



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.

JOY J. O'BRIEN Secretary of the Senate

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

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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 10 discretionary authority to appoint a guardian; and

12 Whereas, children may suffer serious harm from the contentious divorce or separation proceedings of their parents; 14 and

16 Whereas, an appointment of a guardian ad litem to represent a child's interest may often minimize that harm and may assist 18 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:

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

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§752-A. Contested proceedings

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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

36 the child. The appointment must be made as soon as possible after the commencement of the proceeding. In determining whether 38 an appointment must be made, the court shall consider:

- 40 A. The wishes of the parties;
- 42 B. The age of the child;
- 44 <u>C. The nature of the proceeding, including the</u> contentiousness of the hearing;
- 46 48

D. The financial resources of the parties;

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

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F. Other factors the court determines relevant.

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4	2. Duties. The court shall specify the duties of the
~	guardian ad litem. If, in order to perform the assigned duties,
6	the guardian needs information concerning the child or parents,
_	the court may order the parents to sign an authorization form
8	allowing the release of the necessary information. The duties of
	the guardian ad litem may include the following:
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	A. Interviewing the child with or without another person
12	present;
14	B. Interviewing the parents, teachers and other people who
T T	have knowledge of the child or family;
16	have knowledge of the child of family;
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	C. Reviewing mental health, medical and school records of
18	the child;
20	D. Reviewing mental health and medical records of the
	parents;
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	E. Having qualified people perform medical and mental
24	evaluations on the child;
4 I	evaluacions on the child,
26	E Having mulified scale suffers welled and much
20	F. Having qualified people perform medical and mental
	evaluations on the parents;
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	G. Procuring counseling for the child;
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	H. Retaining an attorney to represent the guardian ad litem
32	in the pending proceeding, with approval of the court;
34	1. Subpoenaing witnesses and documents and examining and
51	<u>cross-examining witnesses;</u>
26	cross-examining wrenesses;
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	J. Serving as a contact person between the parents and the
38	child;
40	K. Making a written report of investigations, findings and
	recommendations, with copies of the report to each party and
42	the court; and
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17	L. Other duties that the court determines necessary.
46	3. Best interest of the child. The guardian ad litem must
	<u>be guided by the standard of the best interest of the child as</u>
48	set forth in section 752, subsection 5.
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Page 2-LR3157(1) L.D.1860 4. Written report. A written report of a guardian ad litem may be admitted as evidence in the proceeding for which the guardian was appointed only if the party seeking the admission of the report has furnished a copy to all parties at least 14 days prior to the hearing. The report may not be admitted as evidence without the testimony of the guardian ad litem if a party objects to the admittance of the report at least 7 days prior to the hearing.

10 <u>5. Court's agent. A person serving as a guardian ad litem</u> under this section acts as the court's agent and is entitled to 12 <u>guasi-judicial immunity for acts performed within the scope of</u> <u>the duties of the guardian ad litem.</u>

6. Payment for services. Payment for the services of the
16 guardian ad litem is the responsibility of the parties, as
ordered by the court. In determining the responsibility for
18 payment, the court shall consider:

20 A. The income of the parties;

B. The marital and nonmarital assets of the parties;

24 <u>C. The division of property made as part of the final</u> <u>divorce;</u>

26 <u>D. Which party requested appointment of a guardian; and</u> 28

E. Other relevant factors.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

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STATEMENT OF FACT

This bill clarifies the court's discretionary authority to appoint a guardian ad litem. It provides guidelines to assist judges in deciding when to appoint a guardian. The bill requires the judge to specify the duties of the guardian, allows the admission into evidence of a guardian's report with certain conditions, provides immunity for court-appointed guardians and makes clear that the parties shall bear the expense if a guardian is appointed.

46 This document has not yet been reviewed to determine the 48 cross-reference, stylistic and other technical for need amendments to conform existing law to current drafting standards. 50

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