

# **MAINE STATE LEGISLATURE**

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**REPORT TO THE JOINT STANDING COMMITTEE ON JUDICIARY**

**OF THE 127<sup>th</sup> LEGISLATURE AND**

**THE MAINE SUPREME JUDICIAL COURT**

**ON CASES HANDLED BY THE**

**FAMILY DIVISION**

**OF THE**

**MAINE DISTRICT COURT**



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## **I. Introduction**

In 1997, the Maine State Legislature created the Family Division of the Maine District Court to “provide a system of justice that is responsive to the needs of families and the support of their children.” See 4 M.R.S. § 183; P.L. 1997, ch. 269 § 1. To assist in the processing of Family Matter cases, it authorized the creation of judicial officers of limited jurisdiction, called Family Law Magistrates (Magistrates), and identified case management, education for the parties, and alternative dispute resolution (mediation) as important tools in Family Division proceedings.

The Legislature recognized the Supreme Judicial Court’s authority to promulgate rules and orders governing the practice, procedure, and administration of the Family Division. Furthermore, it directed the Judicial Branch to keep statistical records relating to the cases handled by the Family Division and to provide a report about the Family Division to the joint standing committee of the Legislature having jurisdiction over judiciary matters in each odd-numbered calendar year. See 4 M.R.S. § 183(3).

This Family Division Report to the Joint Standing Committee on Judiciary provides updates about the operations, innovations, and challenges facing the Family Division within the District Court of the Maine Judicial Branch.

## **II. Family Division Overview**

### **A. Statutory Authority and Operational Rules**

Title 4 Section 183 of the Maine Revised Statutes outlines the parameters of the Family Division, defines the jurisdiction of Magistrates, directs the State Court Administrator to provide staffing, and authorizes the Maine Supreme Judicial Court to adopt rules governing the practice, procedure, and administration of the Family Division.

The Maine Supreme Judicial Court adopted distinct Rules for the Family Division of the Maine District Court, effective April 6, 1998. In 2009, the Court abrogated those rules and created new rules for the Family Division, which became part of the Maine Rules of Civil Procedure. See M.R. Civ. P. Chapter XIII. The current rules outline the procedures to be followed in domestic relations proceedings (Family Matters), authorize Magistrates to handle certain types of cases involving children (e.g., child support, divorce with children, paternity, parental rights & responsibilities), and establish a process for managing cases and addressing child support in accordance with the Child Support Guidelines. See M.R. Civ. P. 110A.

### **B. Roles and Responsibility of Judicial Officers**

After filing, Family Matter cases proceed through various stages from pre-trial case management conferences, to mediation or trials, to post-judgment issue resolution. Maine trial court Judges may preside over any stage of any Family Matter case. See 4 M.R.S. § 152(11); see also M.R. Civ. P. 110A(a) and *Authority of Judges/Justices to Sit in Either District or Superior Court*, Me. Admin. Order JB-07-03 (effective November 1, 2007).

By contrast, Family Law Magistrates are judicial officers with limited jurisdiction. They are required to be members of the Maine Bar (licensed attorneys) with family law experience, who devote themselves solely to the official duties of the Magistrate position. See 4 M.R.S. § 183(1)(A)(B). In addition, Magistrates must have knowledge of case management principles, family dynamics, child development, domestic violence, and mediation techniques.

To assist with processing Family Matter cases in which children are involved,<sup>1</sup>

Magistrates have the authority to:

- Conduct case management conferences and issue case management orders;
- Enter interim orders relating to the care and support of children when the parties are in agreement;
- Preside at contested interim hearings in actions involving establishment, modification or enforcement of child support;
- Preside at contested hearings concerning interim parental rights and responsibilities if both parties consent;
- Modify the parental rights provisions of a protection from abuse order to conform to an order entered in a Family Matters proceeding;
- Conduct status or pre-trial conferences;
- Enter a default or default judgment;
- Preside at final, uncontested hearings and enter a judgment or order;<sup>2</sup>
- Preside at final, contested hearings when child support is the only contested issue and enter a judgment or order;<sup>3</sup>
- Enter post-judgment orders by agreement of the parties; and
- Preside at and enter final orders in contested post-judgment proceedings when child support is the only contested issue.<sup>4</sup>

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<sup>1</sup> Magistrates are not authorized to conduct proceedings in divorce actions without minor children; hear and decide contempt motions; hear and decide post-judgment motions to enforce when there are issues other than child support; or preside at contested final hearings when there are issues other than child support, even by agreement of the parties. 4 M.R.S. §183(1)(D)-(G); M.R. Civ. P. 110A; *Family Law Magistrate Authority*, Me. Admin. Order JB-05-18 (effective August 1, 2005).

<sup>2</sup> If a party is dissatisfied with a Magistrate's final order, the party can request that a judge review it by filing an objection to the order within 21 days of the decision. M.R. Civ. P.118. Following review by a Judge, a dissatisfied party has a further right of appeal to the Supreme Judicial Court. M.R. Civ. P. 118. A statement of these rights appears at the end of all final orders signed by a Magistrate.

<sup>3</sup> See footnote 2.

<sup>4</sup> 4 M.R.S. §183(1)(D)-(G); M.R. Civ. P. 110A; *Family Law Magistrate Authority*, Me. Admin. Order JB-05-18 (effective August 1, 2005).

### **III. Family Matters Case Processing**

The District Court processes approximately 15,000 Family Matter cases annually. In approximately 75% of those cases at least one party lacks attorney representation. In all of these proceedings, District Court seeks to encourage settlement on the terms developed by the parties, to educate the parties about resources, and, when necessary, to hear and impartially resolve contested cases. Once filed, a Family Matter case will proceed on one of two tracks, depending on whether children are involved.

#### **A. Cases without Children**

In cases where no children are involved and the defendant does not respond to the complaint, the case is scheduled for an uncontested hearing before a Judge at the expiration of the 60-day waiting period. If the defendant files an answer or entry of appearance, a scheduling order will issue outlining the case deadlines including the time for exchanging financial information and attending mediation. Parties that reach a resolution are scheduled for a final uncontested hearing at which they can present their agreement to a Judge. Cases that do not reach resolution will be scheduled for a final contested hearing before a Judge.

#### **B. Cases with Children**

Where children are involved, the case is assigned to a Family Law Magistrate. There are eight (8) Magistrates who provide statewide coverage in 27 District Court locations.<sup>5</sup> The amount of time a Magistrate will be available at each court location depends on the size of that court's Family Matters caseload.

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<sup>5</sup> Madawaska and Millinocket court locations are no longer regularly staffed and cases filed in those courts may be heard in Fort Kent and Lincoln respectively.

The heavy volume of court filings and the limited number of Magistrates and Judges creates a challenge for the Judicial Branch to consistently address each family's case in a timely manner. Caseload filings ebb and flow and each court must endeavor to manage increasing caseloads within limited resources.

In keeping with the Family Division goal of providing a system of justice that is responsive to the needs of families and the support of their children, the Magistrate's primary objective is to promptly address the family's situation to assure that the children's needs are being met, including the provision of financial support. The heart of the Magistrate process is the case management conference, which is generally held within 45 days after the filing of the complaint or applicable post-judgment motion. At that conference with the parties, the Magistrate identifies issues on which the parties are in agreement and those on which the parties are not in agreement; helps the parties understand the court process; and schedules other pre-trial events, which usually include mediation and attendance at a parent education program. See 4 M.R.S. § 183. Depending on the circumstances of the case, the Magistrate may conduct a hearing immediately following the conference or later in the process. See M.R. Civ. P. 110A.

### **1. Initial Conference**

The initial conference (also referred to as a Case Management Conference or CMC) is an important means of assuring that the needs of the parties' children are addressed. It is also an opportunity for unrepresented litigants to learn more about the court process and the steps through which their case will proceed. In nearly 75% of the Family Matters cases filed, *at least one* of the parties is unrepresented. Historically, in nearly 55% of the Family Matters cases filed, *both* of the parties were unrepresented. More recently, the Magistrates and clerks report that the number of unrepresented litigants is on the rise and that in nearly

60% of the Family Matters cases filed, *both* of the parties are unrepresented. Although Magistrates cannot provide legal advice, they provide essential information about family law and case processing to a large number of parents who appear in court without an attorney.

## **2. Mediation**

Another integral part of the case management process is mediation. When the parties are able to reach agreement without a contested hearing, the length of disruption and uncertainty in the lives of Maine's children and families is reduced.<sup>6</sup>

In accordance with statute, the Family Division has adopted certain practices and procedures, including referral to mediation and other alternative dispute resolution techniques. Maine Rule of Civil Procedure 110A provides that "mediation shall be promptly scheduled" when "the parties cannot reach an interim agreement on all issues." Using the services of a professional mediator retained by the Court Alternative Dispute Resolution Service (CADRES), the parties are encouraged to develop their own solutions to family issues. If an agreement is reached through mediation and is approved by the court, it may be entered as either an interim or final order. See 4 M.R.S. § 183.

## **3. Cases Handled by the Family Division in 2014: 2014 Statistics**

In calendar year 2014, 8,262 new (original) Family Matters and 6,391 post-judgment motions<sup>7</sup> were filed in the District Court.<sup>8</sup> Of the 14,653 original and post-judgment Family Matters filed in the District Court during calendar year 2014, approximately 11,707

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<sup>6</sup> See also Block Scheduling Model at section III(B)(5) below.

<sup>7</sup> Through these post-judgment motions, parties usually ask the court to modify child support, to change the primary residence of a child, to change parent-child contact arrangements, to impose penalties for failure to comply with provision(s) of an existing court order, or to enforce the support or contact provisions of an order.

<sup>8</sup> See Appendix A, which includes a table showing the number of new cases and post-judgment motions filed in each court location during calendar year 2014.

were proceedings initially conducted before a Magistrate.

New complaints and post-judgment motions generally require more than one court event before disposition, and Magistrates report handling 20,262 events during calendar year 2014. These events fall into three major categories: conferences, interim hearings, and final hearings. Magistrates conducted 11,189 conferences, 1,397 interim hearings, and 6,981 final hearings during this time period.

- Conferences usually take between 15 and 30 minutes, with initial case management conferences—most notably those with both parties unrepresented—requiring the greatest amount of time.
- Between 2012 and 2014 the number of interim hearings conducted by Magistrates increased sharply from 541 to 1,397 (increase of 856) and the number of final hearings conducted by Magistrates increased from 6,714 to 6,981 (increase of 267).

Although the Magistrates conducted far fewer interim and final hearings than conferences, these hearings were more time consuming, lasting anywhere from an hour to a full day.

#### **4. Case Scheduling**

Magistrates, Judges, and clerks work hard to prevent backlogs that would increase the time to resolution in Family Matter cases. The Chief Judge of the District Court, in concert with the Family Division staff, works with clerks and Magistrates on an ongoing basis to develop, implement, and refine scheduling practices to make the most efficient and effective use of court and litigant time.

In 2014, most courts kept up with the new filings in Family Matters, “clearing” or closing cases at an average rate of over 95%.<sup>9</sup> More importantly over the past decade, the time in which Family Matters cases are resolved has been cut in half. Between 2004 and

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<sup>9</sup> The clearance rate compares the ratio of case dispositions to case filings and measures whether a court is disposing of its cases at the same rate as new cases are being filed. A clearance rate of 100% means the court has disposed of the same number of cases filed in the time period being measured.

2014, the average number of days to resolution for original family matters decreased by approximately 100 days. This reduction in the time it takes to resolve a Family Matters case minimizes the length of disruption and uncertainty in the lives of Maine's children and families.

In addition to system-wide scheduling priorities, the District Court has established internal timelines that seek to have families appear before a Magistrate for an initial case management conference within 35-45 days after a complaint or post-judgment motion is filed. The Judicial Branch's antiquated case management system does not have the capability to report on such data, but polling of court clerks indicates that 25 out of the 27 district courts regularly meet this scheduling goal.

## **5. Block Scheduling Model**

Under the direction of the Chief Judge of the District Court, the Family Division has worked with Magistrates and clerks in several courts to develop a block scheduling model for original action and post-judgment Family Matter "with children" cases. Beginning in 2012, several courts in central Maine began a pilot project of scheduling cases for all Magistrate dockets in "blocks" of time. In 2013 and 2014, Block Scheduling was expanded to all courts in Maine.

In addition, post-judgment blocks with real-time mediations were implemented in most counties. The post-judgment blocks enable the Magistrate to triage post-judgment cases at the parties' first court appearance, send the parties immediately to a brief mediation, schedule the parties for a more comprehensive mediation, and/or set the parties for a final hearing. The estimated result is that nearly 50% of post-judgment cases appearing on block schedules resolve with two (2) or fewer court appearances. This saves parties time, money, and reduces the

period of family uncertainty.

A third type of block for Department of Health and Human Services Division of Support Enforcement and Recovery (DSER) cases was also developed. DSER blocks are scheduled by grouping paternity and child support cases together in blocks of time, enabling DSER agents to work with parties to resolve cases at their first appearance while the Magistrate is able to simultaneously hear other cases. This allows more cases to be scheduled at the same time while providing an informative, effective first court appearance sensitive to the needs of each party.

Historically, without block scheduling, each Family Matter would be assigned 30 minutes of court time, regardless of the specific case dynamics. On one hand, some case events would finish in 10 minutes, leaving the additional 20 minutes of court time unscheduled without an effective way to bring in additional parties for case resolution. On the other hand, the more complicated case events could not be completed within the 30-minute timeframe, resulting in delays for other cases subsequently scheduled that day or return trips to the courthouse for those parties.

Based on historical time estimates, this block schedule results in less waiting time for parties, less Magistrate “down” time between cases, and more matters being resolved in the time allotted. Block scheduling allows the Magistrate to quickly address the cases needing less time and to spend additional time on cases with more complex or contested issues.<sup>10</sup>

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<sup>10</sup> Basically, “block” scheduling sets expectations about how many matters of a particular type should be scheduled for any given “block of time.” Under Block Scheduling, in any given 1.5-hour period the court may hear a variety of cases scheduled for that block based upon the dual goals of allowing parties an opportunity to be heard and effective case processing. For example, in any given block there may be three cases scheduled that will require only 5-10 minutes of court time to effectively address the parties’ needs along with several other more complex or contested cases that require significantly more court time to address the parties’ needs.

Assigning each case the same amount of pre-determined time was not an efficient use of court resources and results in delays and frustration for parties. Over the course of three years, the block-scheduling pilot project showed promising results. Now that the model has been implemented in nearly all courts, the Chief Judge has directed the Family Division to undertake a review of the model so that adjustments and modifications may be implemented to improve further the District Court’s ability to manage its increasingly complex cases effectively and to provide service to increasing numbers of unrepresented litigants.

#### **IV. Family Division Task Force**

As necessary to advance the Family Division’s mission, the Maine Supreme Judicial Court periodically conducts reviews of the case management process in the context of the continuing evolution of the Family Matters caseload. Toward this end, the Supreme Judicial Court chartered the Family Division Task Force—2013 (FDTF) in July of 2013, for the purposes of reviewing and updating the status of changes recommended in the Family Division Task Force—2006 (FDTF) Report as well as to make recommendations to the Chief Judge of the District Court and the Justices of the Maine Supreme Judicial Court regarding any changes to procedures, law, or rules necessary to advance the Family Division’s mission.<sup>11</sup> The multi-stakeholder FDTF, chaired by the Honorable Daniel F. Driscoll, was comprised of attorneys, legislators, clerks, judicial officers, and one public member.<sup>12</sup>

The FDTF reviewed available data, Family Matters scheduling practices, relevant statutes, Rules of Procedure, Rules of Evidence, Judicial Canons, Administrative Orders, and court forms to assess their effect on the Family Matters process and whether any changes were

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<sup>11</sup> See Family Division Task Force Charter, Maine Supreme Judicial Court, at Appendix B.

<sup>12</sup> The FDTF membership roster is attached hereto at Appendix B, page 3.

necessary to enhance the Family Division's mission of providing a system of justice responsive to the needs of families and the support of their children.

The FDTF also held eight public hearings in courthouses across the State, including Presque Isle, Calais, Bangor, Augusta, Rockland, Portland, Lewiston, and Springvale.<sup>13</sup> These public hearings provided the FDTF with input from members of the public, practitioners in the field of family law, judicial officers, legislators, and court personnel. The FDTF also solicited, accepted, and reviewed written public comments and suggestions.<sup>14</sup>

The FDTF submitted its Final Report to the Justices of the Maine Supreme Judicial Court in May 2014.<sup>15</sup> The Task Force included recommendations targeted to bring some clarity to processes that create uncertainty or confusion for parties, eliminate court events that create unnecessary costs or delays, create different or improved procedures that promote prompt and effective resolution of disputes, and allow for better allocation of judicial resources.

Following the review of these recommendations and the information gathered from public hearings, Judicial Leadership, Court Management, and the Family Division have begun to develop process improvement plans. To date, the Judicial Branch has expanded Magistrate Block Scheduling, reviewed and revised all Family Matters forms, reviewed Family Matters caseloads to adjust FLM Magistrate schedules, developed a child support interface to create efficiencies and expedite enforcement efforts, monitored case scheduling quarterly to adjust

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<sup>13</sup> See Appendix C.

<sup>14</sup> Public comments touched on various types of family matters cases and a number of challenges faced by litigants. Common themes included the high number of unrepresented litigants, the high cost of legal representation, the level of unfamiliarity with the process, and dissatisfaction with the lack of clear expectations.<sup>14</sup> The Task Force was very moved by the courage and insight demonstrated by the individuals who chose to provide input and gave those comments great weight throughout its deliberations.

<sup>15</sup> The FDTF Report can be found in its entirety under the Family Division tab at [http://www.courts.maine.gov/reports\\_pubs/reports/index.html](http://www.courts.maine.gov/reports_pubs/reports/index.html).

individual court resources (e.g., mediation and Magistrate days per month) to meet caseload demands, implemented best practice case docketing to facilitate uniformity in electronic case file management as well as prompt scheduling, and implemented a new form Order of Appointment of Guardian ad Litem. The Family Division continues to develop more detailed and accessible public information and the Judicial Branch continues to gather additional suggestions for better public service and efficient case processing.

## **V. Guardian ad Litem**

When the custody of a child is in dispute, the court may appoint a Guardian ad Litem (GAL) to help investigate the circumstances of the family and to make a recommendation regarding the best interests of the child. Appointment of a GAL remains mandatory in child protection proceedings. See 22 M.R.S. § 4005(A). In Family Matters cases, appointment of a GAL is discretionary and may depend on the parents' financial resources. See 19-A M.R.S. 1507.

### **A. History**

The Maine Legislature first mandated the use of GALs in Maine protective custody cases over 30 years ago. This initial effort marked the first in a series of several significant federal and state legislative events that have shaped the role of GALs in Maine's courts.

In 1997, the Maine Legislature enacted 19-A M.R.S. § 1507, providing for the discretionary appointment of GALS in Family Matters.<sup>16</sup> In 1998, the Family Division was established within the Judicial Branch, with the mission to "provide a system of justice that is responsive to the needs of families and the support of their children." See 4 M.R.S. § 183. Under current law, the court may appoint a GAL in a Family Matter case to help investigate the

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<sup>16</sup> P.L. 1995, ch. 694, § B-2, (effective Oct. 1, 1997).

circumstances of the family and make a recommendation regarding the best interests of the child. See 19-A M.R.S. 1507.

In 1999, the Supreme Judicial Court promulgated the Maine Rules for Guardians Ad Litem (hereinafter “GAL Rules”), with appended Standards of Practice for Guardians Ad Litem in Maine Courts (hereinafter, “GAL Standards”), which are intended to “set the qualifications for Guardians ad Litem, standards for practice for GALs, and [to] govern the appointment of a GAL and the placement of a GAL on, and the removal of a GAL from the GAL Roster.”<sup>17</sup> The GAL Rules and appended GAL Standards were last reviewed and edited on August 4, 2004, and last amended in March of 2001.

In February of 2007, the Chief Justice formally established the Judicial Branch Advisory Committee on Children and Families (ACCF). The ACCF was tasked to review all court sponsored services and projects relating to children and families. Upon review of these services and projects, the ACCF made recommendations, developed budget information, and drafted policies and proposed statutory or rule changes to support those recommendations. In particular, the ACCF identified necessary improvements in GAL projects and services and prioritized improvements to the recruitment, selection, evaluation, and complaint processes for GALs. Those recommendations were never funded.

## **B. Training**

The first two-day GAL training was held in May of 1999. There were over 150 participants including attorneys, mental health professionals, and others. Since this initial training, the Family Division has sponsored eleven core GAL trainings. The most recent four-day training included presenters and trainers from the judiciary, the legal community, the social

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<sup>17</sup> M.R.G.A.L. I(A).

work community, the psychological/medical community, as well as the “kids-in-care” community.

The Judicial Branch also seized the opportunity to procure federal Court Improvement Grant funds to provide advanced training to stakeholders in child protection cases, including GALs who have already completed the initial core training. Child protection GALs have had the opportunity to attend between four (4) and seven (7) advanced trainings with topics ranging from child development to ethical boundaries.<sup>18</sup>

### **C. Recent Developments: Stakeholder Review of GAL Rules and Standards**

Despite many improvements, Maine Judicial Branch (MJB) Leadership recognized several concerns regarding GAL services in Maine. Over the past few years, the Supreme Judicial Court and the Chief Judge of the District Court took several interim measures to improve access to justice and fairness for Maine families and children.

#### **1. NCSC Study**

Recognizing the critical need for improvement in GAL services, most notably with regard to the complaint process, the MJB secured funding from the State Justice Institute to take advantage of the National Center for State Court (NCSC)’s expertise and national contacts to learn more about the best practices in GAL service provision, with a particular emphasis on the complaint and resolution processes and the availability of highly qualified GALs for children and families in Maine.

The NCSC concluded that “the Maine courts, to their credit, have established an effective GAL program in domestic relations cases. Maine’s current GAL process is more comprehensive than those found in many jurisdictions. The MJB has established standards and a form

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<sup>18</sup> These trainings are restricted to child protection GALs by the federal funding source.

appointment order that establishes the GAL's role in a particular case and the method for establishing fees. The MJB has established minimum qualifications and mandatory training and continuing education. While no major overhaul of Maine's GAL program is required, the MJB could examine the practices of other jurisdictions...to ensure that its processes enhance the well-being and outcomes for the children of parents seeking custody and parenting orders in Maine's courts.”<sup>19</sup>

The NCSC research provided contextual information about the role of GALs in other states, and discussed the role of GALs appointed in Maine in domestic relations proceedings when parental rights and responsibilities and/or visitation are contested.<sup>20</sup> The NCSC also reviewed courts practices in other states with regard to program oversight, qualification, training, and complaint processes for GALs. In particular, state court systems in Colorado, Massachusetts, Minnesota, and New Hampshire and county court systems in Washington and Arizona have oversight mechanisms, standards, and complaint processes in place. The NCSC ultimately produced an overview of these other state GAL systems that was available to stakeholder groups—outlined below—to help guide the efforts to assure that parties have access to an effective and professional GAL system in Maine.

## **2. Stakeholder and Judicial Review**

On May 31, 2012, the Supreme Judicial Court invited the public, interested parties, and stakeholders to a meeting regarding improving GAL services and the Court solicited written public comment. Supreme Judicial Court Chief Justice Leigh I. Saufley, Superior Court Chief Justice Thomas E. Humphrey, District Court Chief Judge Charles C.

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<sup>19</sup> *Guardians ad Litem Appointed to Represent the Best Interest of Children in Domestic Relations Cases in Maine*, NCSC Final Report October 2013 (NCSC Report) at p. 46.

<sup>20</sup> Id. at p. 9.

LaVerdiere, and District Court Deputy Chief Judge Robert E. Mullen presided over the meeting.<sup>21</sup>

In June of 2012, Chief Justice Saufley asked Deputy Chief Judge Mullen to convene a group of jurists<sup>22</sup> to discuss the existing Rules and Standards and prepare suggestions for possibly redrafting the Rules. The results of those discussions were reduced to a preliminary re-draft of the Rules on July 17, 2012 and the jurists created a “stakeholders group”<sup>23</sup>—including representatives from the Family Law Section of the Maine Bar Association, the Maine Guardian ad Litem Institute (MGALI), the Family Law Advisory Commission (FLAC), the Office of the Attorney General, and the public—to evaluate and to revise this initial re-draft of the Rules and Standards.

In August 2012, Chief Justice Saufley convened this Guardian ad Litem Stakeholder Group to make recommendations to the Supreme Judicial Court regarding GAL Rules and Standards. The stakeholders’ group considered the concerns regarding Maine’s GALS that had been raised at the May 31, 2012 public meeting and those received by the Judicial Branch following that meeting.<sup>24</sup> On December 14, 2012, the group submitted a proposed draft of the Rules to the Supreme Judicial Court for its consideration.<sup>25</sup>

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<sup>21</sup> See Appendix D.

<sup>22</sup> District Court Deputy Chief Judge Robert E. Mullen, Associate Supreme Judicial Court Justice Donald G. Alexander, District Court Judges Bruce Jordan and Patricia G. Worth, and Family Law Magistrate Paul D. Mathews.

<sup>23</sup> A list of stakeholders is included in Appendix E.

<sup>24</sup> The public comments are posted on the Judicial Branch website. *See* [www.courts.state.me.us/maine\\_courts/supreme/gal\\_comments.shtml](http://www.courts.state.me.us/maine_courts/supreme/gal_comments.shtml).

<sup>25</sup> Because a separate group, the Judicial Branch Guardian ad Litem Task Force chaired by Supreme Judicial Court Justice Warren Silver, was specifically charged with designing a GAL oversight and complaint resolution process, the stakeholders group provided all public comments related to GALS to the GAL complaint task force but did not make recommendations regarding those areas of the Rules.

Also as a result of the May 2012 public hearings, Judicial Branch leadership further acknowledged the need for an independent professional oversight body to receive and investigate complaints against GALs. On August 7, 2012, Chief Justice Saufley appointed a Guardian ad Litem Complaint Task Force (Task Force) “to assist the Supreme Judicial Court in designing and presenting to the 126<sup>th</sup> Maine Legislature, a transparent, accessible and credible system for resolving complaints against Guardians ad Litem who are appointed in the State Courts.” The Task Force included twenty members from a variety of stakeholder groups: judicial officers, attorneys in the practice of family law, mental health professionals, legislators, a GAL representative, and a public member. Supreme Judicial Court Justice Warren M. Silver chaired the Task Force. The Task Force recommended the creation of a Guardian ad Litem Review Board (Review Board) to handle the investigations and complaints concerning GALs. As proposed, the Review Board would be administered as an independent unit of the Board of Overseers of the Bar, thereby garnering the benefit of an existing administrative structure and staffing by the Board of Overseers of the Bar.<sup>26</sup>

Several bills concerning GALs were introduced during the First Session of the 126<sup>th</sup> Legislature, all of which were thoroughly considered by the Joint Standing Committee on Judiciary. Ultimately, the 126<sup>th</sup> Legislature passed Public Law 2013, ch. 406, (L.D. 872), *An Act to Improve Quality of Guardian ad Litem Services for the Children and Families of Maine* enacting 4 M.R.S. §§ 1551-1558, to address designation and rostering of GALs, GAL responsibilities, appointment of GALs and the factors the court are to consider in making appointments, payment for services of GALs, and collection of fees by GALs from persons given

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<sup>26</sup> By letter dated October 1, 2012, the Chief Justice of the Maine Supreme Judicial Court forwarded the Task Force report, ***Recommendations for an Improved Process for Complaints Regarding Guardians Ad Litem***, September 21, 2012, to the Joint Standing Committee on the Judiciary.

responsibility to pay GAL fees. The law also directs the Supreme Judicial Court to develop by rule a complaint process concerning guardians.

Consequently, the Supreme Judicial Court reconvened the Task Force chaired by Justice Silver, with the discreet charge of drafting proposed Rules outlining a complaint process responsive and fair to Maine families, children, and GALs. The Task Force met over a period of several months to consider and to deliberate on the most independent and fair process possible. The proposed Rules were submitted to the Supreme Judicial Court and subsequently posted for public written comment on July 21, 2014.<sup>27</sup>

### **3. Maine Supreme Judicial Court Public Hearings**

The Maine Supreme Judicial Court held public hearings at the Cumberland County Courthouse on May 31, 2012<sup>28</sup> and November 13, 2014<sup>29</sup> to receive written and oral comments on the following matters:

- The Guardian ad Litem complaint process;
- The establishment of a cost-effective professional oversight process for Guardians ad Litem in child protective and family matter proceedings;
- The report of the Family Division Task Force—2013 (FDTF);
- The proposed repeal and replacement of the Maine Rules for Guardians ad Litem; and
- The proposed repeal and replacement of the Maine Bar Rules.

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<sup>27</sup> The Task Force (Stakeholders) Report and Recommendations can be found in its entirety at [http://www.courts.maine.gov/rules\\_adminorders/rules/proposed/gal/gal\\_ltr\\_to\\_stakeholders\\_group\\_8-6-13\\_and\\_FLAC\\_report.pdf](http://www.courts.maine.gov/rules_adminorders/rules/proposed/gal/gal_ltr_to_stakeholders_group_8-6-13_and_FLAC_report.pdf). See also final recommendations at [http://www.courts.maine.gov/reports\\_pubs/reports/pdf/ga-final-011413.pdf](http://www.courts.maine.gov/reports_pubs/reports/pdf/ga-final-011413.pdf).

<sup>28</sup> See Public Notice at Appendix D.

<sup>29</sup> See Public Notice at Appendix F.

The report and proposed rules, as well as the public written comments that the Court received on those documents, are available on the Judicial Branch website.

#### **4. New GAL Rules**

The GAL Rules proposal now before the Supreme Judicial Court comprises the work of both the Guardian ad Litem Stakeholders Group, chaired by Deputy Chief Judge Mullen, and the Guardian ad Litem Task Force, chaired by Justice Silver. As noted above, the Supreme Judicial Court has received extensive written comments as well as oral testimonial public comment to allow for the greatest amount of stakeholder and consumer input prior to undertaking its review. The Supreme Judicial Court is now deliberating on the proposed rules and public comments. It is anticipated that the Court will promulgate new GAL rules and standards by Spring 2015.

#### **5. GAL Order of Appointment**

In 2013, the Judicial Branch identified one change that could have a profoundly positive impact on Maine families embroiled in family disputes: a new Guardian ad Litem Order of Appointment (GAL Order). The new GAL Order provides the parties and the GAL with clear guidelines and expectations from the outset, including: clearly defined GAL duties, maximum hours or maximum fees to be charged, hourly GAL rate, and duration of appointment. The GAL Order requires any changes to the limits set forth in the appointment to be formally approved by the court.<sup>30</sup>

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<sup>30</sup> See Order of Appointment of Guardian ad Litem at Appendix G.

## **VI. Conclusion**

The Family Division has enabled the District Court to make significant progress in timely addressing the needs of Maine's children and families involved in court proceedings. Magistrates continue to garner widespread respect through their dedication and hard work, as well as their commitment to bringing the parties before the court as soon after the filing of a complaint as possible. District Court Judges and Magistrates work with an ever-increasing caseload comprised of increasingly complex cases to fashion fair and impartial resolution of emotionally charged issues for families and children.

Maine Judicial Branch Leadership has devoted great attention and time over the past year to improving the court process for families engaged in parental disputes, with extra focus attended to GAL services in Maine. The Court has heard from members of the public and seeks solutions to the problems identified.

There is still work to be done. The Judicial Branch will endeavor to further increase its responsiveness to the needs of families and the support of their children, to evaluate and manage caseloads through innovation, and to encourage quality GAL services, alternative dispute resolution, and co-parenting education to Maine's families. New GAL Rules are anticipated that will include a more transparent and accessible GAL complaint process.

Maine has reason to be proud of the work that the Judicial Branch Leadership and Family Division continue to accomplish.

**APPENDICES TO THE  
REPORT TO THE JOINT STANDING COMMITTEE ON JUDICIARY OF  
THE 127<sup>th</sup> LEGISLATURE AND  
THE MAINE SUPREME JUDICIAL COURT ON  
CASES HANDLED BY THE  
FAMILY DIVISION OF  
THE  
MAINE DISTRICT COURT**



# **APPENDIX A**

CY '14 FM ORIGINAL & FM POST JUDGMENT MOTION FILINGS.....A1

## APPENDIX A

**MAINE DISTRICT COURT**  
**Family Matters**  
**Filings 1/1/14 -12/31/14**

	Original Divorce Complaints with Children		Original PR&R and Paternity Complaints		<b>Total Original FM Complaints</b>	Post-- Judgment Divorce Motions with Children		Post-- Judgment Motions -- PR&R and Paternity		<b>Total Post-- Judgment FM Motions</b>	<b>TOTAL FM FILINGS (Original and Post-- Judgment)</b>
	Divorce Complaints	PR&R and Paternity Complaints	Divorce Complaints without Children	Divorce Motions -- PR&R and Paternity		Divorce Motions without Children					
Augusta	167	122	182		471	209	122	44		375	846
Bangor	202	160	259		621	270	94	41		405	1,026
Belfast	100	60	81		241	110	57	5		172	413
Biddeford	173	134	194		501	213	145	31		389	890
Bridgton	76	29	96		201	67	21	15		103	304
Calais	22	13	27		62	26	16	3		45	107
Caribou	34	32	35		101	40	37	6		83	184
Dover-- Foxcroft	40	28	38		106	36	21	5		62	168
Ellsworth	101	75	126		302	123	81	27		231	533
Farmington	56	56	69		181	77	41	8		126	307
Fort Kent	25	26	33		84	47	32	6		85	169
Houlton	37	33	28		98	54	36	6		96	194
Lewiston	236	244	266		746	287	210	19		516	1,262
Lincoln/ Millinocket	35	30	51		116	53	9	8		70	186
Machias	45	36	36		117	40	24	4		68	185
Newport	61	57	71		189	65	41	6		112	301
Portland	459	228	505		1,192	569	249	61		879	2,071
Presque Isle	53	49	57		159	61	55	3		119	278
Rockland	98	67	93		258	127	89	14		230	488
Rumford	33	37	34		104	66	35	12		113	217
Skowhegan	101	117	152		370	146	111	24		281	651
South Paris	56	34	58		148	75	60	16		151	299
Springvale	123	146	158		427	245	131	24		400	827
Waterville	140	83	103		326	156	87	11		254	580
West Bath	117	104	160		381	163	95	32		290	671
Wiscasset	78	38	86		202	102	38	11		151	353
York	84	32	89		205	126	25	16		167	372
<b>State TOTALS</b>	<b>2,752</b>	<b>2,070</b>	<b>3,082</b>		<b>7,909</b>	<b>3,553</b>	<b>1,962</b>			<b>5,973</b>	<b>13,882</b>

# **APPENDIX B**

FAMILY DIVISION TASK FORCE CHARTER.....B1

FAMILY DIVISION TASK FORCE MEMBERSHIP ROSTER.....B3

# **APPENDIX B**

## **JUDICIAL BRANCH**

### **Family Division Task Force—2013**

<b>Type:</b>	<b>Task Force</b>
<b>Established:</b>	<b>March 7, 2013</b>
<b>Revised:</b>	<b>September 20, 2013</b>
<b>Chair:</b>	<b>Honorable Daniel Driscoll</b>
<b>Report Date:</b>	<b>May 30, 2014</b>
<b>Reports to:</b>	<b>Maine Supreme Judicial Court, Trial Court Chiefs</b>

#### **I. Purpose**

The purpose of establishing the Family Division Task Force—2013 is twofold: First, to review and update the status of changes recommended by the Family Division Task Force—2006 Report; second, to make recommendations to the Chief Judge of the District Court, and to the Maine Supreme Judicial Court regarding any changes to procedures, law, or rules necessary to advance the Family Division’s mission.<sup>31</sup> Toward this end, the Task Force will:

- A. Review the Family Division Task Force—2006 Report, and evaluate the progress towards implementation of any recommendations;
- B. Receive the input of the public, the Bar, and additional Stakeholders;
- C. Study and make recommendations regarding the timing, scheduling, and processing of family matters in the District Courts;
- D. Study and make recommendations regarding the scheduling and management of family matters as those activities relate to the scheduling and management of other case types;
- E. Study and make recommendations for improving the allocation of resources and/or the management of family matters;
- F. Study and make recommendations regarding statistical information compiled by the Family Division; and
- G. Examine such other related topics as are identified by the Task Force.

The overarching goal of the Task Force is to review the processing of family matter cases in Maine, and to recommend any changes that will best serve the needs of children and families. This may include recommendations that would: eliminate magistrate or judicial events that create unnecessary costs or delays, create different or improved procedures that promote prompt and effective resolution of disputes, and allow for better allocation of magistrate and judicial resources.

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<sup>31</sup> The Family Division of the Maine District Court was established in 1998. The Division adopted a case management process to achieve its stated mission of “providing a system of justice that is responsive to the needs of families and support of their children.” 4 M.R.S. § 183 (2005).

## **II. Membership**

The following individuals shall serve as members of the Task Force:

Two District Court Judges  
One Superior Court Justice  
One Magistrate  
Two Clerks of Court  
One Legislator—House of Representatives  
One Legislator—Senate  
One Representative of the Maine State Bar Association  
One Guardian ad Litem  
One Representative of the Attorney General's Office  
One Family Law Practitioner  
One Member with Domestic Violence Experience  
Others as Designated by the Chief Justice

## **III. Meetings**

The Task Force will meet on a schedule established by its Chair. The Chair may also, in his discretion, establish subcommittees of Task Force members.

## **IV. The Report**

Unless otherwise ordered by the Chief Justice, the Task Force will issue its written report and recommendations to the Supreme Judicial Court on or before May 30, 2014. The Task Force's recommendations should include drafts of any statutory and rule amendments that will be required to implement its recommendations. The Task Force may also propose an implementation plan and schedule.

Dated: September 20, 2013

Approved by:

/s/  
Chief Justice Leigh I. Saufley  
Maine Supreme Judicial Court

**JUDICIAL BRANCH**  
**Family Division Task Force—2013**

**MEMBERSHIP ROSTER**

Hon. Daniel Driscoll, Maine District Court, Chair  
Hon. Bruce Jordan, Maine District Court  
Hon. A. Mark Horton, Maine Superior Court  
Magistrate Maria Woodman  
Gail Merritt, Family Division Manager, Cumberland County Clerk's Office  
Diana Durgin, Assistant Clerk, Newport District Court  
Representative Kimberly Monaghan-Derrig  
Senator Roger J. Katz, Esq.  
Diane Dusini, Esq.  
Anthony A. Trask, Esq.  
Debby L. Willis, AAG  
Barbara L. Raimondi, Esq.  
Richard W. Elliott, Esq.  
Bonita Usher, Public Member

Staff Consultant:

Tracie Adamson, Family Division Manager

Supreme Judicial Court Liaison:

Hon. Jon D. Levy, Associate Justice

# **APPENDIX C**

FAMILY DIVISION TASK FORCE NOTICE OF PUBLIC HEARING.....C1

## **APPENDIX C**



# **Administrative Office of the Courts**

**P.O. Box 4820, Portland, Maine 04112-4820**

**Tel: (207) 822-0792 FAX: (207) 822-0781 TTY: (207) 822-0701**

Mary Ann Lynch  
Government & Media Counsel  
P.O. Box 4820  
Portland, Maine 04112-4820

Tel: (207) 592-5940  
[mary.ann.lynch@courts.maine.gov](mailto:mary.ann.lynch@courts.maine.gov)

### **Court Task Force to Hold Public Hearings on Family Matters Case Process**

December 20, 2013 - For Immediate Release. Portland, Maine. The Maine Supreme Judicial Court established the Family Division Task Force in 2013 to make recommendations to the Chief Judge of the District Court, and to the Supreme Judicial Court regarding changes to procedures, law or rules necessary to advance the Family Division's mission of "providing a system of justice that is responsive to the needs of families and the support of their children." The Family Division Task Force will hold public hearings throughout the State as listed below to gather public comments and suggestions for the review of family matter cases and to recommend any changes that will better serve the needs of children and families. Public comments may be limited in duration and should not reference specific cases. Written comments may be emailed to [lawcourt.clerk@courts.maine.gov](mailto:lawcourt.clerk@courts.maine.gov), or mailed to State of Maine, Administrative Office of the Courts, 171 State House Station, 24 Stone Street, 1st Bldg., 1st Floor, Augusta, ME 04333-0171. Comments will be accepted until 5:00 p.m. on January 24, 2014. For more details, please visit the Maine Judicial Branch website at [http://www.courts.maine.gov/news\\_reference/news/index.shtml](http://www.courts.maine.gov/news_reference/news/index.shtml).

### **Public hearings are from 4:15 - 6:00 pm in the following locations:**

- January 6, 2014 (Presque Isle District Court)
- January 7, 2014 (Calais District Court)
- January 8, 2014 (Bangor District Court)
- January 9, 2014 (Rockland District Court)
- January 13, 2014 (Lewiston District Court)
- January 14, 2014 (Portland District Court)
- January 15, 2014 (Springvale District Court)
- January 16, 2014 (Augusta District Court)

## **APPENDIX D**

PUBLIC MEETING TO HEAR COMMENTS ON GAL OVERSIGHT.....D1

## **APPENDIX D**

# **Public Meeting to Hear Comments on GAL Oversight**

Please note: The meeting scheduled for Thursday, May 31 at 4:00 pm at the Cumberland County Courthouse for the purpose of hearing comments regarding a Guardian ad Litem complaint process, has been moved from the Feeney Conference Room, across the hall to Courtroom 2. The Judicial Branch will accept written comments from interested persons until June 15th, 2012. Please send written comments to: [lawcourt.clerk@courts.maine.gov](mailto:lawcourt.clerk@courts.maine.gov).

The Maine Judicial Branch will hold an open meeting on Thursday, May 31, 2012 at the Cumberland County Courthouse at 4:00 p.m. to 5:30 p.m., on the 1st Floor in the Feeney Conference Room. The purpose of the meeting is to receive input and suggestions for the establishment of cost-effective, professional oversight of Guardians ad Litem in Child Protection and Family Matter proceedings in the State Courts.

# **APPENDIX E**

MEMBERS OF THE GUARDIAN AD LITEM STAKEHOLDERS GROUP.....E1

## **APPENDIX E**

### **MEMBERS OF THE GUARDIAN AD LITEM STAKEHOLDERS GROUP**

*Associate Justice of the Supreme Judicial Court:*

Justice Donald G. Alexander

*District Court Judges:*

Deputy Chief Judge Robert E. Mullen (Chair)  
Judge Patricia G. Worth

*Family Law Magistrate:*

Magistrate Paul D. Matthews

*Office of the Attorney General:*

Nora Sosnoff, Esq.

*Family Law Section of the Maine Bar Association:*

Margaret C. Lavoie, Esq.  
Ilse Teeters-Trumy, Esq.

*Maine Guardian ad Litem Institute:*

Thomasine M. Burke, Esq.  
Heather T. Whiting, Esq.

*Maine Coalition to End Domestic Violence:*

Margo Bastie

*Judicial Branch Staff:*

Tracie L. Adamson, Esq., Family Division Manager  
Mary Ann Lynch, Esq., Government & Media Counsel  
Kirsten Skorpen, MSW, Family Division Resource Coordinator  
Janet A. Stocco, Esq., Lead Law Clerk to the Maine District Court

*Public\**

\* Dr. Jerome Collins was invited to join the Stakeholders Group as a representative of the public; he initially participated but resigned his position on October 16, 2012.

# **APPENDIX F**

NOTICE OF PUBLIC HEARING ON THE REPORT.....F1

## **APPENDIX F**

**NOTICE OF PUBLIC HEARING  
ON THE REPORT OF THE FAMILY DIVISION TASK  
FORCE  
AND THE PROPOSED REPEAL AND REPLACEMENT OF  
THE  
MAINE RULES FOR GUARDIANS AD LITEM  
AND THE  
MAINE BAR RULES**

**Thursday, November 13, 2014, at 10:00 a.m.  
Supreme Judicial Court Courtroom  
Cumberland County Courthouse, Portland, Maine**

The Maine Supreme Judicial Court will hold a public hearing at 10:00 a.m. on Thursday, November 13, 2014, in Courtroom 12 of the Cumberland County Courthouse (the Supreme Judicial Court courtroom) to receive comments on the following matters currently before the Court:

- The report of the Family Division Task Force;
- The proposed repeal and replacement of the Maine Rules for Guardians Ad Litem; and
- The proposed repeal and replacement of the Maine Bar Rules.

Any person may make oral comments to the Court at the public hearing; commenters need not be attorneys. Any person intending to make comments should arrive at the courtroom and report to the Executive Clerk by 9:50 a.m.

The report and proposed rules, as well as public written comments the Court received on those documents, are available on the Judicial Branch website. The documents are linked from the website version of this notice at [http://www.courts.maine.gov/maine\\_courts/supreme/comment/public\\_hearing\\_notice\\_2014-10-10.shtml](http://www.courts.maine.gov/maine_courts/supreme/comment/public_hearing_notice_2014-10-10.shtml).

Dated: October 10, 2014

Matthew Pollack  
Executive Clerk  
205 Newbury Street, Room 139  
Portland, Maine 04101  
(207) 822-4146

# **APPENDIX G**

ORDER APPOINTING GUARDIAN AD LITEM.....G1

# APPENDIX G

## STATE OF MAINE

### DISTRICT COURT

Location: \_\_\_\_\_

Docket No.: \_\_\_\_\_

Plaintiff

v.

Defendant

### ORDER APPOINTING GUARDIAN AD LITEM

4 M.R.S. § 1555

#### 1. APPOINTMENT

- A. Pursuant to 4 M.R.S. § 1555 and 19-A M.R.S. § 1507(1) and subject to the conditions set forth below, the Court appoints \_\_\_\_\_, a person rostered to serve as a Guardian ad Litem ("GAL") in Maine, whose address is \_\_\_\_\_, to serve as a GAL for the child(ren) in this matter whose name(s) and date(s) of birth are as follows: \_\_\_\_\_
- B. The appointment is in effect until vacated by Order of the Court.
- C. The GAL's appointment is agreed not agreed to by the parties. If the parties do not agree to the appointment of the GAL, the Court's findings supporting the appointment of the GAL are as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### 2. FEE ARRANGEMENT

- A. The fee arrangement for payment of the GAL is agreed not agreed to by the parties. If the parties do not agree to the fee arrangement for payment of the GAL, the Court's findings supporting the fee payment order are as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- B. Payment for the services of the GAL is the responsibility of the parties, with the terms of payment specified in this Order. The GAL will be paid an hourly rate of \$ \_\_\_\_\_. a flat fee of \$ \_\_\_\_\_.  
GAL is providing services pro bono.
- C. Plaintiff is ordered to pay the GAL an initial payment of \$ \_\_\_\_\_ on or before \_\_\_\_\_ and then payments of \$ \_\_\_\_\_ monthly towards the GAL's expenses.
- D. Defendant is ordered to pay the GAL an initial payment of \$ \_\_\_\_\_ on or before \_\_\_\_\_ and then payments of \$ \_\_\_\_\_ monthly towards the GAL's expenses.
- E. The GAL's fees, including the initial payment in paragraph C and D, shall not exceed \$ \_\_\_\_\_ absent either: (a) a further Order of the Court or (b) a written agreement of the parties filed with the Court.
- F. If the initial payments, if any, are not paid as ordered, the GAL shall notify the court, and the Court may vacate this Order or take such other action it determines appropriate under the circumstances.

### **3. RESPONSIBILITIES AND DUTIES**

- A. Absent further order of the Court, the GAL's duties are specifically limited as follows:

The GAL shall perform the mandatory statutory duties set forth in 19-A M.R.S. § 1507(3)(A) and 4 M.R.S. § 1554(3);

The GAL shall investigate the following specific issues: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;

The GAL shall be required to interview only the following individuals: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;

The GAL's written report shall include recommendations on the following topics: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;

- B. The GAL shall spend no more than \_\_\_\_\_ hours on the investigation absent either: (a) further Order for the Court **or** (b) written agreement of the parties filed with the Court.

- C. The GAL shall prepare (a preliminary written report by \_\_\_\_\_ and) a final report to the parties and the court no later than 14 days prior to the final hearing.

- D. Given the confidential nature of the material that may be reviewed by the GAL, all of the GAL's reports shall be confidential and sealed after the report is submitted to the court and to the parties. The reports shall not be disclosed by the parties or the GAL or further released by the Court, except as otherwise ordered by the Court.

- E. The parents in this matter shall cooperate with the GAL. The parties are hereby ordered to sign releases granting the GAL access to the following specific types of records regarding following specific individuals:

\_\_\_\_\_ (party's name); type of records: mental health medical  
\_\_\_\_\_ (party's name); type of records: mental health medical

(child(ren)'s name(s)); type of records: medical mental health education

The Clerk is directed to incorporate this Order by reference into the docket for this case, pursuant to M.R. Civ. P., Rule 79(a).

Date: \_\_\_\_\_

Judge/ Magistrate, Maine District Court

**THIS FORM MAY NOT BE ALTERED OR MODIFIED**