

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1063

S.P. 380

In Senate, March 1, 2005

An Act To Improve the Guardian ad Litem System

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 BRENNAN of Cumberland.
Cosponsored by Representative TARDY of Newport and
Senators: BARTLETT of Cumberland, HOBBS of York, MITCHELL of Kennebec,
Representatives: MILLS of Farmington, MOODY of Manchester, PINGREE of North Haven.

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

4 **Sec. 1. 18-A MRSA §1-112** is enacted to read:

6 **§1-112. Guardian ad litem**

8 (a) In any proceeding under this Title for which the court
10 may appoint a guardian ad litem for a child involved in the
12 proceeding, at the time of the appointment, the court shall
14 specify the guardian ad litem's length of appointment, duties and
16 fee arrangements.

18 (b) A guardian ad litem appointed on or after October 1,
20 2005 must meet the qualifications established by the Supreme
22 Judicial Court.

24 (c) If, in order to perform the guardian ad litem's duties,
26 the guardian ad litem needs information concerning the child or
28 parents, the court may order the parents to sign an authorization
30 form allowing the release of the necessary information. The
32 guardian ad litem must be allowed access to the child by
34 caretakers of the child, whether the caretakers are individuals,
36 authorized agencies or child care providers.

38 (d) The guardian ad litem shall use the standard of the
40 best interest of the child as set forth in Title 19-A, section
42 1653, subsection 3. The guardian ad litem shall make the wishes
44 of the child known to the court if the child has expressed them,
46 regardless of the recommendation of the guardian ad litem.

48 (e) If required by the court, the guardian ad litem shall
50 make a final written report to the parties and the court
reasonably in advance of a hearing. The report is admissible as
evidence and subject to cross-examination and rebuttal, whether
or not objected to by a party.

(f) A person appointed by the court as a guardian ad litem
acts as the court's agent and is entitled to quasi-judicial
immunity for acts performed within the scope of the duties of the
guardian ad litem.

(g) A guardian ad litem must 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.
The guardian ad litem shall protect the best interests of the
child in those hearings and proceedings, unless otherwise ordered
by the court.

(h) Guardians ad litem are not required to pay the
following fees:

2 (1) Court filing fees for filing a motion to enforce court
3 orders, including orders for payment; and

4
5 (2) Fees for driving records and for criminal record checks
6 concerning persons involved in the action for which the
7 guardian ad litem has been appointed.

8
9 **Sec. 2. 19-A MRSA §1507, sub-§1**, as enacted by PL 1995, c.
10 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

11 **1. Guardian ad litem; appointment.** In contested
12 proceedings under sections 904 and, 1653 and 1803 in which a
13 minor child is involved, the court may appoint a guardian ad
14 litem for the child. The appointment may be made at any time,
15 but the court shall make every effort to make the appointment as
16 soon as possible after the commencement of the proceeding. The
17 court may appoint a guardian ad litem when the court has reason
18 for special concern as to the welfare of a minor child. In
19 determining whether an appointment must be made, the court shall
20 consider:

21 A. The wishes of the parties;

22 B. The age of the child;

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

25 D. The financial resources of the parties;

26 E. The extent to which a guardian ad litem may assist in
27 providing information concerning the best interest of the
28 child;

29 F. Whether the family has experienced a history of domestic
30 abuse;

31 G. Abuse of the child by one of the parties; and

32 H. Other factors the court determines relevant.

33 At the time of the appointment, the court shall specify the
34 guardian ad litem's length of appointment, duties and fee
35 arrangements.

36 **Sec. 3. 19-A MRSA §1507, sub-§9** is enacted to read:

37 **9. Waiver of fees.** Guardians ad litem are not required to
38 pay the following fees:

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A. Court filing fees for filing a motion to enforce court orders, including orders for payment; and

B. Fees for driving records and for criminal record checks concerning persons involved in the action for which the guardian ad litem has been appointed.

Sec. 4. 19-A MRSA §1803, sub-§2, ¶D, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2 is amended to read:

D. If the court's determination under paragraph C is in the affirmative, the court may appoint a guardian ad litem as provided in section 1507. The court shall hold a hearing on the grandparent's petition for reasonable rights of visitation or access and shall consider any objections the parents or legal guardians may have concerning the award of rights of visitation or access to the grandparent. If the court has appointed a guardian ad litem, the court shall also consider the report of the guardian ad litem. The standard for the award of reasonable rights of visitation or access is provided in subsection 3.

Sec. 5. 22 MRSA §4005, sub-§1, ¶H is enacted to read:

H. Guardians ad litem are not required to pay the following fees:

(1) Court filing fees for filing a motion to enforce court orders, including orders for payment; and

(2) Fees for driving records and for criminal record checks concerning persons involved in the action for which the guardian ad litem has been appointed.

SUMMARY

This bill amends the laws concerning guardians ad litem. It adds a section to the Probate Code to provide for appointment, qualifications, access to information, application of the best interest of the child standard, requirement of a report, immunity, requirement of notice and waiver of fees for guardians ad litem serving the Probate Court. This bill also authorizes appointment of a guardian ad litem in an action in which a grandparent is seeking contact with a child. This bill provides that guardians ad litem are not required to pay certain court filing fees and fees for driving records and criminal record checks concerning persons involved in the action.