

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

No. 1860

S.P. 680

In Senate, February 10, 1994

**An Act to Amend the Law Pertaining to the Appointment of a Guardian
Ad Litem in Contested Proceedings.**

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CONLEY of Cumberland.
Cosponsored by Representative: COTE of Auburn.

Emergency preamble. Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

Whereas, there appears to be an uncertainty in the status of
the need of the appointment of a guardian ad litem in contested
hearings; and

Whereas, it is important to clarify the court's
discretionary authority to appoint a guardian; and

Whereas, children may suffer serious harm from the
contentious divorce or separation proceedings of their parents;
and

Whereas, an appointment of a guardian ad litem to represent
a child's interest may often minimize that harm and may assist
the court in making appropriate decisions concerning the child;
and

Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 19 MRSA §752-A is enacted to read:

§752-A. Contested proceedings

1. Guardian ad litem; appointment. In contested
proceedings under sections 214, 581, 693 and 752 in which a minor
child is involved, the court may appoint a guardian ad litem for
the child. The appointment must be made as soon as possible
after the commencement of the proceeding. In determining whether
an appointment must be made, the court shall consider:

A. The wishes of the parties;

B. The age of the child;

**C. The nature of the proceeding, including the
contentiousness of the hearing;**

D. The financial resources of the parties;

**E. The extent a guardian ad litem may assist in providing
information concerning the best interest of the child; and**

2 F. Other factors the court determines relevant.

4 2. Duties. The court shall specify the duties of the
6 guardian ad litem. If, in order to perform the assigned duties,
8 the guardian needs information concerning the child or parents,
10 the court may order the parents to sign an authorization form
12 allowing the release of the necessary information. The duties of
14 the guardian ad litem may include the following:

16 A. Interviewing the child with or without another person
18 present;

20 B. Interviewing the parents, teachers and other people who
22 have knowledge of the child or family;

24 C. Reviewing mental health, medical and school records of
26 the child;

28 D. Reviewing mental health and medical records of the
30 parents;

32 E. Having qualified people perform medical and mental
34 evaluations on the child;

36 F. Having qualified people perform medical and mental
38 evaluations on the parents;

40 G. Procuring counseling for the child;

42 H. Retaining an attorney to represent the guardian ad litem
44 in the pending proceeding, with approval of the court;

46 I. Subpoenaing witnesses and documents and examining and
48 cross-examining witnesses;

J. Serving as a contact person between the parents and the
 child;

K. Making a written report of investigations, findings and
 recommendations, with copies of the report to each party and
 the court; and

L. Other duties that the court determines necessary.

3. Best interest of the child. The guardian ad litem must
 be guided by the standard of the best interest of the child as
 set forth in section 752, subsection 5.

