources for the provision of high-quality GAL and child representative services and CASA programs. Effective July 1, 2001, the office became responsible for allocating monies appropriated to the OCR for the provision of state paid GAL, child representative and attorney special advocate services.

In addition, OCR shall work with judicial districts to establish pilot programs designed to enhance the quality of attorney services for children. The office must also assess and document the effectiveness of various models of child representation and the outcomes achieved by GALs, child representatives and attorney special advocates.

III. Establishment of OCR – Report to the General Assembly

The legislation creating the OCR set forth a specific schedule for the development of the office. For fiscal year 2001, the office was required to establish its operational structure, including appointing a board, selecting a director, hiring staff and begin determining the operational structure, goals and priorities of the office. The General Assembly appropriated \$147,000 for FY2001 to fund the establishment of the office.

Effective July 1, 2001, OCR became fully operational as the state agency authorized and responsible to oversee and administer the provision of legal representation and advocacy for children throughout the state. The statute specified that for fiscal year 2002, funds from the Judicial Department's mandated costs line item in the amount of approximately \$6.7 million would be transferred to the OCR.

The office must report on the activities of the office to the General Assembly on or before September 1, 2001, and annually thereafter. Because OCR devoted much of its resources and time in FY2001 to establishing its operational structure and did not become fully operational until July 1, 2001, this report will provide a brief overview of OCR's activities in FY2001 and a more detailed discussion of its activities as a fully functional state agency since July 1, 2001.

IV. OCR Activities in Fiscal Year 2001

Implementation of OCR began with the creation of a board of directors to oversee the office. The Colorado Supreme Court Chief Justice appointed nine individuals to serve on the board. The nine include three lawyers who have experience in representing children as GALs or legal representatives, three child advocates and three citizens at large. The board members are not paid for their service. Board members represent the six congressional districts in the state, and no more than five members of the board may be from the same political party. Board members are John Abeyta, Representative Kay Alexander, Karen Beye, Tedi Cox, Jim Covino, Celeste Holder Kling, Oneida Little, Richard Milton and Eric Weisman.

As required in statute, the board appointed a director of the office in March 2001. The director must have been an attorney in the state for at least five years prior to the appointment and be familiar with the unique demands of representing a child in the court system. The director hired three additional staff to administer the office.

Once appointed, the director immediately assumed the administrative duties of the office. The director had between March and June 2001 to set a new state agency and complete the transition of the duties and responsibilities from the State Court Administrator's Office (SCAO) in the Judicial Department to the OCR. The director hired staff, established a new office, implemented a new payment system for the approximately 400 existing attorney contracts, began outreach visits to the judicial districts, established a committee to initiate preparation of training curricula and began the transition to overseeing the legal care of more than 10,000 Colorado children each year.

At this same time, the director was involved in clarifying and establishing the OCR budget at the Joint Budget Committee's figure setting process for the General Assembly's Long Bill. Also during FY2001, the OCR assumed responsibility for the \$1.2 million pilot project in El Paso County that provides GAL services through a centralized office rather than by assigning individual attorneys to cases.

V. OCR Activities in Fiscal Year 2002

Effective July 1, 2001, the responsibility of payment for attorney services transferred from the SCAO to the OCR. As expected, the staff of four spent much of its initial time and resources implementing the transition of the responsibilities from the SCAO to OCR. The first few weeks were devoted to training staff for the payment and budget process, responding to the needs of the judicial districts and attorneys and coordinating computer information systems to implement the transition.

Because it was not the intent of the general assembly to just shift the transfer of mandated costs but also charge the office with the responsibility of enhancing and administering the provision of legal services provided to children, the OCR simultaneously commenced action towards fulfilling the oversight responsibility and mandates of the new state agency. Progress made to date is as follows:

A. Enhancement of the Provision of Services / Statewide Assessment

Since the office is responsible for enhancing the provision of attorneys and services for all of Colorado's children, the board and director decided an initial statewide assessment of services must be accomplished before appropriate change can be considered or implemented. Therefore, the office began visits to each of the 22 judicial districts across the state within the first year. Travel commenced in April of 2001. It was decided to travel first to the remote or rural jurisdictions in order to assess their particular needs as opposed to the Front Range locations.

During the visit, the OCR usually meets independently with the court (judges, magistrates, court facilitator and court administrator), attorneys who currently provide or are interested in providing services, the county department of social services and the county attorney from each of the counties within that particular judicial district, the local CASA if in existence, the District Attorney's office, probation, and any other service provider or agency that works with children. The intent of the meetings are to assess the needs of that community, determine quality of services, ascertain how OCR can offer support training, be a resource to the attorneys in the field and the court and to lay the ground work necessary to begin the process of establishing the local oversight committees. To date, OCR has visited the 4th, 7th, 11th, 14th, 19th and 21st judicial districts.

B. Training

As mentioned under the list of OCR's mandates, training is a critical component to the success of enhancing the provision of legal services and advocacy for children. A child-sensitive legal system depends upon a bench and bar of considerable sophistication and competence. In representing children, lawyers and judges must not only know the law well but also be able to draw upon interdisciplinary knowledge from psychology, sociology, social work and medicine. Children are best served by the legal child welfare system when lawyers understand the social, psychological as well as legal implications of a case and what those mean developmentally for the child.

Training is a top priority for OCR. In April 2001 the office created a multidisciplinary training committee for the purpose of developing a curriculum and standards for training. The OCR State Training Committee members consist of Jane Berdie, MSW; Terry Bernuth, Esq., Attorney Regulation Office; David Johnson, Esq.; Celeste Holder Kling, Esq.; Lavita Nadkarni, Ph.D., Director of Forensic Psychology, University of Denver Graduate School of Psychology; Barbara Mattison, Executive Director, Colorado CASA; Nancy Smith, Esq.; Robert Smith, Esq., Office of Dispute Resolution, SCAO; Karen Steinhauser, Esq., Visiting Professor, University of Denver College of Law; Marvin Ventrell, Director, National Association of Counsel for Children; Eric Weisman, Esq.; and Ellen Toomey-Hale, Esq., OCR. The committee is in the process of developing a training curriculum for new attorneys and an advanced continuing education module for experienced attorneys. In addition to developing statewide training curricula, OCR has already initiated training as provided below.

1. Forthwith Training

Together with the Office of Dispute Resolution, the OCR has set up immediate training to serve the four remote corners of the state. At the statewide Juvenile and Family Law Judges Conference in January of 2001, the rural bench requested that low-cost, multidisciplinary training be made available to their professionals who work with families and children (GALS, child representatives, attorney special advocates, judges and magistrates, mental health professionals and family mediators) because education opportunities rarely are available in these remote regions. The collaborative efforts of the OCR and ODR has resulted in a three-day education conference that will be presented in Montrose in October 2001, Alamosa in November 2001, Steamboat Springs in January 2002 and Fort Morgan in February 2002. The topics covered at the conferences include the effect on children who witness domestic violence, forensic interview of the child, child hearsay statements, report writing and testifying, mediation training in high-conflict dissolution cases, brain development of children through age four, child developmental disabilities and comparative analysis of the use of the children's representative versus an attorney special advocate under Title 14.

2. Delinquency Training and Collaboration with the State Public Defender's Office

As a result of traveling to the different judicial districts, the OCR quickly identified a special need for GAL training in the area of criminal delinquency. In many jurisdictions services and treatment only become available to families when criminal charges are pending. Such matters are unique to this area of juvenile law and are typically not covered in continuing legal education and training.

Therefore, the OCR met with a representative from the State Public Defender's Office (SPDO) and the Colorado Division of Criminal Justice to request that dual training of juvenile defense attorneys and delinquency GALs be considered under a state grant typically awarded to the SPDO for annual spring training of their attorneys who represent juveniles. Although the child is the defense counsel's client and the GAL is representing the child's best interest, the issues that both professionals struggle with are often the same and require special training. Challenging issues in the area of juvenile law include appropriate placement options, mental health assessment and treatment, drug and alcohol assessment and treatment, educational opportunities and sentencing alternatives. In addition, the SPDO attorneys are recognized for their strong litigation skills. Any dual training in that area will serve the child by enhancing the skills of his or her GAL. Grant applications will be made in October of 2001.

3. Training of Judges and Magistrates

a) Mandated Training

The mandated duties of the OCR include providing high-quality training to judges and magistrates who regularly hear matters involving children and families. Any and all training sponsored by the OCR (with the exception of potential dual SPDO training) will be planned and designed to not only serve the needs of the attorneys who represent the child's best interest but also to better educate the judges and magistrates who hear these cases and make critical

decisions in the lives of our children and families. It is the plan of the OCR, and also critically important, that this agency maintain a collaborative relationship with the judges and SCAO in order to encourage participation, assess the judges' educational needs and continually apprise the judges of upcoming training events. This is also a reason OCR meets with all the judges and magistrates on its statewide assessment travels. As previously stated under the delinquency training, both the bench and all of the professionals involved with our in-court families struggle with the same complicated and unique issues. Therefore, dual training is not only practical but benefits our children and families. It is anticipated that OCR training will also be open to other professionals, if space and funding permits.

b) Annual Participation in the Juvenile and Family Law Judges Training

In addition to welcoming judges to any training sponsored by this agency, it is the current intent of OCR to participate in the annual Juvenile and Family Law Judges training. The Colorado judges and magistrates who hear matters involving children and families participate in a well-attended yearly "Juvenile and Family Law Conference." Not only is it well attended, but it is representative of all of the judges and magistrates across the state. The OCR director currently serves on the SCAO training committee that plans and develops the curriculum for the upcoming conference. Should the budget allow, the OCR will also contribute to the costs of this important training. The current fiscal year's training is scheduled for January 24 and 25, 2002.

4. Ancillary Training Issue / Mentoring Program

Critical to the success of any training curriculum is the opportunity to provide a mentoring program to new attorneys in the field. The OCR has contacted the University of Denver College of Law and their student law clinic to investigate the development of such a program. The OCR State Training Committee is also including mentoring components in its proposed curriculum. This office anticipates development of such a program within the current fiscal year. At the request of one rural district court judge, this office has assigned new attorneys to travel to the Front Range and mentor with experienced counsel.

C. CASA Update

The court-appointed special advocate or "CASA" program is a private non-profit corporation that recruits and intensively trains high-quality volunteers who effectively assess children's needs and advocate for their best interests. Currently CASA volunteers serve in 20 of Colorado's 63 counties. The legislative mandates of OCR include enhancing the CASA program in Colorado by ensuring development of CASA programs in each judicial district and enhancing funding resources.

Upon the hire of the OCR director, a close working relationship immediately developed between the OCR and state CASA office known as Colorado CASA. The OCR director has met with the Board of Directors of Colorado CASA and meets regularly with their Director Barbara Mattison. Both entities have presented together at the Colorado National Child Welfare Conference and other continuing legal education programs on the benefits of a child having both the appointment

of a CASA volunteer and the child's attorney. This partnership ensures quality representation and volunteer advocacy for the state's most vulnerable children.

Specifics of this partnership include a plan that the OCR will offer support and assistance to Colorado CASA as any new community considers or adopts the implementation of a CASA program. In the first few months of OCR's operation, both agencies have been able to work together on issues arising out of several communities considering or implementing a new CASA program (Broomfield, Cortez and Durango). Both entities have further agreed to work together at a pace that will allow CASA to grow responsibly within the state and thereby meet the unique needs of each community and ensure a stable and diversified budgetary foundation. Now that the OCR is in operation, these two entities have set future dates to commence working on funding issues.

D. Fair and realistic compensation / maximum caseloads / minimum standards of practice / duties and other responsibilities of the GAL

In our adversarial system of justice, a child's vulnerability and inability to independently speak on his or her own behalf provide the foundation for an absolute right to effective and competent counsel. It is the responsibility of the OCR to ascertain how to continually attract and provide highly qualified and trained attorneys who specialize in representing the child's best interest. Because in this first fiscal year 2002 of operation the OCR received a transfer of mandated costs in an amount equal to that spent on attorney services in fiscal year 2000, OCR will contract with attorneys the same as has historically been done in the past. The OCR will use this first fiscal year to investigate, study and develop a plan of action on how to best determine fair compensation and minimum standards that will truly serve the need of our children. Since realistic compensation, maximum caseload size, and attracting and maintaining high-quality attorneys with distinguished standards are so intertwined, they should be assessed and investigated together and not separately. This office has already prepared a plan and commenced the process to first assess and then implement appropriate changes.

The OCR will investigate national best practices, different models of services, recommended practice standards and guidelines and various compensation structures regarding the provision of legal representation for children. The agency will also oversee and assess pilots in our own state to ascertain how to best serve the needs of our children. Once the investigatory process is complete, and within this same fiscal year, the OCR will develop a plan on how to implement and adopt any necessary changes that will ensure quality legal counsel, independent investigations, reduced out-of-home placements and shorten time frames for the legal process that involve our children. Steps taken to accomplish this assessment phase include:

- Contacted the American Bar Association Center on Children and the Law in Washington, D.C., which has and will continue to provide technical assistance to OCR through a staff attorney. Services offered include assistance and consultation on American Bar Association (ABA) standards of training, best practices, ABA recommended minimum standards and duties and national trends to consider. ABA staff attorney, Jennifer Renne, facilitated the OCR board retreat and assisted in making training material available. Technical assistance will continue to be provided.

- The National Association of Counsel for Children (NACC) and the University of Michigan Law School have applied for a four-year federal grant to pilot a national training and certification program for attorneys who practice in the area of child welfare cases. OCR wrote a letter of support and will assist in the coordination of Colorado becoming one of the three designated pilot sites. Because a child-sensitive legal system depends on a bar with considerable sophistication and competence whose lawyers must not only know the law well but draw upon other interdisciplinary knowledge, NACC and the University of Michigan want to pilot a program certifying attorneys as specialists in the area of representing children. A second component of the pilot will be to develop a training package preparing lawyers to achieve the level of competence required. The information received from the evaluation process will be critically important to meeting the needs of Colorado's children. In addition, Marvin Ventrell, Director of the NACC, has agreed to serve on the OCR State Training Committee and share the proposed training curriculum with OCR.
- Broomfield Pilot – OCR has met with the new county of Broomfield to discuss estimated caseloads involving children and to determine an appropriate model of GAL services. OCR will use this opportunity to evaluate and test best practice models.
- Adams County Pilot – The 17th Judicial District is about to embark on the second phase of their Family Court Pilot Project. This project involves the bundling of all of the different case types for one family and one judge. The goal is to reduce the many court appearances for one family, reduce inconsistent court orders and better serve the needs of families and children in our court system. This pilot will commence in October 2001 and will involve 60 D&N cases. The OCR will participate in this pilot by providing a controlled and unique GAL service model with the assistance of the Rocky Mountain Children's Law Center. One attorney will exclusively handle all of the family pilot cases, and this attorney will be specially trained in child welfare and juvenile law and will have strong litigation skills. He or she will not practice outside of the 60 cases. They will work within the parameters of the attorney standards designated by the American Bar Association. Participation in this pilot will allow OCR and the Rocky Mountain Children's Law Center to evaluate timely outcomes, caseload size, necessary training and appropriate minimum attorney standards.
- Colorado Springs GAL Pilot Project – The OCR assumed oversight of the existing Colorado Springs GAL pilot project. The Office of the GAL was created in fiscal year 2000 and serves the children of El Paso County. A firm of ten attorneys with appropriate staff support handle all of the GAL appointments. The office currently has a caseload of 35 cases per attorney. All attorneys participate in legal and child welfare training. Debra Campeau is the supervising attorney for the office. To date, the community is pleased with the services provided by the office and believe children are effectively represented. The continuation of this pilot will allow OCR to evaluate timely outcomes, fair compensation and salaries, training and caseload sizes and an alternate GAL model.

E. Local Oversight Committees

The OCR is charged with working collaboratively with each judicial district and chief judge to develop local oversight committees that will oversee the provision of GAL services. As previously mentioned, the OCR is traveling to each of the 22 judicial districts. One purpose of the visits is to assess those in the community who are able to serve on these critically important committees. The OCR has also begun collecting and reviewing current existing oversight committee plans and interviewing some of the original founding committee members in different districts. From the visits and reviews, the OCR will develop a best practice plan and recommendation to assist each community with any revisions and implementation of future oversight committees.

F. Additional Funding Sources and Needs

The office will be exploring any other additional funding resources such as grants that will further support the goals and mission statement of OCR. Immediate areas of concern related to funding needs include better serving the children in our dissolution and paternity cases in which high-conflict parenting time issues are pending. This is an area very frustrating for the courts and litigants because child representatives and attorney special advocacy services are costly and not available to most families. Exposure to a contested custody proceeding can profoundly affect the well being of any child.

Rural areas also have unique problems such as affordable access to training for attorneys; unavailability of attorneys to provide services; unavailability of mentoring programs for attorneys; lack of assistance and support with appellate and contempt procedures for attorneys; unavailability of attorneys to pick up conflict appointments; the limited opportunities for attorneys to develop litigation skills and the absence of the assistance of a more experienced attorney in cases involving complicated litigation or extremely aggravated cases. Additional grant monies or funding resources could assist in providing pilots such as “flying teams” who could travel to various jurisdictions and offer technical or attorney support.

G. Resource of Information Concerning Representation of Children

This office will also serve as a centralized legal and professional resource center to attorneys in the field. Additional funding will help develop a legal research center with a bank of continuing case law and statutory updates, periodicals and library collection to enhance knowledge and skills, legal research and monitoring of legal and social welfare issues and reform.

VI. Conclusion

The passage of House Bill 00-1371 and the establishment of the OCR represents the increased importance and awareness that Colorado gives to the representation of children in its court system. Colorado has now made giving children a voice in the court system a top priority and deserving of its attention and resources. Children still remain perhaps the most marginal political group in our society. However, under the charge the legislature has given OCR,

Colorado has taken a significant step in granting a voice to Colorado's most vulnerable individuals, children who are exposed to the court system.

OCR is steadfast in its commitment to fulfilling the ideals and purposes of its mission to apply the high principles of the legal system to the representation of Colorado's children. Empowering children who are the subject of litigation is a challenging and exciting opportunity, as well as a significant responsibility. Given the support of the legislature, Judicial Department, attorneys representing children throughout the state, CASA, and other interested and affected parties, OCR is confident and enthusiastic that these ideals can be achieved. The office believes that in Colorado "the essence of justice" in the form of highly-qualified, expert legal representation can and will be provided to its children.