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**THE STATE OF MAINE**

**JUDICIAL BRANCH**

**ADVISORY COMMITTEE ON CHILDREN AND**

**FAMILIES**



**RECOMMENDATIONS FOR A GUARDIAN *AD LITEM***

**PROGRAM FOR THE STATE OF MAINE**

Winter 2008

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## I. INTRODUCTION

### A. Statement of Purpose

In February of 2007, the Chief Justice formally established the Judicial Branch Advisory Committee on Children and Families (“Committee”) as a standing committee.<sup>1</sup> The Committee has been given both a general and a specific charge. The Committee’s general and ongoing task is to review all court sponsored services and projects relating to children and families, including parent education and training. Upon review of these services and projects, the Committee is responsible for making recommendations, developing budget information, and drafting policies and proposed statutory or rule changes to support those recommendations.

The recent work of the Committee, and the subject of this report, is the more specific charge: to review the current state of Guardian *ad Litem* (“Guardian”) services in the State of Maine and assess how best to deliver Guardian services. In particular, the Committee has been asked to identify any needed improvements in Guardian projects and services and to assess, recommend, and prioritize improvements to the recruitment, selection, evaluation and complaint processes for Guardians.<sup>2</sup>

The Committee’s assessment process and recommendations are contained within this report. The contents that follow represent the consensus of the Committee reached through intensive consultation, lively discussion, and painstaking research. The Committee is mindful that its efforts seek, in part, to fill a void the Judicial Branch has struggled to address, without funding, for nearly 10 years. Funding is absolutely critical to the establishment and success of a comprehensive and responsive Guardian program in Maine.

### B. A Brief History of Guardians in Maine

In order to lay the groundwork for this report, the Committee offers a brief historical overview of Guardians in Maine.

The Maine Legislature first mandated the use of Guardians in Maine 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 the Guardian in Maine’s courts.

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<sup>1</sup> See Adv. Comm. CF-23-07, attached as [Appendix G](#). This Committee was formerly known as the Court Services Advisory Committee.

<sup>2</sup> In July 2006, the Office of Program Evaluation and Government Accountability (OPEGA) of the Maine State Legislature released a report to the Government Oversight Committee on a Performance Audit of Guardians *ad Litem* for Children in Title 22 Child Protection Cases. The OPEGA Report enumerated concerns that were not adopted by the Judiciary wholesale, such as: role confusion; inadequate performance monitoring and supervision; weak complaint process; inadequate screening; and weak recruitment and retention efforts. Rather, the Judiciary opted to review the provision of Guardian services in Maine directly and with regard to Titles 15, 19-A and 22. The Committee’s work on this task actually commenced on December 14, 2006.

In 1974, the federal Child Abuse and Prevention Treatment Act (“CAPTA”) was enacted. CAPTA required all states, in order to qualify for federal grant funds, to appoint a Guardian in all child protection cases. The following year Maine responded by passing a provision requiring appointment of a Guardian in all Title 22 child protection cases. P. L. 1975, ch. 167 (effective April 21, 1975).

Six years later, the federal Adoption Assistance and Child Welfare Act of 1980 was enacted. The effect of this Act was to minimize out of home placements, reunify children with their parents, and establish an 18-month deadline for permanency. Chapter 1071 of Title 22 incorporated Public Law 1975, chapter 167. The resulting increase in court events, necessitated by both the shortened timelines and the increased accountability of courts and parties for permanency, made Guardians critical to the timely making of recommendations.

By 1997, further federal legislation, the Adoption and Safe Families Act (“ASFA”), highlighted the need for permanency for children, requiring Guardians to make more time-sensitive recommendations regarding children’s best interests. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89 (1997).

These changes in federal law affected the course of the Maine Judicial Branch’s mission, and increased nationwide awareness of child maltreatment. In 1997, the Maine Legislature enacted 19-A M.R.S.A. § 1507, providing for the discretionary appointment of Guardians in Title 19-A family matters. P.L. 1995, ch. 694, § B-2, (effective Oct. 1, 1997). 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.” 4 M.R.S.A. § 183 (Supp. 2007).

In 1999, the Maine Supreme Judicial Court issued Rules and Standards for Guardians appointed in both Title 22 and Title 19-A cases. These rules and standards included training and application criteria as well as continuing education requirements. In May of 1999, the Guardian *ad Litem* Committee authorized by the Judicial Branch sponsored the first two-day Core Guardian training. There were over 150 participants including attorneys, mental health professionals, and others.

Since this initial training, the Family Division has sponsored eleven Guardian Core trainings. The training has now expanded to four (4) days, is offered once a year, and includes the Court Appointed Special Advocate Program (CASA).<sup>3</sup> The four-day training is comprehensive and includes presenters and trainers from the judiciary, the legal community, the

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<sup>3</sup> Maine, in conjunction with National CASA, established the Court Appointed Special Advocate Program in 1986 in order to recruit, train and supervise volunteer community members to serve as Guardians in child protection cases.

social work community, the psychological/medical community and the “kids-in-care” community.<sup>4</sup>

### **C. Committee Resources and Review Process**

The greatest asset of the Committee is its members. These members comprise a volunteer body of diverse individuals who represent broad perspectives and possess detailed understanding of Guardian work. Committee members have demonstrated track records of proactive commitment to improving Guardian services in Maine. The Committee is made up of judges, a family law magistrate, lawyers, state and private administrators, Guardians, a legislator, and mental health and information technology professionals.<sup>5</sup>

Since December 2006, the Committee members have contributed hundreds of hours and have worked intensively together and in subcommittees to research the issues, develop a model, and to articulate a proposal outlining the best way that the State of Maine can structure, administer, supervise, and support the Guardians and the CASA Program. As part of the review process, the Committee has evaluated materials and models from all over the country, has drawn upon its own experience and expertise, and has solicited written and testimonial input from various constituencies interested in the provision of Guardian services in Maine.

The review process broke down naturally into several subject areas, which were organized into subcommittees covering the topics of Guardian Role Definition; Guardian Professional Standards, Training, Supervision and Discipline; Guardian Program Design including administrative structure and placement of the program; Legislative and Rulemaking Requirements; Information Technology issues; and evaluation of the Maine Children’s Alliance Proposal.

### **D. Executive Summary of Conclusions and Recommendations**

This Committee has endeavored to design the best system for the provision of Guardian services to the children and families of Maine. The key elements of this enterprise are as follows:

1. The creation of an Office of Children’s Guardians (“OCG”) within the Family Division of the Judicial Branch. The OCG would provide for the daily oversight, management, training, and support of Guardians.
2. Establishment of a Guardian *ad Litem* Oversight Committee outside of the Judicial Branch, responsible for receiving, investigating, and recommending outcomes in response to complaints against Guardians.

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<sup>4</sup> See the 2007 Core Guardian *ad Litem* Training agenda, attached as [Appendix F](#).

<sup>5</sup> See member biographies attached as [Appendix H](#).

3. Actions to address the unmet need for Guardians in Title 19-A family matters, including:
  - Establishment of the Maine Children’s Fund to provide funding for access to Guardian services in family matters where resources are extremely limited or nonexistent;
  - Revision of Title 19-A and the Maine Rules for Guardians *ad Litem* to formally authorize the provision of cost-saving, special purpose Guardian services in family matters;
  - Encouragement of rostered Guardians to continue to increase their provision of *pro bono* and reduced fee Guardian services in Title 19-A cases; and
  - Continued exploration of incentives to provide *pro bono* and reduced fee Guardian services in Title 19-A cases.
4. Employment of a state-of-the-art information technology infrastructure designed to support the new Guardian program, including:
  - A “federated,” or linked, Judicial Branch information system, allowing user interface with the second generation of the Maine Judicial Information System (“MEJIS II”),<sup>6</sup> the OCG Guardian Management System, and a payment voucher system;
  - Information gathering capabilities that would allow detailed data collection for use by the Judicial Branch in its continued assessment and improvement of Guardian services, case management, and training;
  - Secure information access by clerks, judges, program administrators and Guardians to facilitate cooperative efforts to manage Guardian services effectively, confirm Guardian compliance with rules and standards, and monitor performance of statutory and other requirements;
  - Data query and analysis capabilities to provide efficient management of finances and other resources; and
  - Data query and analysis capabilities for meaningful program planning.

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<sup>6</sup> The Maine Judicial Information System II is currently being developed.

## II. FINDINGS AND RECOMMENDATIONS

The Chief Justice, through the Chief Judge of the District Court, directed that the Committee’s review and recommendations include: Title 15 juvenile matters, Title 19-A family matters and Title 22 child protective matters. This approach recognizes the substantial role Guardians play in guiding the court and the parties—through sometimes contentious waters—to a result that is in the child’s best interests. In particular the inclusion of Title 19-A matters in this process ensures that the goal of increasing access to Guardian services is met, especially in light of the high percentage of *pro se* litigants in family matters.<sup>7</sup>

The recommendations in this report are organized into six (6) sections, derived from the Subcommittee tasks. They include:

1. Role of the Guardian in the State of Maine;
2. Professional Standards, including eligibility, application, training and the establishment of a Guardian *ad Litem* Oversight Committee;
3. Program structure;
4. Technology considerations;
5. Recommended Changes to Statutes, Rules and Standards; and
6. Recommendation on the Maine Children’s Alliance Proposal to Administer a Maine Guardian program.

The Committee developed clear consensus on recommendations regarding all of the sections noted above. Consensus was achieved through a process of researching national models, determining best practices, and understanding the strengths and limitations of Maine’s current model. A summary of the findings and recommendations of the Committee, informed by the work of its subcommittees, comprises the body of this report. Additional detail is available within referenced Appendices.

### A. Role of the Guardian

It is the recommendation of the Advisory Committee that Guardians in Maine should continue to function in the advocate-directed model of servicing the needs of families and children in Title 15, Title 19-A, and Title 22 cases. Under this model, the Guardian conducts a comprehensive evaluation and then advocates for what, as a result of that investigation, he or she believes is in the child’s best interests. Determination of the child’s present and future needs is essential to this inquiry. The Guardian does not necessarily advocate for the child’s stated preference, as would an attorney representing the child. The focus is the protection of and advocacy for the child by an adult who attempts to understand and then articulate the child’s best interests. Under this model, both attorneys and non-attorneys, including individuals within other professional disciplines such as mental health professionals, social workers, etc., may serve as

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<sup>7</sup> The most recent Report of the Justice Action Group estimates that upwards of 75% of family matter cases have at least one (1) *pro se* litigant.



Guardians. This diversity of perspectives optimizes the opportunity for the system to address the wide range of issues presented by families in both Title 19-A and Title 22 cases in this state.

The Guardian in Maine is an agent of the court, serving as its eyes and ears in both Title 19-A and Title 22 cases. In this capacity, the Guardian is expected to perform the following functions:

- **An Investigator.** Perform an appropriate independent investigation of a case and be familiar with the issues and the facts related to the individual child, as well as the family before the court;
- **A Recommender.** Provide the court and the parties with advice/suggestions for the best course of action to be followed in light of the best interest of the child in Title 15, Title 19-A, and Title 22 cases;
- **An Advocate for Services.** Identify the need for, and pursue, other agency and community resources.<sup>8</sup>
- **An Advocate for the Best Interest of the Child.** Act and speak with the sole motivation of effecting an outcome that serves or otherwise furthers the health, safety, wellbeing, education and growth of the child in a case, including demanding that particular resources be brought to bear when appropriate; and
- **A Consensus Builder.** Identify, explore and facilitate the agreement and consensus of the parties on the best interests of the children, where and when appropriate.

The Committee believes that giving the Guardian the broadest permissible scope of activity and authority to serve the best interests of the children in Title 19-A and Title 22 cases, within constitutional limits, is a desirable outcome and should be facilitated where and when possible. The Committee recommends that Guardians be entitled to:

- Access and copy all pleadings at no charge;
- Receive copies of all pleadings and notices;
- Respond to any pleadings filed by other parties;
- Subpoena witnesses and documents;
- Present evidence and witnesses at all hearings, including direct examination of the Guardian's witnesses and cross examination of other parties' witnesses;
- Attend and participate in all conferences between counsel and the court;
- Attend and engage in mediation and other forms of alternative dispute resolution;

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<sup>8</sup> A Guardian in a Title 19-A case typically must be more creative in this capacity as services usually are not readily available. Guardians in Title 19-A cases therefore must be proficient not only in investigating, researching, identifying, and articulating the need for services and resources in these cases, but also in finding ways for needed services and resources to actually be provided.

- File such reports, motions, affidavits or other pleadings as are necessary to represent the best interests of the child;
- Initiate or engage in *ex parte* communications with a judge or family law magistrate (collectively referred to hereafter as “judicial officer(s)”) when it is in the best interest of the child, consistent with the Maine Rules for Guardians *ad Litem* and the Canons of Judicial Ethics;
- Make arguments to the court and respond to arguments presented by other parties; and
- File and perfect appeals in accordance with the Appellate Rules.<sup>9</sup>

To that end, the Committee recommends that statutory changes be made to clarify the rights and duties of the Guardian.<sup>10</sup>

## **B. Professional Standards, Conduct, Oversight and Discipline**

The Committee requested that the Professional Standards Subcommittee research, consider, and make recommendations on the following issues related to Guardian activities: qualifications; investigation and background checks; rostering process; core training; continuing education; support and services; annual reporting; and standards of conduct. The Subcommittee researched Guardian programs in other states, evaluated Maine’s system, and made program recommendations after thoughtful deliberation.

Additionally, the Professional Standards Subcommittee considered the complaint and disciplinary processes in Maine. Ultimately, the Subcommittee recommended the creation of an Oversight Committee, to be administered outside of the Judicial Branch.<sup>11</sup> The Oversight Committee would be responsible for fielding and investigating complaints against Guardians. All of these recommendations were then fully considered by the Committee as a whole and are outlined below.

### **1. Qualifications**

The Committee recommends that mental health professionals who are rostered be eligible for service on Title 22 cases. The Child Abuse Prevention and Treatment Act (“CAPTA”) permits the appointment of non-attorney Guardians.<sup>12</sup> The Committee recognizes that mental

<sup>9</sup> The Committee is aware that for attorney and non-attorney Guardians to perform some of these functions, including filing pleadings and appeals, changes to Titles 4, 19-A and 22, as well as the Maine Rules for Guardians *ad Litem*, would be required. These changes may also require an exception or revision to the Maine Bar Rules to comply with the prohibition against the unauthorized practice of law.

<sup>10</sup> Proposed statutory changes are discussed at § II(E) of this report, and in [Appendix A](#).

<sup>11</sup> See [Appendix B](#).

<sup>12</sup> 42 U.S.C. § 106a(b)(2)(A)(xiii) (2007).

health professionals and other non-attorney Guardians are a valuable resource for Maine’s children in Title 22 cases.

The Committee proposes implementation of this recommendation through the following changes to the qualifications of Guardians:

- i. A current, valid license to practice law in the State of Maine; **or**
- ii. A current, valid license to practice as an LSW, an LCSW, LPC, LCPC, LMSW, LMFT, Psychologist, or Psychiatrist in the State of Maine, including individuals with a Masters in Education who have held the position of school guidance counselor in Maine and who are currently certified and in good standing and/or persons with a Masters in Education who have taught school for at least five (5) years; **or**
- iii. Waiver of the licensure or qualification requirement by the Chief Judge for those who served as rostered Guardians prior to January 1, 2008 (i.e., a grandfathering process); **and**
- iv. Is of a temperament befitting a Guardian, including the demonstration of impartiality, honesty, integrity, respect for the judicial process, respect for the law, and respect for the rights of others.

The Committee considered the provision of waivers to the qualifications enumerated above but ultimately determined that no waivers from the qualification criteria should be granted prospectively.

**2. Guardian *ad Litem* Training**

**a. Initial Training.**

In order to attain rostered status, the Committee recommends that all applicants complete 27 hours of Core training. This requirement can be satisfied by attendance at the Guardian training sponsored by the Family Division of the Judicial Branch or by other training approved in writing by the Director of the OCG or designee.<sup>13</sup>

**b. Ongoing Training Requirements to Maintain Rostered Status.**

In order to maintain Rostered Status, it is recommended that Guardians be required to complete at least six (6) hours of continuing education annually relating to any of the Core training topics.

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<sup>13</sup> Detailed recommendations for required content are included in [Appendix C](#).

Failure to complete the required continuing education will result in suspension from the Guardian Roster. Bills for services performed during this time will be ineligible for payment.

Judicial officers will be informed of the suspension of rostered status. They may elect to replace the Guardian in existing cases or the Guardian may ask to be replaced. The Guardian is not eligible for assignment to new cases during his or her suspended status. The suspended status continues until such time as the continuing education requirements are completed to the satisfaction of the Director of the OCG or designee. Late fees should be imposed for annual Guardian continuing education disclosures that are not timely filed, and a reinstatement fee should be imposed prior to being placed back on the roster. Any revenue generated from these fees shall be directed to the Maine Children's Fund.<sup>14</sup>

### 3. *Pro Bono Requirement*

The real need for *pro bono* Guardians currently falls within Title 19-A cases. Maine Rules of Guardian *ad Litem* ("M.R.G.A.L.") Rule 2.F currently addresses "acceptance of Court referrals" as follows:

A Guardian should anticipate being asked to accept at least one *pro bono* or reduced-fee referral from the Judicial System per calendar year, and should do so to the extent consistent with the Guardian's other professional, personal and other public interest service.

The rule as currently written encourages *pro bono* service in both Title 19-A and Title 22 cases. The demand for *pro bono* services is much more pressing in Title 19-A cases, however, as Guardians in Title 22 cases are subsidized. To encourage increased *pro bono* service in Title 19-A cases, the Committee recommends changing Rule 2.F to read as follows:

A Guardian should anticipate being asked to accept at least one *pro bono* or reduced-fee referral from the Judicial System, other than Title 22 cases, per calendar year, and should do so to the extent consistent with the Guardian's other professional, personal and other public interest service.

This proposed change makes explicit that acceptance of *pro bono* cases in Title 19-A cases is strongly recommended and hopefully serves to address the shortfall of *pro bono* Guardians in the Title 19-A system.

### 4. *The Guardian ad Litem Oversight Committee*

In order to assure that Guardians in the State of Maine maintain the highest level of professional accountability, the Committee recommends the establishment of a Guardian Oversight Committee. This Oversight Committee will provide the public with an avenue to gain a fair evaluation of their concerns and complaints. At the same time it will provide Guardians

<sup>14</sup> Discussed *infra* at pp. 13-14 and at [Appendix A](#).

with a structured, predictable, and fair setting in which to answer complaints made against them. Finally, the Oversight Committee will offer the public the assurance that Guardians are held

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accountable for compliance with established standards for their professional conduct. It is recommended that this Oversight Committee be staffed administratively by the existing staff for the Committee on Judicial Responsibility and Disability.<sup>15</sup>

It is anticipated, based on the structure outlined above, that \$25,000.00 would need to be allocated annually to fund the Oversight Committee. This allocation is comprised of funding for staffing, including a half-time Executive Secretary and a part-time administrative assistant, necessary to triage and evaluate complaints.

### **C. Program Structure**

The Committee asked the Program Structure Subcommittee to research, consider and make recommendations on how best to provide for the delivery of Guardian services. In sum, the Subcommittee was tasked with developing the framework for a Guardian program designed to oversee Title 15, Title 19-A, and Title 22 Guardians. In order to give thoughtful consideration to the delivery of Guardian services, the Subcommittee explored various structural models both within and without the Judicial Branch. After deliberation regarding potential access barriers, cost efficiencies, conflicts of interest, and the independence of the Guardian program, as well as logistical considerations, the Subcommittee ultimately recommended that the program would be most appropriately housed within the Family Division of the Judicial Branch.

The Subcommittee also contemplated the high unmet need for Guardian services in Title 19-A cases in which there are limited or no resources. The solution reached was the creation of a Children's Fund, which is outlined below.

#### **1. Establishment of Office of Children's Guardians**

The Committee recommends establishing an OCG within the Family Division of the Administrative Office of the Courts of the Judicial Branch. The OCG would be responsible for the CASA program as well as independent Guardians. OCG staff would provide supportive services to Guardians—but not direct services to families, courts or children. The staff would be responsible for:

- Recruitment, screening, and retention

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<sup>15</sup> Recommended wording for an order establishing the Oversight Committee as well as the attendant rules are included in [Appendix B](#).

- Training and rostering
- Case support
  - Regarding legal matters
  - Regarding mental health matters
  - Serving as a resource for forms, literature, social science studies, and other tools to promote quality and efficiency among Guardians
  - Record collection – helping Guardians obtain relevant records
- Monitoring and evaluation
  - Developing performance goals
  - Providing individual evaluation of Guardians
- Outreach and communication
  - Developing tools and programs for communicating the role and function of the Guardian to the public and especially to the families, extended families, and foster parents who will be working directly with them
  - Establishing and maintaining a website
- Database development
  - Providing access to family resources
  - Tracking Guardian expenses and costs
  - Promoting program development, assessment and evaluation
- Administrative functions
  - Payroll
  - Staffing
  - Budget
  - Maine Children’s Fund

The Committee concluded that placement of the OCG within the Judicial Branch was necessary to ensure that Guardians function objectively as agents of the court. In addition, it quickly became apparent that the significant administrative, professional, and information technology infrastructure required to support the program already exists within the Judicial Branch. Re-creating that infrastructure would not make financial sense.<sup>16</sup>

## **2. Staffing Needs of the OCG**

In order to provide Guardian oversight and management, the OCG will have two attorneys, two mental health professionals, an administrative assistant, and a half-time accounting assistant. The professional staff must be appropriately licensed as either attorneys or mental health professionals.

Based on information on current state employee costs, *i.e.*, salary plus benefits, the total

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<sup>16</sup> In the course of its deliberations, the Committee specifically considered a proposal by a separate agency to administer the OCG. The response to that proposal, at § II(F) of this report, further explains why placement outside the Judiciary is problematic.

estimate of annual staffing expenses would be \$438,000, with a breakdown as follows:

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2 Attorneys:	\$200,000
1 Psychologist:	\$ 85,000
1 Social worker:	\$ 70,000
1 administrative staff:	\$ 58,000
1 half-time accounting staff:	\$ 25,000
<b>Total:</b>	<b>\$438,000</b>

In addition to these annual expenses, there would be a one-time start-up expense of approximately \$9000 for each employee. This one-time expense would bring the first year total staffing expense to \$492,000 (\$54,000 + \$438,000).

### 3. Establishment of the Maine Children's Fund

The Committee also recommends the establishment of a Children's Fund within the OCG, to address those Title 19-A cases in which there are insufficient family resources to pay for Guardians. Thereafter, the Fund would become partially regenerating. In Title 19-A cases where the family does not have adequate resources, and the Court determines a need for such assistance, the Court could appoint a Guardian and approve that Guardian for payment from the Fund through the court appointed voucher system.

Judicial officers could order expenditures, not to exceed \$2,000 per case, to pay for a Guardian or specific services such as psychological examination, child trauma assessment, alcohol or substance abuse evaluation, parent coordination, short-term children's or parent's counseling, and expert witnesses. The Fund could not be utilized to pay attorney's fees of parties to a case. Payment of Guardians and other professionals would not exceed the amounts allowable for court-appointed Counsel and Guardians in Title 22 cases. The parties would be required to repay the Fund for these expenditures to the fullest extent of their abilities. The repaid expenses would rebuild the Fund so that further allocations could be made to serve other families facing similar crises.

In order to establish the Children's Fund, the Committee determined that the Legislature would need to allocate \$800,000 for each of the first two years of the Fund. This figure was reached, in part, by taking the number of estimated cases that constitute the ongoing "unmet need," and multiplying that number by the \$2000 estimated cost of each case.

Each year approximately 7,000 Maine families with children are in court for a divorce or similar family law proceeding.<sup>17</sup> Approximately 10% of these cases involve litigants with a genuine need for Guardian services, such as in high conflict cases, but who have no financial

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<sup>17</sup> This figure includes Divorce actions, with children, Parental Rights and Responsibilities actions and post-judgment actions with children.

resources available to pay for such essential professional assistance.<sup>18</sup>

Following this method, the Committee estimates the total annual financial need for Guardians in these cases at approximately \$1,400,000. The Committee recommends that \$800,000 be allocated from State of Maine General Funds for each of the first two years to the Children’s Fund. The remainder of the unmet annual financial need would be met by charging an assessment of litigants based on a sliding scale, as well as by encouraging rostered Guardians to continue to increase their *pro bono* or reduced fee services.

#### **D. Technology**

The Technology Subcommittee was charged with researching and recommending a state-of-the-art information technology infrastructure to support the Guardian program. The Subcommittee reviewed and identified the qualities and functions that a Guardian management system would require to meet the needs of various authorized users including judges, magistrates, Guardians, program administrators and the Administrative Office of the Courts effectively.

The Committee ultimately concluded that the best and most cost-efficient recommendation was to create and house the Guardian Information Technology management system within the Judicial Branch. By housing the proposed information technology management system within the Judicial Branch a “federated” data system could be employed, allowing for interface between the Maine Judicial Information System (“MEJIS”) and the OCG’s Guardian Management System. The Committee reviewed and identified specific pros, cons and costs of “outsourcing” this management system, and determined that this approach would significantly increase costs. Outsourcing would also make a fully integrated and federated system impossible, and sacrifice valuable information-access opportunities.

The Committee recommends the optimal development and use of information technology support for the Guardians’ programs and services.<sup>19</sup> The Committee consulted with information technology experts from the Office of Information Technology within the Judicial Branch towards developing an understanding of state-of-the-art capacities and opportunities. In the process of considering the technology, the Committee took into account the ongoing upgrade of the Judicial Branch’s technology and included its ability to provide some, though not all, of the technology needs to manage the Guardian program adequately.

The information required to manage Guardians effectively is of two general types: information that is used directly in the adjudication of cases before the court and information

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<sup>18</sup> These are conservative figures based on actual court filings, and estimates by judicial officers as to the percentage of cases coming before them in which they would appoint a Guardian if the financial resources were available.

<sup>19</sup> For an extensive explanation of management and access of date, see Technology Subcommittee Report at Appendix E. The projected cost of the development of a similar but non-federated system outside of the Judicial Branch would be \$432,000. See [Appendix E](#).



that is not used directly in the adjudication of cases but has other applications, such as policy and program development and monitoring. These two types of information are often maintained in separate systems.

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Information that is used for case management is stored in MEJIS and information used specifically for Guardian management is stored in the Guardian management system. Access to the information in both systems is gained from a single user interface that allows the user to retrieve data from both data sources. In this way the two systems are linked, or “federated.”

The system should be developed by identifying which of the various informational components are required as well those that would be useful. The system should be accessible from remote sites, but must have state-of-the-art security.

A fully integrated system can provide up-to-date information on rostering, training status, availability, case assignment and management, and compliance support and monitoring. It can provide Guardians and staff at the OCG immediate access to one another in the form of real-time review of work product as well as the electronic tracking of report distribution. Guardians would be able to access all orders that they are authorized to see. Judges and Magistrates would be able to review reports electronically, ensuring up-to-date and immediate access. The MEJIS screens would identify the Guardian’s name and contact information as well as the date of appointment. This feature would enable the court to respond to inquiries by Guardians about related matters in which a child’s interests may be affected. All of these things are both possible and desirable.

The Committee concluded that the best and most cost effective means of achieving this result is to house the program within the Judicial Branch. The estimated cost of in-house development totals approximately \$54,000.<sup>20</sup>

#### **E. Statutory and Regulatory Change**

The Legislative Subcommittee was tasked with reviewing all of the Committee’s proposals and recommendations to identify necessary revisions and/or additions to Maine’s current statutory and Guardian rule provisions. After significant research and deliberation, the necessary changes are outlined below.

In light of the Committee’s recommendation that a central office be created to oversee Guardians in protective custody and family matters, the statutory provisions in Title 19-A and Title 22 pertaining to Guardians should be consolidated both to reflect this restructuring and to improve public access.

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<sup>20</sup> Detailed and more technical discussion and recommendations as well as a budget comparison between the resources being developed as a part of the Judicial System information system and being developed by an independent party are offered in [Appendix E](#).

The Committee acknowledges that there are significant considerations that would inform such a consolidation. Both 19-A M.R.S.A. § 1507 and 22 M.R.S.A. § 4005 benefit from associated bodies of case law, and have been drafted to recognize the distinctions between the role of the Guardian in Title 19-A and Title 22 actions. It is beyond the scope of this report to undertake the comprehensive re-drafting needed to consolidate these two statutes in a way that preserves their current effect.

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The Committee proposes additional desirable statutory and rule changes below, in summary form. The suggested text for some of the proposed changes can be found at Appendix A.

**1. Revise 19-A M.R.S.A. § 1507 and 22 M.R.S.A. § 4005 to accomplish the following:**

- a. Enhance the role of Guardians in Title 19-A and Title 22 actions beyond those activities already provided for by statute, by authorizing Guardians to participate in all court proceedings in the action as an agent of the court, including: receiving copies of all pleadings and notices; filing such reports, motions, responses, objections, or notices of appeal as are necessary to represent the best interests of the child; providing all parties of record with copies of such pleadings as are filed by the Guardian; and appearing at and participating in all court proceedings, hearings and conferences, including related proceedings such as
- b. Protection from Abuse proceedings under Title 19-A, Part 4, Chapter 101, and proceedings under the Juvenile Code, Title 15, Chapter 501.
- c. Provide that Guardian reports be sealed by the clerk and treated as confidential as to all but the parties, unless otherwise ordered, in Title 19-A and Title 22 cases.
- d. Authorize Guardians to attend and to participate in all proceedings, including but not limited to, hearings, conferences, settlement conferences or mediations, and conferences of counsel.
- e. Allow the Guardian, when in the best interest of a child, to seek to protect a child as a witness in hearings in proceedings, such as Protection from Abuse actions under Title 19-A, Part 4, Chapter 101 or Protection from Harassment actions under Title 5, Part 12, Chapter 337-A, that are ancillary or related to the case in which the Guardian is appointed. Whenever the child's interests may be affected, a Guardian may participate in matters related to the case in which the Guardian is appointed.
- f. Relieve the Guardian of the statutory obligation to make a final written report in Title 19-A cases when the case has been settled prior to the preparation of the

report. This change would allow parties to avoid the expense of preparation of a report where the needs of the child have been met.

- g. Provide for special-purpose Guardian appointment in Title 19-A cases. This designation would allow a Guardian to address limited issues, when appropriate to the scope of the inquiry, and to reduce the time and expense of Guardian involvement when only discrete issues are of concern or limited services are otherwise required.
  - h. Provide that a Guardian currently appointed in a Title 22 case may participate in a related family matters case, when in the best interests of the child at the direction of the court.
  - i. Permit all rostered Guardians to act in Title 22 cases. This would have the effect of permitting non-lawyer Guardians who are rostered to participate in these cases, in addition to CASA Guardians.
  - j. Amend 22 M.R.S.A. § 4008 to permit the Guardian *ad Litem* Oversight Committee to access confidential case files.
  - k. Codify the standards for who can serve as a Guardian by statute.
  - l. Authorize the release of criminal histories and driving records of parents and caregivers to Guardians at no charge in *pro bono* and reduced fee cases.
- 2. Summary of Proposed Changes to Guardian *ad Litem* Rules and Standards**
- a. Change the rules to require the court to appoint rostered Guardians in Title 19-A cases and either rostered or CASA Guardians in Title 22 cases; eliminating the court's discretion to appoint non-rostered or non-CASA Guardians.
  - b. Regarding criteria for initial listing on the roster: eliminate the provision for waiver of requirements for rostering by the Director of the OCG except for those Guardians who are grandfathered and who served as Guardians prior to March 1, 2000.
  - c. Revise the application procedure for placement on the roster to require:
    - i. Written application containing educational and employment background, training, and experience working with children;
    - ii. Two references;
    - iii. Signed releases from applicant authorizing state and federal criminal records check, sex offender registry check, driving record check, Title 19-A and Title 22 case involvement check;
    - iv. Presentment of a picture I.D.;

- v. If driving in role as Guardian, a valid current driver's license and proof of adequate insurance;
  - vi. Fingerprinting upon request;
  - vii. Annual disclosure form under oath; and
  - viii. All applicants must provide the above information to be considered, and the investigating authority must check the information for accuracy.
- d. Permit exclusion from the roster for failure to establish temperament befitting a Guardian, including: the demonstration of impartiality, honesty, integrity, respect for the judicial process, respect for the law, and respect for the rights of others.
- e. Specify Guardian training program elements, and any additional CASA training elements.
- f. Incorporate the contents of Maine Rules of Guardians *ad Litem* ("M.R.G.A.L.") II(3)(A) *exhibits A* (Standards of Practice for Guardians *ad Litem* in Maine Courts) *and B* (specified sections of the Judicial Branch Code of Conduct), into the text of M.R.G.A.L. II(3)(A).
- g. Complaints, Reviews and Appeals: replace M.R.G.A.L. II(4) with an administrative order establishing a Guardian *ad Litem* Oversight Committee, whose members would be appointed by the Supreme Judicial Court. The Committee would assume the responsibility, currently held by the Office of the Chief Judge of the District Court, for investigation of complaints of Guardian misconduct. The Committee would be authorized to hold hearings and make findings of fact and conclusions of law, to be submitted to the Director of the OCG as recommendations of action. The Director of the OCG would have the power to endorse or to reject these recommendations.
- h. Authorize a Guardian to seek to protect a child as a witness in hearings or in proceedings related to the Title 19-A or Title 22 case on which the Guardian has been appointed, when it is in the child's best interest. The Committee also proposes to authorize a Guardian to be present and to be heard in related proceedings where the child is not a witness. Title 19-A and Title 22 should contain companion provisions for both of these Guardian duties.
- i. Clarify the role of a Guardian as a facilitator of agreements and a consensus builder, when appropriate and in the best interest of the child, in both Title 19-A and Title 22 cases.

## F. Maine Children’s Alliance Proposal for Oversight of Guardians *ad Litem*

During the review process, the Committee was asked to consider a proposal for Guardian oversight by the Maine Children’s Alliance (“MCA”), a highly respected organization dedicated to advocating for children.

The MCA is the Executive Branch-designated Ombudsman under 22 M.R.S.A. § 4087-A, for child welfare services. In that role, the MCA’s statutory priority is “case-specific advocacy services.” 22 M.R.S.A. § 4087-A (Supp. 2007). As a major component of these services, the MCA is required to “answer inquiries, investigate and work toward resolution of complaints regarding the performance and services of [DHHS]<sup>21</sup> ....” 22 M.R.S.A. § 4087-A(4)(B) (Supp. 2007).

The MCA did not submit a formal proposal to the Committee. A contingent of the Committee met with representatives of the MCA to gain a sense of its interest and its approach, philosophically and practically, to Guardian administration and oversight. During the summer of 2007, the Committee developed criteria to assess the MCA’s capacity to administer and to oversee Guardian services in Maine based on the preliminary information that the MCA provided. In September 2007, the MCA met with the Committee to discuss at length the MCA’s plan to administer a Guardian program in Maine. The plan proposed by the MCA included the following components:

- Establishment of a Guardian training program in partnership with DHHS;
- Increased efficiency of Guardian performance through prioritization of Guardian standards for casework;
- Support for the role of the MCA as ombudsman, by establishing a mechanism through which Guardians can report policy or practice issues, which can then be brought to the attention of DHHS;
- Centralization of billing and payment of Guardians, including creation of an audit trail that connects a Guardian’s billed activities to their recommendations;
- Establishment or use of an existing database to collect basic demographic data; and
- Execution of a data purchasing contract with DHHS, by which information collected through the MCA database is sold to DHHS, and the proceeds are used to assist in funding the administration of Guardians.

The following components were not included in the MCA’s proposal, and are considered by the Committee as essential to the success of a Guardian program:

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<sup>21</sup> State of Maine Department of Health and Human Services.

- Agency accountability for fiscal shortfalls and responsibility for budget overruns;
- Either existing infrastructure to support the scale of program involved, or a concrete source of funding to develop the necessary expertise, knowledge, technology, and infrastructure;
- An absolute lack of bias, or appearance thereof, and absence of conflicts of interest, appropriate to the Guardian's role as an agent of the court;
- A program structure that financially supports the provision of Guardian services to indigent families in Title 19-A cases;
- A data monitoring system that is sophisticated enough to provide critical information in aid of case administration and monitoring;
- One-on-one supervision and assessments of Guardian performance;
- The provision of ongoing mentoring, support, and assistance to Guardians in the performance of their duties;
- A supervisory and disciplinary framework that permits individual judges to focus on decision making as opposed to Guardian monitoring; and
- Integration of the rostering process with education and monitoring for compliance with Guardian standards and disciplinary process.

The Committee gave careful consideration to the MCA's proposal. Ultimately, the Committee concluded that the needs of Maine's children and the support and governance of the Guardians who serve them were best achieved by establishing a highly accountable, court system-integrated office within the Judicial Branch, which is actively engaged in dialogue and collaboration with Maine and national stakeholders and which can support Guardians in their provision of the best services possible to Maine families.

The Committee is appreciative of the MCA's interest in improving Guardian services to the children of the State of Maine. The MCA has a consistent track record of commitment to children and their well-being. They have significant experience and are capable in the arena of fundraising. The MCA could provide a high priority service to Maine's children by using its fundraising acumen, interests, and expertise to develop a funding source for the provision of Guardian services in Title 19-A cases where the families are unable to afford that cost.

### III. CONCLUSION

The Committee respectfully submits this Final Report of the Judicial Branch Advisory Committee on Children and Families: Recommendations for a Guardian *ad Litem* Program for the State of Maine. The conclusions and recommendations in this Report are made with the goal of building a high-quality, accountable and accessible Guardian program that is responsive to the needs of Maine's children and families.



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Proposed changes to 19-A M.R.S. §1507:

A-1

1. Renumber 19-A M.R.S. as § 1507(3) (B)(11), and revise to read as follows:

(11) Other duties that the court determines necessary, ~~including, but not limited to, filing pleadings.~~

2. Replace 19-A M.R.S. § 1507(3)(B)(10) as follows:

(10) Identifying, exploring, and facilitating the agreement and consensus of the parties on the best interests of the children, where and when appropriate; or

3. Add a new sub-paragraph (C) to 19-A M.R.S. § 1507(3) to read as follows:

C. In any litigation in which a Guardian *ad Litem* has been appointed in an action pursuant to this section, the Guardian *ad Litem* shall make a recommendation to the court and shall be entitled to participate in all court proceedings in the action. The Guardian *ad Litem* shall be entitled to: access and copy all pleadings, at no charge; receive copies of all pleadings and notices; respond to any pleadings filed by other parties; subpoena witnesses and documents; present evidence and witnesses at any hearings, including the direct examination of the Guardian *ad Litem*'s witnesses and cross examination of other parties' witnesses; attend and participate in any conferences of counsel with the court; attend and engage in mediation and other forms of alternative dispute resolution; file such reports, motions, affidavits or other pleadings, as are necessary to represent the best interests of the child; initiate or engage in *ex parte* communications with a judge when it is in the best interest of the child, consistent with the Maine Rules for Guardians *ad Litem* and the Canons of Judicial Ethics; make arguments to the court and respond to arguments presented by other parties; and file and perfect appeals in accordance with the Appellate Rules.

Further, with respect to any related proceedings, such as Protection from Abuse proceedings under Title 19-A, Part 4, Chapter 101, Protection from Harassment actions under Title 5, Part 12, Chapter 337-A, and proceedings under the Juvenile Code, Title 15, Chapter 501, in which the child for whom the Guardian *ad Litem* was appointed is a real party-in-interest, and as necessary to represent the best interests of the child, the Guardian *ad Litem* shall be entitled to: access and copy all pleadings, at no charge; receive copies of notices, to the extent practicable under the circumstances; attend and participate in any conferences of counsel with the court; attend and engage in mediation and other forms of alternative dispute resolution.

3. Revise 19-A M.R.S.A. § 1507(8) as follows:

**8. Notice.** A Guardian *ad Litem* appointed in an action under this Title must be permitted to attend and participate in all proceedings, including but not limited to hearings, conferences, settlement conferences or mediations and conferences of counsel.

A Guardian *ad Litem* must also be given notice of all civil or criminal hearings and proceedings, including, but not limited to, grand juries, in which the child is a party or a witness, or in which the child's interests may be affected. The Guardian *ad Litem* shall protect the best interests of the child in those hearings and proceedings, unless otherwise ordered by the court.

**Proposed changes to 22 M.R.S. § 4005(1):**

1. Revise 22 M.R.S. § 4005(1)(C) to read as follows:

~~C. The guardian ad litem may subpoena, examine and cross-examine witnesses and~~ In any litigation in which a Guardian *ad Litem* has been appointed in an action pursuant to this section, the Guardian *ad Litem* shall make a recommendation to the court and shall be entitled to participate in all court proceedings in the action. The Guardian *ad Litem* shall be entitled to: access and copy all pleadings, at no charge; receive copies of all pleadings and notices; receive notice of and attend family team meetings; except in cases of an emergency, receive notice from the Department of Health and Human Services prior to a change in the placement of a child; respond to any pleadings filed by other parties; subpoena witnesses and documents; present evidence and witnesses at any hearings, including the direct examination of the Guardian *ad Litem*'s witnesses and cross examination of other parties' witnesses; attend and participate in any conferences of counsel with the court; attend and engage various forms of alternative dispute resolution; file such reports, motions, affidavits or other pleadings, as are necessary to represent the best interests of the child; initiate or engage in *ex parte* communications with a judge when it is in the best interest of the child, consistent with the Maine Rules for Guardians *ad Litem* and the Canons of Judicial Ethics; make arguments to the court and respond to arguments presented by other parties; and file and perfect appeals in accordance with the appellate rules.

Further, with respect to any related proceedings, such as Protection from Abuse proceedings under Title 19-A, Part 4, Chapter 101, Protection from Harassment actions under Title 5, Part 12, Chapter 337-A, and proceedings under the Juvenile Code, Title 15, Chapter 501, in which the child for whom the Guardian *ad Litem* was appointed is a real party-in-interest, and as necessary to represent the best interests of the child, the Guardian *ad Litem* shall be entitled to: access and copy all pleadings, at no charge; receive copies of notices, to the extent practicable under the circumstances; attend and participate in any conferences of counsel with the court; attend and engage in mediation and other forms of alternative dispute resolution.

2. Revise 22 M.R.S.A. § 4005(1) as follows:

Renumber 22 M.R.S. § 4005(H) as 22 M.R.S. § 4005(I), and replace § 4005(H) with the following:

**H. Notice.** A Guardian *ad Litem* appointed in an action under this title must be permitted to attend and participate in all proceedings, including but not limited to hearings, conferences, settlement conferences or mediations and conferences of counsel.

A Guardian *ad Litem* must also be given notice of all civil or criminal hearings and proceedings, including, but not limited to, grand juries, criminal actions, complaints for protection from abuse or harassment, and proceedings under Title 15, in which the child is a party or a witness, or in which the child's interests may be affected. The Guardian *ad Litem* shall protect the best interests of the child in those hearings and proceedings, unless otherwise ordered by the court.

3. Add a new sub-paragraph (G) to 22 M.R.S. § 4005(1) to read as follows:

**G.** The Guardian *ad Litem* may, where and when appropriate, identify, explore and facilitate the agreement and consensus of the parties on the best interests of the children.

**14 MRSA § 1060 is enacted to read:****§ 1060. *Maine Children's Fund.***

**1. Fund Established.** There is established a fund to be known as the *Maine Children's Fund*. The Fund shall be maintained by the Treasurer, who shall deposit into it funds appropriated by the Legislature, or funds from grants or gifts accepted by the State Court Administrator pursuant to Section 17-B. Balances in the Fund may not lapse and carry forward from year to year for the purposes set forth in this section.

**2. Expenditures from Fund.** The Fund provides funds to pay for essential collateral services needed to effectively mediate or adjudicate contested family law proceedings under the Maine Revised Statutes, Title 19-A, which involve one or more children. Disbursements from the Fund may be ordered by a Superior Court Justice, District Court Judge or Family Law Magistrate in any such case where professional services are required but the family has insufficient currently available resources to pay for them. The Fund may be utilized to pay for the services of a *Special Purpose* Guardian ad Litem, psychological examination, child trauma assessment, alcohol or substance abuse evaluation, family assistance coordination services, short-term children's or co-parenting counseling, expert witnesses or services from other appropriate professionals. The Fund may not be utilized to pay for the attorney's fees of parties to a case. *The payment of Guardians ad Litem and other professionals who may be paid by the this Fund shall not exceed the amounts allowable for court-appointed Counsel and Guardians ad Litem.*

**3. Family Contributions.** As with the court appointed voucher system, when ordering expenditures from the Fund, or at any point thereafter, the court shall make appropriate orders providing for repayment of the expenditures by the parties, to the maximum extent feasible in the circumstances of the case. Repayment orders may include orders for one or both parties to repay all or part of the expenditure, in a lump sum or over time, repayment from marital assets subject to division pursuant to § 953, repayment from non-marital assets, or imposition of a lien against one or more specified assets. If not repaid by time of trial, the court may issue a judgment in favor of the Fund, which may be collected by the court as though it were an unpaid civil violation, or which may be enforced by the Attorney General, or both. All repayments shall be made through the appropriate clerk of court and credited to the Fund. Non-compliance with a repayment order may be considered contempt of court or be grounds for sanctions.

**Sec 1. 4 MRSA Chapter 32 is enacted to read:**

**Chapter 32**  
**Office of Children's Guardians**

**§ 1551 Office of Child Advocacy Established.**

There is established, within the Family Division of the Administrative Office of the Courts of the Judicial Department, the Office of Child Children's Guardians to coordinate the roster of Guardians, the placement and retention or removal of persons from that roster, and the training, evaluation, support and oversight of guardians, including Court Appointed Special Advocates. Each Guardian shall be periodically evaluated by the Office of Children's Guardians, pursuant to rules to be adopted by the Supreme Judicial Court. The Office of Children's Guardians shall develop a database of information necessary to the development and oversight of its programs and tools and programs for communicating the role and function of Guardians to the public.

**§ 1552 Staff**

The State Court Administrator shall appoint a Director of the Office of Children's Guardians, who shall serve at the pleasure of the State Court Administrator. The State Court Administrator shall provide necessary professional and clerical or other staff and logistical support to the Office of Children's Guardians, within the limit of funds available. Professional staff should include two lawyers, both with Guardian experience in both child protective and family law matters and two mental health professionals, a psychologist and a social worker, both with experience in both child protective and family law issues. In addition, the State Court Administrator should continue to maintain the current level of staffing for the Court Appointed Special Advocate program.

**Order Establishing Guardian Ad Litem Oversight Committee**    APPENDIX B  
**Rules Of The Guardian Ad Litem Oversight Committee**

B-1

All of the Justices concurring therein, it is hereby ORDERED, to be effective on \_\_\_\_\_, as follows:

1. There is hereby established a Guardian *ad Litem* Oversight Committee consisting of five members appointed by the Chief Justice of the Supreme Judicial Court. Three members shall be rostered guardian *ad Litem*s (at least one of which shall be an attorney at law admitted to practice in the State of Maine and at least one shall be a mental health professional licensed by the State of Maine), and two members shall be representatives of the general public of the State of Maine and shall not be attorneys or members of the judiciary.
2. The term of each member shall be for four years, except that initial appointments shall be as follows in order to achieve staggered terms:
  - A. Two Guardian *ad Litem* members shall be appointed for four-year terms and one Guardian *ad Litem* member shall be appointed for a two-year term.
  - B. One public member shall be appointed to a four-year term, and the second public member shall be appointed to a two-year term.
  - C. No member shall serve more than one term in office.
3. Alternate members shall be appointed by the Chief Justice of the Supreme Judicial Court, each for a term of four years as follows:
  - A. One alternate member shall be an attorney at law admitted to practice in the State of Maine and shall serve whenever an attorney member recuses or is otherwise unable to participate in Committee actions; and
  - B. One alternate member shall be a representative of the general public of the State of Maine and not an attorney or a member of the judiciary and shall serve whenever a public member of the Committee recuses or is otherwise unable to participate in Committee actions.
4. The Committee may establish such offices, employ an Executive Secretary who shall be an attorney, and make arrangements for secretarial and other assistance as the Committee shall reasonably require.
5. The Committee shall have an operating budget approved by the Chief Justice of the Supreme Judicial Court, and expenses of the Committee shall be paid by the Judicial Department through the budget of the state courts.

6. The Chief Justice of the Supreme Judicial Court shall appoint a chairperson of the Committee and, from time to time, the Committee may designate from its members a vice chairperson and secretary. A quorum of the Committee shall consist of three members, and no action shall be taken by the Committee except by vote of a majority of the full Committee.
7. The Committee shall make public any rules of general applicability adopted by it for the conduct of its operations under this Order.
8. The Committee shall receive complaints concerning the performance or misconduct of any rostered Guardian *ad Litem*. The Committee shall make an initial assessment of a complaint based on its content and on any further information from the complainant or from court records of cases involved in the complaint. The Committee may have access to confidential information including any past complaints against the guardian. In special circumstances where the nature of the allegations suggests that prior notice to the person complained against might create a significant risk of compromising the Committee's ability to obtain information necessary to accurately assess the complaint, the Committee may conduct a preliminary investigation, but not involving the use of subpoena power, and designed, to the extent practical, to preserve the confidentiality of the complaint and of the preliminary investigation. Unless the complaint is dismissed on the basis of information from the complainant, from the court records, or from any preliminary investigation, the Committee or its designee shall communicate the complaint to the person complained against and shall provide such person with a copy of any written complaint. The person complained against shall have reasonable opportunity to respond. The Committee shall conduct such further investigation as it deems fit. At any stage of such further investigation, the Committee shall have subpoena power and may require a person to appear or produce evidence before the Committee, or before its Executive Secretary, and to provide evidence under oath. If the Committee determines that the complaint is unfounded, the Committee shall dismiss the matter and notify the person complained against and any complainant of its actions.
9. After receipt of a complaint, the Committee may direct its Executive Secretary to seek informal correction of any conduct or practice of the Guardian *ad Litem* that the Committee determines may create an appearance of guardian misconduct. Any recommendation from the Committee or its Executive Secretary may be directed to the Director of the OCG. A recommendation for informal correction may be made at any stage of the proceedings but shall not necessarily preclude further action on the complaint. The Committee may, in its discretion, inform the complainant of any action taken under this provision.
10. The Committee shall hold a hearing at the request of a majority of the members of the Committee or of the person whose conduct is being investigated. At such hearing the person under investigation shall be entitled to counsel. The Committee shall have subpoena power, and every witness shall be sworn. The hearing shall be had before the Committee with a record.
11. All proceedings before the Committee shall be confidential, and no information shall be published by the Committee unless by order of the Chiefs of the Courts, except that:
  - (A) In connection with the consideration of the rostering of a person who is or has been a Guardian, the Committee shall provide information on any complaints made against



that person and the Committee's disposition thereof, upon written request from the Director of the OCG.

- (B) In connection with the consideration of the appointment of a person who has been a rostered guardian, the Committee shall provide information on any complaint made against that person and the Committee's disposition thereof, upon written request from the Governor or the appropriate legislative committee, or from an United States governmental agency or official authorized to consider and act upon the nomination or appointment of persons to United States government positions.
  - (C) Unless otherwise provided by law, any person who is the subject of a complaint to the Committee may disclose at any time any information contained in the complaint.
  - (D) The Director of the OCG may make any referrals the Director deems appropriate, as part of the disposition.
12. If after the completion of the Committee's investigation and hearing, if any, the Committee determines (i) that the person under investigation has been convicted of a crime, the nature of which casts into doubt that person's continued willingness to or ability to comply with the Maine Rules for Guardian *ad Litem*s or (ii) that in fact the person has violated the Rules as applicable and that the violation is of a serious nature so as to warrant formal disciplinary action, the Committee shall file a report of its findings with the Director of the OCG together with a statement of the alleged charges and a recommendation as to action by the Director. The Director of the OCG shall make the final decision regarding disposition and may make such referrals as the Director deems appropriate.
13. If after completion of the Committee's investigation and hearing, if any, the Committee determines that the person under investigation is suffering from a disability which materially affects the Guardian's ability to perform the duties of a Guardian, the Committee shall file a report of its findings with the Chief Judge of the District Court and a recommendation as to action by the Chief Judge.
14. Members of the Committee and its staff shall be immune from liability for any conduct in the course of their official duties relating directly or indirectly to discipline and the rules of the Court and the Committee governing the Committee's operation and proceedings. In the absence of malice, a complainant and any witness shall be immune from liability based upon the filing of a complaint or the giving of any testimony in a proceeding before the Committee.

#### **RULE 1. RECEIPT AND REVIEW OF COMPLAINT; INVESTIGATION**

- A. Complaints of guardian misconduct and disability shall be made in writing and shall be signed by the complainant. Each complaint received shall be assigned a number and a docket, and receipt of the complaint shall be acknowledged.
- B. The Committee shall consider each complaint received to determine whether it is of a type within the Committee's authority and whether it describes conduct that could constitute a violation of the Maine Rules for Guardians *ad Litem*.

- (i) If the Committee is unable to make that determination on the basis of the complaint alone it may, through its staff, obtain additional information from the complainant or from court records of proceedings related to the complaint. In special circumstances where the nature of the allegations suggests that prior notice to the person complained against might create a significant risk of compromising the Committee's ability to obtain information necessary to accurately assess the complaint, the Committee may conduct a preliminary investigation, but not involving the use of subpoena power, and designed, to the extent practical, to preserve the confidentiality of the complaint and the preliminary investigation.
- (ii) If the Committee determines that a complaint is not of a type within the Committee's authority or that the complaint does not constitute guardian misconduct, it shall dismiss the complaint, notify the complainant of its decision, and notify the person complained against of the nature of the complaint and the Committee's decision. The Committee may also provide the person complained against with a copy of the complaint dismissed under sub-paragraphs (i) and (ii), and shall provide such a copy upon request unless the Committee determines that knowledge of the complaint or of the complainant's identity might interfere at that time with pending court proceedings or compromise future court proceedings, or would cause a significant risk of harm to the interests of the complainant or others involved in the complaint.
- (iii) If the Committee determines that a complaint is within the Committee's authority and describes conduct that could constitute a violation of the Maine Rules for Guardians *ad Litem*, it shall communicate the complaint to the person complained against by providing that person with a copy of the written complaint and shall request a written response. The Committee may conduct such investigation of the matter as it deems appropriate. If the Committee determines that the complaint is unfounded or frivolous or otherwise provides insufficient cause for proceeding, it shall dismiss the complaint and notify the complainant and the person complained against of its decision.
- (iv) The dismissal of any complaint by the Committee does not preclude later consideration of the matters involved in that complaint to the extent that they may evidence a pattern or practice of judicial misconduct, or are otherwise relevant to the consideration of any other complaint or matter properly before the Committee under these rules. A complaint dismissed by the Committee may be reconsidered if new information is received upon the basis of which the Committee determines that such reconsideration is necessary to fulfill the purposes of the oversight process.

C. The Committee may initiate an investigation of a matter within its authority on its own motion.

## **RULE 2. HEARING**

- A. The Committee shall hold a hearing at the request of a majority of its members or of the Guardian whose conduct is being investigated. Such hearing shall be had before the Committee with a record. The Committee shall have subpoena power, and every witness shall be sworn.

- B. The Executive Secretary shall present the matter before the Committee. The Guardian shall be entitled to be present at the hearing, to be represented by counsel, to introduce evidence, and to examine and cross-examine witnesses. Both the Committee and the guardian may subpoena witnesses under the Committee's authority.
- C. The Executive secretary shall issue to the Guardian a written notice containing a statement of alleged misconduct, including reference to any section of the Rules for Guardians *ad Litem* alleged to have been violated, or alleged disability. The notice shall state alleged facts upon which such charges are based. The Executive Secretary shall make available to the Guardian all information concerning the charges as the Committee has acquired.
- D. Within thirty days after receipt of notice, the Guardian shall file a written response setting forth any admission, denial, affirmative defense, or other matter upon which the Guardian intends to rely at the hearing.
- E. Discovery shall be allowed under the Committee's direction upon request to and approval of the Committee.
- F. Evidence shall be admitted if it is of a kind upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Committee shall be guided on evidentiary matters by the Maine Rules of Evidence.
- G. The Chairman of the Committee or his designee may meet with the Executive Secretary and Guardian's counsel, or if the guardian is not represented by counsel, with the Guardian prior to hearing for the purpose of framing the issues, identifying areas of agreement, and otherwise simplifying the hearing.
- H. After hearing a matter, the Committee shall decide whether it is satisfied by a preponderance of the evidence that:
  - i. The guardian has violated the Rules for Guardians *ad Litem* and that the violation warrants a recommendation of disposition to the Director of the OCG; or
  - ii. the Guardian has been convicted of a crime the nature of which casts into doubt the guardian's continued willingness and ability to conform the guardian's conduct to the Rules for Guardians *ad Litem*; or
  - iii. the Guardian is suffering from a disability that materially affects his or her ability to perform the duties of a Guardian.
- I. The Committee shall make findings of fact and shall draw conclusions of law. If the Committee decides that a charge has not been established, it shall dismiss the matter and provide written notice of its decision to the guardian and any complainant. If the Committee decides that a charge has been established, it shall report its decision to the Director of the OCG and shall provide to the Guardian and any complainant written notice of its decision to report to the Director of the OCG.

- J. The Committee may recommend any action or disposition to the Director that the Committee deems appropriate.

### **RULE 3. REPORT TO THE DIRECTOR OF THE OCG**

A report to the Director of the OCG shall include a statement of the alleged charges, a statement of the Committee's findings of fact and conclusions of law, and a recommendation of action to the Director. A copy of the report shall be provided to the Guardian. The Director of the OCG may request further information from the Committee. The Director, having considered the Committee's recommendation, shall make a final decision regarding the appropriate disposition, including any referrals the Director deems appropriate. If the Director disagrees with the Committee's recommendation, the Director of the OCG shall issue a written explanation to the Committee.

### **RULE 4. ANCILLARY ORDERS**

The Committee may make such orders as may be necessary in aid of its authority and may have access to confidential information including any past complaints against the Guardian.

### **RULE 5. QUORUM; ALTERNATE MEMBERS**

No action may be taken by the Committee except by a majority vote of the full Committee. Whenever a member of the Committee is unable to participate in Committee consideration of a complaint, the Committee may determine that the appropriate alternate member be notified and designated to participate in the consideration of that complaint. A quorum of the Committee shall consist of three members, including any alternate members designated to serve in lieu of a regular member.

### **RULE 6. CONFIDENTIALITY**

- A. Except as otherwise provided by these rules or by order of the Chief Judge of the District Court, all proceedings before the Committee shall be confidential and no information may be published by the Committee. All persons concerned with any matter before the Committee shall be requested to respect the confidentiality of Committee proceedings.
- B. Any hearing held pursuant to Rule 2 of these rules shall be confidential.
- C. Unless otherwise provided by law, any person who is the subject of a complaint to the Committee may disclose at any time any information relevant to allegations contained in the complaint, unless otherwise prohibited by rule or statute.

**RULE 7. ANNUAL REPORT**

The Committee shall report annually to the Chief Justice of the Supreme Court, Chief Justice of the Superior Court, the Chief Judge of the District Court, and the Director of the OCG summarizing its activities.

**RULE 8. AMENDMENT**

These rules are subject to revision by the Committee.

I. QUALIFICATIONS

C-1

A. **Qualifications for Guardians for protective custody cases.**

The person must be a CASA or rostered Guardian (including both attorney and non-attorney rostered Guardians.).

B. **Qualifications for family matter cases.**

The person must be a rostered Guardian (including both attorney and non-attorney rostered Guardians.)

II. APPOINTMENT

IV. **“Appointment on or after January 1.”**

When appointing a Guardian *ad Litem*, the court shall appoint a person listed on the roster, except that in Title 22 cases, individuals certified by the Director of the Court Appointed Special Advocates (CASA) Program to be appointed.<sup>22</sup>

**B. Criteria for Initial listing on the roster.**

- i. A current valid license to practice law in the State of Maine; OR
- ii. A current valid license to practice as an LSW, an LCSW, LPC, LCPC, LMSW, LMFT, Psychologist or Psychiatrist in the State of Maine, including persons with a Masters in Education who have held the position of school guidance counselor in Maine and who are currently certified and in good standing and/or persons with a Masters in Education who have taught school for at least five (5) years; OR
- iii. Waiver of the licensure or qualification requirement by the Chief Judge for those who are grandfathered and who served as rostered Guardians *ad Litem* prior to January 1, 2008; AND
- iv. Is of a temperament befitting a Guardian *ad Litem*, including the demonstration of impartiality, honesty, integrity, respect for the judicial process, respect for the law and respect for the rights of others.

- C. No waivers from the criteria listed in subparagraphs A and (B)(i-iv) above will be granted after January 1, 2008.

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<sup>22</sup> The Professional Standards Sub-committee discussed whether CASA Guardians *ad litem* should be required to have an Associates Degree or greater in a qualified field. Other states have this requirement. The majority of the subcommittee voted against imposing this requirement.

### III. INVESTIGATION

In order to be selected or qualified as a Guardian, the following investigation must be completed on the applicant:

1. All applicants must complete a written application containing educational background and training, employment history and experience, if any, working with children.
2. The application must include the names of and contact information for at least two references that are unrelated to the applicant.
3. The applicant must sign releases for a state and federal criminal records check. If the applicant has resided in another state prior to residing in Maine, then the applicant must also sign a release for that check. In addition, the applicant must sign releases for a sex offender registry check, driving record check, if required, child support release, child protection release, protection from abuse or harassment orders and any other relevant history. The applicant, if requested, must attend and participate in an interview.
4. The applicant shall provide a picture ID with the application.
5. If the Guardian will be transporting children or driving on behalf of the program, the applicant must submit a copy of a valid current drivers license and proof of adequate personal automobile insurance.
6. If requested, the Guardian shall submit to fingerprinting.
7. Each applicant shall make an annual disclosure on a form which is under oath and which contains a warning regarding false statements as well as to authorize annual updated background as outlined in subparagraph 3 above.
8. The applicant must demonstrate personal and professional qualities consistent with the role and function of the designation including the temperament and impartiality that is specific to the Guardian's role as a neutral party in the process
9. The investigating authority will check the required information.
10. Any applicant who does not provide the required information will not be accepted.

#### **IV. GUARDIAN AD LITEM TRAINING**

In order to attain rostered status, applicants shall complete 27 hours of Core training. This requirement can be satisfied by attendance at the Guardian training sponsored by the Family Division of the Administrative Office of the Courts or by other training approved in writing by the Director of the Office of Children's Guardians or designee.

The Core training shall include, at minimum, the following topic areas:

- A. Guardian Rostering and Responsibilities of the Director of the OCG
- B. Guardian Rules, Standards, Standards of Conduct and Caselaw: Duties and Obligations of the Guardian as an Agent of the Court
- C. General Report Writing and Testifying
- D. Working with Families, Service Providers and Children (including, but not limited to communication with young children using age appropriate language and techniques)
- E. The Educational Issues for Children & Youth
- F. Relationship Building: Strategies for interviewing and working with Families
- G. The Role of Consensus Building for the Guardian
- H. Nuts & Bolts of Guardian Work: Investigation Requirements and Strategies
- I. Overview of Family Law: Title 19-A; Title 22, Title 18-A; UCCJEA; UIFSA
- J. Family Law: Case Management, Pre-trial, Trial Process and Post-Judgment Motions
- K. The Impact of Separation and Divorce on Children and Families: Parent
- L. Children's Needs: A Developmental Perspective
- M. Domestic Violence: The Impact on Children and Families
- N. Substance Abuse & Mental Health – Adults & Children
- O. Protective Custody Law and Process: The Role of the Title 22 Guardian in Each Critical Stage of a Child Protection Case
- P. Identifying & Assessing Risk: Forensic Assessment of Child Abuse and Neglect
- Q. Child development, including, but not limited to, the effects of abuse, neglect and trauma on children
- R. Other topics deemed appropriate by the Office of Children's Guardians (OCG).



In addition to the Guardian *ad Litem* training topics outlined above, these additional topics as implemented in the CASA training, shall be required as part of the Guardians *ad Litem* Core training:

- A. Juvenile court process
- B. Dynamics of human behavior associated with child abuse and neglect
- C. Dynamics of families
- D. Relevant state and federal laws including the Adoption and Safe Families Act (ASFA), the Child Abuse Prevention Treatment Act (CAPTA), the Indian Welfare Act (ICWA), and the Multi Ethnic Placement Act (MEPA)
- E. Confidentiality and record keeping practices
- F. Permanency planning and resources in Title 22 actions
- G. Advocacy
- H. Special needs of the children served: differences in cultural and socioeconomic norms, values, heritage and cultural awareness
- I. Identification of personal and institutional bias or discrimination as it relates to the children and families

## V. CONTINUING EDUCATION

### (a) Ongoing Training Requirements to maintain Rostered Status:

A Guardian shall attend and complete continuing professional education events or seminars designated as mandated by the OCG. In addition, in order to maintain rostered status in each 12 month period beginning August 1, 2008, a Guardian must annually participate at least six (6) hours of continuing professional education programs applicable to one of the topic areas enumerated in subsection IV above or as determined by the Director of the Office of Children's Guardians or designee.

### (b) Reporting Continuing Legal Education Credit.

On or before July 30, 2008 and each year thereafter a Guardian shall annually sign and submit proof of the Guardian's completion of the specified training hours by the by filing a statement providing the course title, date, location, sponsor, and number of credit hours of all courses or other activities taken for credit, on a form approved by the OCG.

The OCG may at any time ask the guardian to provide documentation supporting any information reported and the guardian shall promptly respond.

**(c) Sanctions**

Any Guardian subject to the requirements of this rule who fails to complete the required continuing education or who fails to sign and submit the form demonstrating compliance with these rules on or before July 30, 2008 shall automatically be suspended from the guardian roster. While a Guardian is suspended the Guardian shall not seek or receive payment for services performed during this time. Judicial Officers will be informed of the suspension of rostered status.

Judicial Officers shall replace the Guardian in existing cases or the Guardian may ask to be replaced. The guardian is not eligible for assignment to new cases during their suspended status. The Guardian's suspended status shall continue until the guardian completes the continuing education requirements to the satisfaction of the Director of the Office of Children's Guardians ("OCG") and meets the other requirements of the guardian rules.

Notice of the suspension shall be given by the OCG by regular mail to the office or home address of the Guardian last known to the OCG. Such suspension for failure to comply with continuing education and filing required forms shall not be effective until days (21) days after the date of mailing the notice thereof.

The failure to file shall not be considered a violation of the Guardian's code of conduct per se, and the suspension for failure to file shall not constitute the imposition of discipline. A Guardian who, after the date of the mailing of such notice of suspension, but before the effective date of such suspension, reports compliance with this rule, or applies for a waiver on the basis of hardship, disability or for other good cause shall not be suspended for failure to comply with this rule. Otherwise the Guardian shall be suspended from the roster.

**(d) Reinstatement Fees.**

A Guardian who files proof of continuing education after July 30, 2008 but before the Guardian is suspended shall pay a \$25 late fee with the OCG approved form.

If a Guardian has been suspended under provisions relating to continuing education and filing shall, prior to reinstatement, demonstrate compliance with the requirements of the continuing education requirements. The suspended Guardian shall pay, in addition to the \$25.00 late fee, a reinstatement fee of \$125.00 unless excused from such reinstatement fee by the OCG as a result of its determination that to impose the fee would result in a grave injustice under the circumstances. A Guardian who has been suspended within the previous five (5) years for non-compliance with the continuing education and filing requirements shall be assessed an additional \$50.00 reinstatement fee.

**ROLE OF THE GUARDIAN AD LITEM  
SUBCOMMITTEE REPORT**

APPENDIX D

D-1

12/22/07

**1. Advocate-Directed Model.** Guardians in Maine should continue to function in the advocate-directed model of servicing the needs of families and children in Title 19-A and Title 22 cases. Under this model, the Guardian advocates for what he/she believes (not necessarily what the child believes) is in the child's "best interest." The focus is the protection of the child by an adult who attempts to know and then articulate the child's best interests.<sup>23</sup> Under this model, both attorneys and non-attorneys (including individuals with other forms of professional training such as mental health professionals, social workers, etc.) may serve as Guardians.<sup>24</sup> This diversity of perspectives and broad reach best affords the opportunity to address the wide range of issues and the geographic stretch presented by families in both Title 19-A and Title 22 cases in this state.

**2. Agent of the Court.** The Guardian in Maine is an agent of the Court, serving as its eyes and ears in both Title 19-A and Title 22 cases. In this capacity, the Guardian is expected to act in the following roles so as to produce better outcomes for children and families in Maine courts:

- An Investigator – To perform an appropriate independent investigation of a case and to be familiar with the issues and the facts related to the family before the court
- A Recommender – To provide the court and the parties with advice/suggestions for the best course of action to be followed in light of the best interest of the child(ren) in Title 19-A and Title 22 cases<sup>25</sup>
- An Advocate for Services – To bring to the attention of the court and the parties the need to bring special judicial and/or extra-judicial resources to bear in a case<sup>26</sup>

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<sup>23</sup> In making this recommendation, the subcommittee has specifically considered and rejected the Lawyers Only Advocate-Directed Model (i.e., only lawyers serve as Guardians and advocate for the child best interest) and the Client Directed Model proposed by the American Bar Association Standards (i.e., lawyers advocate for the expressed wishes of the client).

<sup>24</sup> The subcommittee notes that under Title 22 §4005(F), if the need arises, a child or the Guardian can request the Court to appoint an attorney for the child. However, that rarely occurs. The subcommittee explored whether there were any situations that would require a recommendation to change Title 19-A to incorporate a similar provision. Ultimately, the subcommittee rejected that option as unnecessary.

<sup>25</sup> The subcommittee confirmed that judges and magistrates overwhelmingly consider the Guardian making recommendations to be an essential role of the Guardian in both Title 19-A and Title 22 cases.

<sup>26</sup> A Guardian in a Title 19-A case typically must be more creative in this capacity as services usually are not readily available. Guardians in Title 19-A cases therefore must not only be proficient in investigating, researching, identifying and articulating the need for services and resources in these cases, but in finding ways for needed services and resources to actually be provided.

- An Advocate for the best interest of the child in the context of court cases, including where appropriate specific services – To act and speak with the sole motivation of effecting an outcome that serves or otherwise furthers the health, safety, wellbeing, education and growth of the child(ren) in a case, including demanding particular resources being brought to bear when appropriate
- A Consensus Builder – To identify, explore and facilitate the agreement and consensus of the parties on the best interests of the children, where and when appropriate.<sup>27</sup>

**3. Distinct Role as Agent of the Court in Title 22 Case.** In Title 22 cases, the dispute arises between the State, represented by DHHS, and the parents. In Title 22 cases, DHHS has the ability to obtain services that may not be available in 19-A cases.<sup>28</sup> In Title 22 cases, the Guardian has access to a team in connection with his or her advocacy for services for the children. Accordingly, the Guardian, as an agent of the Court, serves as an Independent Monitor of the delivery, receipt and efficacy of services provided in Title 22 cases. The Guardian in a Title 22 case also serves as an Independent Monitor of the social services being provided to the family in Title 22 cases and serves as a “safety net” to guard against a child being overlooked or forgotten by the State’s social service system.

**4. Guardian’s Participation in Court Proceedings.** The subcommittee recognizes that under the existing law in Maine whenever a child is a real party-in-interest or the child’s best interest is implicated in an action and a Guardian is appointed in that action, either at common law or by statute, a Guardian is an agent of the court. Under Maine law, the Guardian already has the right to receive copies of pleadings, to file pleadings and to appear at hearings. The exact boundaries of the Guardian participation in litigation where either a child is a real party-in-interest or the child’s best interest is implicated, however, still remains somewhat unclear. *See Mary-Gay Kennedy v. Maine*, 1999 ME 85 ¶10 (role of the Guardian changes depending on the type proceeding). *See also In re Nikolas E.*, 1998 ME 243 ¶9 (attorney Guardian has standing to appeal a decision in a child protective action). The subcommittee believes that giving the Guardian the broadest permissible scope of activity and authority, within constitutional limits, to serve the best interests of the children in Title 19-A and Title 22 cases is a desirable outcome and should be facilitated where and when possible. To that end, the subcommittee

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<sup>27</sup> The subcommittee considered including “Mediator/Mediation” to the role of the Guardian to get at this functional duty. The subcommittee came to realize that there is a prevailing view that “mediation” is a term-of-art to describe a very formal function that is performed after very specialized training in accordance with particular standards. The subcommittee chose not to confuse the concept of the Guardian’s attempt to resolve children’s issues in a case through the collaboration of the parties by using the term “mediation.” The Guardian, as an advocate for the best interests of the child, takes a position for which s/he seeks an agreement of the parties. A mediator is truly neutral on the outcome and seeks only an agreement.

<sup>28</sup> As suggested above, the difference in accessing resources between Title 22 and Title 19-A cases is staggering. This difference creates a huge distinction in the Guardian role of advocating for services in Title 22 and 19-A cases. That said, in Title 22 cases, the Guardian serves as an independent and neutral advocate for the best interest of the child, including, where appropriate, services. This is true even if the best interest of the child conflicts with the Department’s position, the parents’ position or both.

recommends that statutory changes be made to clarify the rights and duties of the Guardian as a participant in litigation whenever a child is a real party-in-interest or the child's best interest is implicated in an action.

**5. Confidentially of Guardian Reports.** Under the current statutory scheme, Guardian reports in Title 19-A cases are not confidential. The parties to these cases are clearly entitled to access these reports. The general public, however, should not be able to access Guardian reports, as they could reveal sensitive information about a child's history, mental or physical condition, and activities that should not be disseminated. The Committee recommends that Guardian reports be made confidential, and that access be limited to the parties unless the judge orders otherwise.

This objective may be accomplished with either an amendment of Title 19-A or by Administrative Order. *Cf.* AO JB- 05-20 (A. 1-06), § (II)(G)(5)(declaring custody reports to be confidential).<sup>29</sup>

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<sup>29</sup> Custody reports, produced by DHHS, are distinct from Guardian reports.

**A. Overview**

The information required to effectively manage Guardians is of two general types: Information that is used directly in the adjudication of cases before the court and information that is not used directly in the adjudication of cases. It is also true that, while these two types of information are so different that they belong in separate systems, it is useful to access both types from a single interface.

Information that is used for case management is stored in the case management system (“MEJIS”) and information used specifically for Guardian management is stored in the Guardian management system. Access to the information in both systems is gained, though, from a single user interface that lets the user fetch data from both data sources.

The Office of Information Technology (“OIT”) within the judicial Branch has developed a technology that serves this purpose very well. This technology is known as a “federated data system” and it is currently employed successfully for various other applications. The Committee recommends that the federated approach be adopted.

**B. Requirements**

Below is a list of general requirements that the application must fulfill to be useful for the purpose described above. These requirements would require refining as part of a detailed discovery process. The outcome of that process would be a “commitment list”. This list is comprised of discrete functional elements that the users commit to needing and the developers commit to build.

**C. Case Management Changes**

The first step is to make changes to the case management system that would assure that Guardian information is docketed in the appropriate way:

1. Guardian should be treated by the system like Lawyers
  - a. The Guardian roster should be added to MEJIS
  - b. Guardians added to cases and tracked like lawyers and not parties
  - c. Guardians are removed from cases via motions for withdrawal or other motion

2. Guardian is different from a lawyer
  - a. They can have a lawyer represent them

Accommodation of this circumstance may be difficult and it depends on the actual role of the attorney for the Guardian. Further discovery is needed to determine the complexity of this requirement

Once we begin to treat Guardians as Agents of the Court in the data, then we can get reports about Guardians from MEJIS:

1. For Guardians what cases are they assigned to
3. For Case who is the Guardian
4. How many cases does a Guardian have or has had
5. How did the judge rule for cases with a particular Guardian

These changes are all internally managed and are required for MEJIS II PC/FM case type development.

#### **D. Guardian *ad Litem* Management System Development (“GALMS”)**

This system would be comprised of 4 parts:

1. A Graphic User Interface (“GUI”) used by Guardian managers to maintain Guardian management data
2. A web browser interface used by Guardians to manage information about their cases
3. A Database Schema (a model that managed how datum relates to other data)
4. A Service that federates and manages data traffic from the interfaces to:
  - a. Guardian Schema
  - b. MEJIS Schema
  - c. Payment Voucher Schema (potentially)

The Graphic User (developed for Apple OS X) and the WEB Browser interfaces (compatible on every OS) will both connect to the Service that will authenticate the user and authorize the user for access to appropriate information. The Director of OCG might be able to see what all Guardians *ad litem* are doing, while the Guardian might only see the cases to which they are assigned.

From these interfaces users can query information that is either contained in the MEJIS or the GALMS. The information will appear on the screen for the user who can add data. When a user adds data it is only written to the GALMS schema and does not update MEJIS.

The details of specifically how and what functions are developed would be contained in the commitment list generated via the discovery process. The Schema will be developed in Oracle

and be based on the GUI requirements determined in discovery. As part of discovery we will discuss what types of reports will be desired and the schema will be developed to accommodate those needs. The Service will be developed in APPLE web objects and be deployed on Xserves at OIT. These services act as the exclusive access point for the data contained in the schema.

**E. In-House Development Resource Costs**

An off the shelf product that specifically handles these requirements so any development will be custom has not been found. All costs represent a combination of in-house and vendor costs unless otherwise specified.

In house development assumes we use in-house infrastructure and current MEJIS II vendors who are familiar with our methods. These changes must be made to accommodate with MEJIS II development. The resource cost is excluding the “Guardian who needs a Lawyer” circumstance.

MEJIS Case Management Upgrade \$12,000.00

GALMS Development:

Discovery	\$5,000.00
Documentation	\$2,500.00
SCHEMA Development	\$10,000.00
Service development	\$5,000.00
GUI Development	\$10,000.00
WEB Interface Development	\$7,500.00
TESTING and Polish	\$2,000.00

TOTAL \$54,000.00



## F. Outside Development Costs

An outside player would be less familiar with Maine court process so Discovery and Documentation would increase. Also an outside party would need infrastructure to support the system. The costs listed below assume that the infrastructure would be equal to what OIT can provide. Other costs would be Project Management and the development of basic technology like system federation that OIT as already developed.

MEJIS Case Management Upgrade	\$12,000.00
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### GALMS Development:

Discovery	\$10,000.00
Documentation	\$10,000.00
SCHEMA Development	\$10,000.00
Service Development (with Federating Technology)	\$50,000.00
DATABASE creation	\$50,000.00
GUI Development	\$10,000.00
Web Interface Development	\$7,500.00
TESTING and Polish	\$10,000.00
SERVERS and Network equipment	\$150,000.00
Project Management	\$45,000.00
Software Licenses	\$60,000.00/year

TOTAL Fixed Cost	\$432,000.00
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TOTAL Recurring Cost	\$60,000.00
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It is clear that OIT in-house development has a large cost advantage. The disadvantage would be that OIT's and, specifically the MEJIS II development team's, priorities are governed by the Court Technology Committee. The inclusion of the GALMS project on the priority list would require action from that committee.

## G. Conclusion

OIT recommends that if the addition of the GALMS project to the priority list for OIT came with sufficient monetary resources and would not occult MEJIS II development, the ACCF should recommend to the Chief that the GALMS project be completed by OIT pending approval of the Technology Committee.

## Guardian *ad litem* Training

Maple Hill Farm, Hallowell, Maine  
Monday, October 29, 2007

7:45 – 8:30	Registration
8:30 – 9:00	Welcome, Overview of Agenda & Guardian Rostering and Responsibilities of the Chief Judge’s Office Hon. John C. Nivison
9:00 – 10:15	Overview of Guardian Rules, Standards and Caselaw: Duties and Obligations of the Guardian as an Agent of the Court Hon. John David Kennedy
10:15 – 10:30	Break
10:30 – 11:30	Overview of Family Law: Title 19-A; Title 22, Title 18-A; UCCJEA; UIFSA; Similarities and Differences between types of cases. Hon. John David Kennedy
11:30 - 12:30	Educational Issues for Children & Youth Sara Meerse, Esq., GAL
12:30 - 1:30	Lunch
1:30 - 3:15	Domestic Violence: The Impact on Children and Families Juliet Holmes-Smith, Esq., Kate Huntress, Kristina Joyce Smith, Esq., GAL, Richard Dubois, Esq., GAL, Marty Burgess, LCPC Moderator: Hon. Paul Eggert
3:15 - 3:30	Break
3:30 – 4:30	Culturally Competent Child Advocacy Ned Chester, Esq. GAL, Aria eee, Esq., Beth Stickney, Esq., Rachelle Parise Esq. Moderator: Hon. Keith A. Powers

Day Two  
Maple Hill Farm, Hallowell, Maine

Tuesday, October 30, 2007

- 8:30 – 9:30 Children’s Needs: A Developmental Perspective  
Roy Siegfriedt, LCPC, MA
- 9:30 – 10:30 Relationship Building with Children and Families  
Stephen Andrew, LCSW, LADC, CCS, CGP
- 10:30 – 10:45 Break
- 10:45- 12:00 Substance Abuse & Mental Health – Adults & Children  
Barbara Piotti, LCSW, Bob Long, MS, LCPC, LADC
- 12:00 – 12:30 Lunch
- 12:30 – 1:00 211 – Resource Information  
Karen Turgeon
- 1:00 – 2:15 Substance Abuse & Mental Health – Adults & Children  
Continued...  
Barbara Piotti, LCSW, Bob Long, MS, LCPC, LADC
- 2:15- 2:30 Break
- 2:30 – 3:30 The Role of Consensus Building for the Guardian  
Lisa Levinson, CASA GAL, Mediator, Toby Hollander Esq., GAL, Tobi  
Schneider Esq., GAL, Moderator
- 3:30 – 4:30 Report Writing and Testifying  
Philip Cohen, Esq., GAL, Lisa Levinson, CASA GAL, Mediator, Felicity  
Myers, LCSW, GAL/Mediator  
Moderator: Hon. Patricia Worth

Family Law Day  
Maple Hill Farm, Hallowell, Maine



Wednesday, October 31, 2006

- 8:30 – 9:30      Family Law: Case Management, Pre-trial, Trial Process and Post-Judgment Motions  
Hon. Rick E. Lawrence & Magistrate Bruce A. Jordan
- 9:30 – 11:30     Determining Primary Residency: One Judge's Perspective  
Hon. Jon D. Levy
- 11:30 – 12:30    A View from the Bench  
Magistrate Susan Oram, Magistrate Daniel Driscoll,  
Magistrate Bruce A. Jordan  
Moderator: Hon. Rick E. Lawrence
- 12:30 – 1:30     Lunch
- 1:30 – 2:30      The Impact of Separation and Divorce on Children and Families: Parent Education and Access & Visitation Programs & Services  
Jed French, Esq., Susan Wiggin, LMSW, GAL
- 2:30 - 2:40      Break
- 2:40 – 3:40      The Role of the Family Matters Guardian: Working with All the Players  
Magistrate Daniel Driscoll, Terry Hayes, GAL, Toby Hollander, Esq., GAL,  
Amanda Hollander, DHHS  
Moderator: Magistrate Susan Oram
- 3: 40 – 4:30     A View From the Trenches: Two Guardians' Perspectives  
Terry Hayes, GAL, Toby Hollander Esq., GAL

CHILD PROTECTION DAY  
Maple Hill Farm, Hallowell, Maine

Friday, November 2, 2007

- 8:30 – 9:45 Protective Custody Law and Process: The Role of the Title 22 Guardian in Each Critical Stage of a Child Protection Case  
Hon. Rae Ann French, Mary Zmgrodski, AAG, Elizabeth McCullum, Esq., GAL, Robert Bennett Esq., Parent's Attorney,  
Moderator: Hon. John C. Nivison
- 9:45- 10:00 Break
- 10:00 – 11:00 A View From the Bench  
Hon. John V. Romei, Hon. James E. MacMichael, Hon. Christine Foster  
Moderator: Hon. John C. Nivison
- 11:00 – 12:00 Identifying & Assessing Risk: Forensic Assessment of Child Abuse and Neglect  
Dr. Diane Tennes, Ph.D., GAL
- 12:00 – 12:30 Lunch
- 12:30 – 1:30 Guardian Probate 101  
Hon. John Alsop
- 1:30 – 1:45 Break
- 1:45 – 2:45 DHHS 101 *What Every Guardian needs to Know*  
Martha Proulx, DHHS, Mark Terison, Esq., CASA, Michael Kearney AAG, Katherine Forte, Esq., GAL/Parents Attorney  
Moderator: Elizabeth Stout, Esq., GAL
- 2:45 – 3:45 The Last Word: Young People who have experienced the Foster Care System on Creating Youth/Adult Partnerships  
Pentheia Burns & the Youth Leadership Advisory Team
- 3:45 – 4:15 Wrap up and Closing Remarks  
Hon. John C. Nivison

**Judicial Branch  
Advisory Committee on Children and Families**

G-1

Type: Standing Committee  
Updated: February 23, 2007; Formerly know as: Court Services Advisory Committee  
Chair: Hon. Rick Lawrence  
Report Date: September 14, 2007  
Reports to: Chief Judge of the District Court

**I. Purpose:**

The purpose of the Advisory Committee is to assist the Chief Judge of the District Court in evaluation, modification, and oversight of court sponsored services and projects relating to children and families within the Judicial Branch.

The Advisory Committee will:

- A. Review court sponsored services and projects relating to children and families, but not limited to, parent education and training;
- B. Review the state of the GAL usage by the Judicial Branch and assess how best to deliver GAL services:
  - 1. Identify needed improvements in services and projects including GAL services;
  - 2. Assess the recruitment, selection, evaluation, and complaint processes for GALs; and
  - 3. Prioritize any needed improvements in services and projects, including GAL services;
- C. Develop budget information to support proposals and recommendations;
- D. Draft policies and proposed rule or statutory changes to support recommendations;
- E. Make recommendations regarding CIP funds; and
- F. Make other recommendations to the Chief Judge of the District Court.

**II. Authority:**

The Advisory Committee may seek input, suggestions, and recommendations from individuals and groups within and outside of the Judicial Branch. The Advisory Committee is authorized to study procedures and alternative structures for providing court sponsored services and projects relating to children and families, including, but not limited to, GAL services.

The Advisory Committee may invite consultants to the meetings as needed.

The Advisory Committee may, through its Chair, request such additional authority from the Chief Justice as may prove necessary to achieve the Advisory Committee's purpose. There is no funding authorized for the work of the Advisory Committee.

**III. Membership:**

The Chief Judge of the District Court appoints members. Members serve three-year terms and may be reappointed for additional terms.

Hon. Rick Lawrence shall serve as Advisory Committee Chair.

**IV. Meetings:**

The Advisory Committee will meet on a schedule established by the Chair and approved by the Committee. The Advisory Committee will meet no less than twice a year.

**V. Reporting:**

The Advisory Committee will submit a written report, including its recommendations and identification of resource needs, to the Chief Judge of the District Court on or before September 14, 2007. The Chief Judge will submit the Advisory Committee's report along with any supplemental information or comment to the Supreme Judicial Court on or before October 31, 2007. Thereafter, the Advisory Committee will submit written reports as requested by the Chief Judge of the District Court. The Advisory Committee will report to the Supreme Judicial Court as requested.

**VI. Committee Duration:**

The Advisory Committee on Children and Families will be a standing committee of the Judicial Branch.

Dated: February 23, 2007

Approved by:

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Leigh I Saufley  
Chief Justice

**Advisory Committee on Children and Families  
Membership**

APPENDIX H

H-1

**Hon. Rick Lawrence, Chair**

Judge Lawrence has served as a judge in the Maine District Court for approximately 8 years. During that time he has presided over numerous Family Matters and Child Protection cases. For several years he chaired the Court Services Committee, the forerunner to the Advisory Committee on Children and Families, which addressed a wide array of issues relative to the Family Division of the Maine District Court. Prior to joining the Maine judiciary, he graduated from Harvard Law School, practiced law with the firm of Pierce, Atwood, Scribner, Allen, Smith & Lancaster and was the Vice President/Managing Counsel with UNUM Provident Life Insurance Company.

**Joseph Baiungo, Esq.**

Attorney Baiungo has been a lawyer in private practice in Belfast for 15 years. He has his own firm which engages in all forms of litigation, representing individuals along the Mid-Coast as well businesses in the area. Attorney Baiungo was recently recognized by the Volunteers Lawyer's Project as donating the most pro bono time to cases in his area.

**Gregg Bernstein, AAG**

Attorney Bernstein is an Assistant Attorney General assigned to the Child Protection Division where he represents the Maine Department of Health and Human Services in child protection matters. Prior to joining the Office of the Attorney General he practiced law in Maine focusing primarily on family and child protection law, tort law, disability and workplace discrimination law, and criminal defense. Attorney Bernstein also has worked on issues important to the deaf community in Maine, Washington, D.C., and Philadelphia.

**Kathleen Caldwell, Esq.**

Attorney Caldwell has been affiliated with Pine Tree Legal Assistance for more than 28 years where she has served as a Staff Attorney, the Pro Se and Client Education Coordinator and the Website Coordinator.

**Wayne Doane, Esq.**

Attorney Doane graduated from Elmira College and Vermont Law School. He has been practicing in Maine since, 1989, prior to that he practiced in Hawaii. Attorney Doane has been doing Guardian ad litem work since 1997, primarily since he opened his own firm in 1999 in the Bangor area. He has been a member of the Child Protection Advisory Committee and was involved in drafting the booklet "Representing Children in Child Protection Cases" for the District Courts.



**Hon. Rae Ann French**

Judge French has served as a judge in the Maine District Court for more than 15 years. She has heard numerous family matters and currently presides over the Augusta and Waterville Child Protection dockets in as well as the Family Treatment Drug Court, Mental Health Court and the Domestic Violence Court. She is past chair of the Family Division Oversight Team and has served on various other committees including the Family Division Implementation Team, Court Services Committee and the Pro Se Divorce Team. She currently serves as the court liaison on the Rules of Evidence Committee and the Child Death and Serious Injury Review Panel.

**Rep. Terry Hayes**

Representative Hayes represents House District #94 in the Maine Legislature. She has operated her own company for more than 22 years where she provides professional Guardian *ad litem* services for Maine children and families. She is a member of the Maine Guardian *ad Litem* Institute, the Oxford Hills Chamber of Commerce and the Maine Democratic Party.

**Toby Hollander, Esq.**

Attorney Hollander has been licensed to practice law for 33 years and has provided Guardian *ad litem* services exclusively since 2000. His prior experience includes practicing law as a trial attorney in the private sector and serving as a Directing Attorney for Pine Tree Legal Assistance. He is currently President of the Maine Guardian *ad Litem* Institute, and a member of the Association of Family and Conciliatory Courts, the Maine State Bar Association and the National Lawyers Guild.

**Kate Huntress**

Ms. Huntress is Community Services Coordinator at Family Crisis Services, the comprehensive domestic violence agency serving Cumberland and Sagadahoc Counties. Over the course of 6 years at FCS, Kate previously assisted victims of domestic violence navigate the civil and criminal justice systems through her work as a court based Outreach Advocate. Kate also practices as a DONA Trained Birth Doula and serves on the executive board of Birthroots, Maine's Perinatal Resource Center. Kate serves on the Legislative and Public Awareness/Education Committees of The Maine Coalition to End Domestic Violence. She is a frequent trainer on domestic violence issues.

**Stephen Hussey**

Mr. Hussey is the Director of the Division of Support Enforcement and Recovery at the Department of Health and Human Services. He is a member of the National Council of Child Support Directors and the National Child Support Enforcement Association. He is a ten-year member of the Court Services Committee, the forerunner of the Advisory Committee on Children and Families, which addressed a wide array of issues relative to the Family Division of the Maine District Court.

**Margaret Johnson, Esq.**

Attorney Johnson has practiced law in Maine for 34 years. She has served as a Guardian *ad litem* in child protection and family law cases for 22 of those years. She is a member of the Aroostook, Cumberland and Maine State Bar Associations and the Maine Guardian *ad Litem* Institute, and is currently participating in a pilot program designed to test the efficacy of assigning Guardians *ad Litem* for youths committed to Long Creek Youth Development Center. She has served on several committees convened to consider and make recommendations to the Court regarding child protection procedures and is a founder and past chair of the Maine State Bar Association's Section on Child Protection and Juvenile Justice.

**Hon. Joan Kidman**

Magistrate Kidman has served as a Family Law Magistrate since 1998, presiding over cases that involve children. In the past she has served as chair of the Family Law Section of the Maine State Bar Association and was a member of the Commission to Study Family Matters in Court, the Family Division Access and Visitation Committee, the Pro Se Divorce Team, and the Board of Resources for Divorced Families. Prior to joining the Maine judiciary, she was engaged in the private practice of law for 22 years with an emphasis on family law, and was a Headstart teacher and Peace Corps volunteer.

**Karen Mosher, Ph.D.**

Doctor Mosher is a psychologist and the Clinical Director at Kennebec Behavioral Health where she has been affiliated for 28 years. She provides clinical supervision, oversight, and quality management for agency programs. Her current professional activities include participating on Maine's Child Death and Serious Injury Review Panel as well as on the Child Welfare/Substance Abuse Committee at the Department of Health and Human Services. Dr. Mosher provides both pre-doctoral and post-doctoral training for new psychologists. In addition to agency responsibilities Dr. Mosher provides assessment and consultation for the Department of Health and Human Services Division of Child and Family Services regarding the assessment, service planning, and treatment of parents with multiple co-occurring, complicated, and treatment refractory service needs.

**Tobi Schneider, Esq.**

Attorney Schneider has practiced law in Maine since 1977. She has been doing Guardian *ad litem* work for 25 years in addition to opening her own civil law practice in 1982. She is a Fellow of the Maine Bar Foundation, a member at large of the Maine State Bar association Grievance Committee and a member of the Advisory Committee on the Code of Professional Responsibility. She is also a member of the Maine Guardian *ad Litem* Institute, the Waterville Bar Association, the Kennebec County Bar Association, American Bar Association Family Law Section, and the Maine Trial Lawyers. She is a past chair of the Family Law Section of the Maine State Bar Association and served as a reporter for Maine for the *Family Law Quarterly*, an American Bar Association publication.

**Elizabeth Stout, Esq.**

Attorney Stout has practiced law in Maine since 1990. She is currently a family law attorney in Portland, representing parents, serving as Guardian *ad litem*, and working as a mediator. She served as an Assistant District Attorney in Cumberland County from 1991-1994. She was an Assistant Attorney General in the Child Protection Division from 1998-2002, including serving as Acting Division Chief of the Child Protection Division and as the Attorney General's representative to the Judiciary and Health and Human Services Legislative Committees. She has been a member of the Domestic Violence Pilot Project in York County, a member and President of the Board of Directors of Opportunity for Change batters intervention group, and a member of the Maine Commission on Domestic Abuse.

**Ex Officio Members****Tracie Adamson, Esq.**

Attorney Adamson is the Manager of the Family Division within the Judicial Branch where she oversees Family Division programs including Court Appointed Special Advocates ("CASA"), the Court Improvement Program, Family Treatment Drug Court, the Access and Visitation program, Guardian *ad litem* services, and the Child Abuse and Neglect Evaluator's Program (CANEP). Prior to joining the Family Division she was engaged in the private practice of law where she handled family and domestic law matters as well as civil litigation and personal injury matters and appeals.

**Rosemary Foster, Esq.**

Attorney Foster is a District Court Law Clerk for the Maine Judicial Branch. Previously she was the Manager of the Family Division within the Judicial Branch and an Assistant Attorney General in the Child Protection Division representing the Maine Department of Health and Human Services in Child Protection actions. She has engaged in the private practice of law that included representing parents in Child Protection matters, as well as general civil and criminal matters. She has also served as the Executive Director of Community Mediation Services, the Affirmative Action Coordinator for the Maine Department of Education and as an elementary school teacher and principal.

**Kirsten Skorpen, MSW**

Ms. Skorpen is the Family Resource Coordinator within the Maine Judicial Branch where she is responsible for the Access and Visitation program and coordinating Guardian *ad litem* training. She has also served as the Associate Dean of Students and the Director of Alumni and Parent Relations at Hampshire College, and the Coordinator of Parent Aide Programs at Children's Aid and Family Service in Northampton, Massachusetts. She is currently a member of the Association of Family and Conciliation Courts.

**Susan Snyder, Esq.**

Attorney Snyder has been a practicing attorney since 1997 and is licensed in both Pennsylvania and Maine. Attorney Snyder has worked as a Senior Deputy District Attorney for Juvenile court in Pennsylvania and has also been a custody conciliator for the Court of Common Pleas in Pennsylvania. During Attorney Snyder's tenure in Pennsylvania, she also represented the Department of Children & Youth in child protective cases. Since moving to Maine, she has been involved as a CASA volunteer and rostered Guardian ad litem. In addition, Attorney Snyder is the coordinator of the Safe Family Monitored Exchange program in Ellsworth Maine.

**[RETURN TO BEGINNING](#)**