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**REPORT TO THE JOINT STANDING COMMITTEE ON JUDICIARY
OF THE 128th LEGISLATURE
SUBMITTED BY THE
CHIEF JUDGE OF THE MAINE DISTRICT COURT**



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REPORT TO THE JOINT STANDING COMMITTEE ON JUDICIARY SUBMITTED BY THE CHIEF JUDGE OF THE DISTRICT COURT

I. INTRODUCTION

The following is a report by the Chief Judge of the District Court to the Judiciary Committee on improvements for the delivery of guardian ad litem (GAL) services made pursuant to the “Act to Improve the Quality of Guardian ad Litem Services for the Children and Families of Maine” (the Act).¹ The Act requires the Chief Judge to report to the Judiciary Committee by February 15, 2017 on improvements in the delivery of GAL services, including:

- The adoption of new rules for the regulation of GALs;
- The adoption of new standards of conduct for GALs;
- The establishment of a GAL complaint process; and,
- The development of a post-judgment evaluation policy and process.²

The Act reflects several years of work by the Maine Legislature, the Maine Judicial Branch (MJB), and other stakeholders to establish clear standards of conduct for GALs, to improve training of GALs, to set limits on the costs parties are billed for GAL services, to develop a consumer-friendly system to address GAL complaints, and to create an evaluation process for consumers of GAL services upon case conclusion.

II. BRIEF HISTORY OF GAL SERVICES

In Maine, GALs are persons appointed by the court to represent the best interests of children in court proceedings. By law, judges must appoint a GAL in all child protection (Title 22) cases; these GALs must either be licensed Maine attorneys or court appointed special advocates (CASAs). GALs are appointed by the court in family law (Title 19-A) cases and in probate (Title 18-A) cases when “the court has reason for special concern as to the welfare of the child.”³ The court may appoint a GAL on the court’s own motion, on the motion of one of the parties, or upon agreement of the parties. GALs in family and probate cases must either be licensed Maine attorneys or qualified mental health professionals.

The authority for the court to appoint GALs was created by the Legislature in 1977.⁴ At that time, no programmatic infrastructure was established and no funding was allocated to oversee GAL appointments. In 1999, the Maine Supreme Judicial Court (SJC) issued the first set of Maine Rules for GALs (GAL Rules). Under that set of GAL Rules, the Office of the Chief Judge of the District Court was responsible for reviewing complaints involving GALs after a case was

¹ The 126th Maine Legislature enacted the “Act to Improve the Quality of Guardian ad Litem Services for the Children and Families of Maine” (the Act) on July 8, 2013. The section of the Act requiring the Maine Judicial Branch (MJB) to report to the Judiciary Committee took effect on January 1, 2015. P.L. 2015, ch. 406, § 1558. See 4 M.R.S. §§ 1551-1558 (4 M.R.S. § 1558 was not codified).

² P.L. 2015, ch. 406, § 1558(4).

³ 4 M.R.S. §§ 1555(1).

⁴ 22 M.R.S. § 4005 (See P.L. 1977, ch. 118 and P.L. 1977, ch. 511); See also 19 M.R.S. § 752-A(1), P.L. 1993, ch. 629. 19 M.R.S. § 752-A(1) has since been repealed.

closed. In open cases, an allegation of GAL misconduct was subject to review by the judicial officer hearing the case by way of a motion to remove the GAL.

Over time, GALs were asked to make increasingly complex recommendations on multiple issues related to children's best interests, often in cases in which families were dealing with considerable stress and conflict. This expansion of responsibilities, together with concern about the ambiguity of the GAL role, GAL fees, and the lack of a consumer-friendly independent complaint process, prompted the SJC to re-evaluate the use and regulation of GALs.

In 2012, the MJB secured funding from the State Justice Initiative to obtain the expertise of the National Center for State Courts (NCSC) to evaluate best practices for GAL services. The NCSC provided information about GAL systems in other states and concluded that Maine's GAL system was more comprehensive than those found in many jurisdictions. On August 7, 2012, Chief Justice Saufley appointed a 20-member GAL Task Force to assist the SJC in designing and presenting to the 126th Maine Legislature a transparent, accessible, and credible system for resolving complaints against GALs appointed in state courts. The GAL Task Force included 20 members from a variety of stakeholder groups: judges, attorneys in the practice of family law, mental health professionals, legislators, a guardian ad litem representative, and member of the public.

The Task Force issued a report providing its "Recommendations for an Improved Process for Complaints Regarding Guardians Ad Litem" on September 21, 2012 (Task Force Recommendations). The report recommended that the SJC create an effective, yet economical, model for resolving complaints against GALs employing infrastructure and resources already available to the SJC. The Task Force issued the following recommendations:⁵

- (1) Create a 12-member volunteer GAL Review Board (Review Board) of 10 rostered GAL attorneys and two members of the public administered by the Board of Overseers of the Bar (Board of Overseers) to oversee and manage GAL complaints;
- (2) Administer the Review Board as an independent unit under the auspices of the Board of Overseers and assign an attorney from the Board of Overseers to serve as Review Board counsel to review and prosecute complaints about GAL services;
- (3) Develop a GAL complaint process similar to the Board of Overseers' current process regulating attorney conduct.

III. An Act to Improve the Quality of GAL Services for the Children and Families of Maine

In response to concerns about GAL services identified by the SJC's GAL Task Force, other stakeholders, and the public, the Maine Legislature enacted several significant statutory changes

⁵ Recommendations for an Improved Process for Complaints Regarding Guardians ad Litem, Report to the Supreme Judicial Court by the Judicial Branch Guardians ad Litem Task Force, Task Force Charter, (September 2012). One of the members of the Task Force filed a separate memorandum in which he indicated his concerns about the report prepared by the other members of the Task Force. A copy of the Task Force Report, including the separate minority memorandum, is attached as Appendix A.

in 2013. “The Act to Improve the Quality of GAL Services for the Children and Families of Maine”:⁶

- Requires the SJC to issue new rules dealing with the establishment and maintenance of the GAL roster, the criteria for serving as a GAL, continuing education requirements for GALs, a process for removing a GAL from the roster, and the development of standards of conduct for GALs.
- Sets out the general responsibilities of GALs, including the requirement that GALs represent the best interests of the child, maintain the highest standards of professionalism, cultural sensitivity and ethics, complete a thorough, appropriate and fair investigation in a timely fashion pursuant to the order of appointment, and abide by the standards of conduct established by the SJC.
- Requires that an appointment of a GAL must be by court order, that the appointment order be on a court-approved form, that the order specify the GAL’s length of appointment, the specific duties for the particular case and the specific fee arrangements for that case. The Act makes clear that the GAL “has no authority to perform and may not be expected to perform any duties beyond those specified in the appointment order.”
- Requires that the GAL make the wishes of the child known to the court if the child has expressed them, regardless of the recommendations of the GAL.
- Requires that in child protection proceedings, the GAL make recommendations for appropriate services to protect the child’s interest.
- Requires that the SJC establish a complaint process for GALs to include criteria for making a complaint, transparent policies and procedures concerning the investigation of complaints, and a process for providing information to all parties about the complaint process.

A. Adoption of the Maine Rules for GALs on September 1, 2015

Prior to adopting the final draft of the GAL Rules, the SJC held two public hearings to receive written and oral comments on the delivery of GAL services.⁷ The proposed GAL rules and a notice inviting public comments were also posted on the MJB website. After reviewing the NCSC data, the Task Force Report, public comments, and other input from stakeholders, the SJC issued new GAL Rules on September 1, 2015.

The Rules govern the qualifications, standards of conduct, and appointment of GALs, as well as the placement and removal of GALs from the GAL Roster. The Rules are designed to govern and define the services provided to the court and promote the best interests of children, and must

⁶ 4 M.R.S. §§ 1551-1558.

⁷ The first public hearing was held on May 31, 2012, and the second public hearing was held on November 13, 2014.

be construed “to secure the just, speedy, and inexpensive determination of every action.” The Rules more clearly define the role of the GAL, provide for greater screening and training of GALs, provide for a more consumer-friendly complaint process, and include the following specific changes:

- The complaint process was moved from the MJB to a newly created GAL Review Board (Review Board) within the Board of Overseers.
- Consumers of GAL services⁸ are now able to file performance complaints in open⁹ and closed cases.
- Parties continue to be able to file a motion to remove a GAL with the court while their case is on-going.
- Mandatory training requirements were established for all GALs.¹⁰
- Applicant screening requirements (character and fitness evaluation) were added.¹¹
- Oversight of compliance with continuing professional education was transferred from the Office of the Chief Judge to the GAL Review Board,¹² and an ethics credit requirement was added.¹³
- Placement on the GAL Roster is limited to licensed Maine attorneys and master’s level professionals with active licenses.
- The initial appointment order in each case must delineate the GAL’s role and responsibilities.
- All family law¹⁴ appointment orders must set out clearly in advance the specific duties of the GAL, the cost for the GAL services, and the responsibilities of the parties for payment of those costs.¹⁵

⁸ Only parties to a case, GAL Review Board Counsel, and judicial officers have the authority to file a complaint.

⁹ The GAL Rules were amended in September 2016 at the request of the GAL Review Board to limit the Board’s ability to initiate a review or take action with respect to a pending case until the court issues either a final judgment or an order allowing the Board to proceed, or until the GAL is removed or discharged. M.R.G.A.L. 9(d)(1).

¹⁰ Applicants for the GAL roster must attend 18 hours of training to be listed on the family law roster, and 23 hours of training to be listed on the child protection roster.

¹¹ See M.R.G.A.L. 2(b)(2)(C) for a list of the character and fitness requirements for placement on the GAL Roster.

¹² The GAL Review Board is now responsible for approving continuing professional education credits and determining whether a GAL has met his/her annual credit requirements. Previously this was the responsibility of the Office of the Chief Judge, with the support of the Family Division.

¹³ See M.R.G.A.L. 10(a)(1).

¹⁴ Family law cases in this Report include divorces and parental rights and responsibilities cases, both original and post judgment.

¹⁵ See 4 M.R.S. § 1555, 19-A M.R.S. § 1507, and M.R.G.A.L. 4(b)(4). The responsibilities of the child protection GALs continue to be set out in a separate appointment order.

B. Standards of Conduct and Updated Duties of GALs

In the Act, the Maine Legislature clarified the general responsibilities of GALs, and required the SJC to establish standards of conduct for GALs when issuing the new GAL Rules.¹⁶ The guiding principle under the current GAL service delivery framework is that a GAL is allowed to act only as authorized by the terms of his/her order of appointment, and is subject to discipline under the new complaint system for acting beyond the scope of his/her authorized duties.¹⁷ Specificity in the appointment order of duties the GAL is expected to accomplish is a significant change from prior practices. Although there was some initial concern about this new approach, it has increasingly gained support from parties, GALs, and magistrates and judges. In family law cases, the parties know at the outset what fee the GAL will charge for the specific work outlined in the appointment order.¹⁸ This new service delivery framework has reduced misunderstandings between parties over what the GAL is expected to accomplish and, in family law cases, at what cost.¹⁹ A summary of expanded GAL core responsibilities as described in M.R.G.A.L 4 is attached as Appendix B.

C. Establishment of the GAL Review Board and Complaint Process

The Act to Improve the Quality of Guardian ad Litem Services required the Supreme Judicial Court to appoint a 12-member GAL Review Board (Review Board)²⁰ to oversee the newly created GAL complaint process. The GAL Review Board is an independent unit of the Board of Overseers, and is responsible under the new Rules for overseeing the GAL complaint process.²¹ The Board was established by Order of the SJC on September 1, 2015. The Board has four public members, one mental health professional, and seven additional members who are experienced family law attorneys in addition to being rostered GALs.

Any party to an open or closed Title 18-A, Title 19-A, or Title 22 proceeding may file a complaint with the Review Board. A judge, magistrate, or Board Counsel may also submit complaints.

Clear criteria for filing complaints, a complaint form, and written instructions on how to file a complaint are included on the GAL Review Board website. The MJB includes this information on the GAL section of the MJB public website by link, as required by the Act.²²

¹⁶ 4 M.R.S. § 1554(2).

¹⁷ M.R.G.A.L. 4(a), 4(c).

¹⁸ In family law cases, the GAL is required to request an amendment to the appointment order to add or subtract work or request a higher fee. In child protection cases, the State pays the full cost of the GAL.

¹⁹ Pursuant to the standards of conduct expressly included in M.R.G.A.L. 5, GALs are required to: (1) provide independent representation of the child; (2) perform duties promptly, fairly, and competently; (3) develop an understanding of the litigation; (4) explain the court process and role of the GAL to the child; (5) advocate for clear court orders; (6) observe all mandatory reporting requirements under 22 M.R.S. § 4011-A; (7) observe all laws, rules, and regulations regarding confidentiality; (8) limit ex parte communications to extraordinary circumstances and; (9) follow specific guidelines in determining conflicts of interest and mandatory disclosures to the court.

²⁰ See Appendix C.

²¹ M.R.G.A.L 7(a).

²² 4 M.R.S. § 1557.

Complaints from parties about a GAL in open and closed child protection, family law, and probate cases are initially forwarded to the Review Board Counsel (Board Counsel). After an investigation, Board Counsel determines whether the complaint alleges facts constituting GAL misconduct or incapacity under the GAL Rules.

If Board Counsel determines the complaint does not allege a violation of the GAL Rules, Board Counsel dismisses the complaint.

Board Counsel must notify the party making the complaint about the decision to dismiss the complaint, and the person filing the complaint may request that a public member of the Board review the file. The complaint and Board Counsel's investigation materials must be provided to the assigned public member. The public member can approve or disapprove the dismissal by Board Counsel, and may direct that the matter be investigated further and that formal charges be filed against the GAL.

If charges are filed, an evidentiary hearing is held with a three-member panel of the Review Board. The Rules provide an opportunity for the complainant to make a statement to the Review Board Panel concerning the GAL's alleged misconduct and its effect. If the Review Board Panel finds that misconduct under the Rules has occurred, it may issue a reprimand if the matter is minor, there was no injury to a child or to the public, the GAL did not act intentionally, and there is no likelihood of recurrence. If the Review Board Panel finds that misconduct has occurred and that a reprimand is not appropriate, the Panel is required to order the removal of the GAL from the Roster. The decision of the Review Board is subject to appeal as provided in M.R. Civ. P. 80C and the Maine Administrative Procedure Act, 5 M.R.S. § 11001, et seq.

Under the Rules, GALs may be dismissed for the following:

- Violating or attempting to violate the GAL Rules, chapter 32 of Title 4, Title 18-A, Title 19-A, Title 22, or an appointment order issued pursuant to them; knowingly assisting or inducing another to do so; or doing so through the acts of another;
- Engaging in conduct that violates the applicable rules of conduct for guardians ad litem in another jurisdiction;
- Committing any criminal or unlawful act that reflects adversely on the GAL's honesty, trustworthiness, or fitness;
- Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- Having allegations of abuse or neglect against him or her substantiated by the Maine Department of Health and Human Services;

- Failing to maintain compliance with Rule 2’s requirements for placement on the Roster;²³
- In the performance of guardian ad litem duties, manifesting by words or conduct bias or prejudice based upon race, color, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status;
- Willfully violating an order imposing discipline under the Rules; willfully failing to comply with a subpoena validly issued under the Rules; or knowingly failing to respond to a lawful demand from a disciplinary authority, except that the Rules do not require disclosure of information otherwise protected by applicable rules relating to confidentiality; or
- Failing to comply with the duty to report set forth in Rule 5(i)(4).²⁴

From September 1, 2015 through December 31, 2016, 28 complaints were filed with the GAL Review Board. Board Counsel dismissed all 28 complaints, after determining that the complaints did not allege misconduct or incapacity as defined by the GAL Rules. As mentioned above, Board Counsel is required to notify the party making the complaint about the decision to dismiss the complaint, and the person filing the complaint may request that a public member of the Board review the file. A public member of the GAL Review Board was asked by the complainant to review nine of the 28 complaints, and in all nine cases the public member agreed with the initial determination of Board Counsel to dismiss the complaint. Of the 28 cases that were dismissed, 15 were family law cases, 11 were child protection cases, and two were probate cases. There are no pending complaints under investigation by Board Counsel as of the date of this Report.²⁵

Under the Rules, the court maintains the ability to remove a guardian ad litem from a particular case upon motion of a party or on the court’s own motion.

IV. Actions taken by the Maine Judicial Branch to give effect to the Act and Rules

A. Post- Judgment Evaluation Policy

²³ M.R.G.A.L. 2 outlines the qualifications for becoming a rostered GAL, such as credentials, training, and character and fitness requirements.

²⁴ M.R.G.A.L. 5(i) requires a rostered GAL to report (to the court or to Board Counsel, depending on the offense) conflicts of interest, criminal convictions, pending criminal charges, professional disciplinary actions, safety assessments or substantiations by the Department of Health and Human Services for child abuse/neglect, or the existence of a person in his/her home who is potentially “unsafe” as defined in the rule.

²⁵ The data was provided by the GAL Review Board Counsel.

The Act²⁶ requires the MJB to develop and implement a post-judgment evaluation policy and process that includes the collection and analysis of data in closed cases in which GALs were appointed.

In response to the Act, the Judicial Branch developed a post-judgment evaluation process that was implemented in January of 2017. When a final judgment is entered, clerks mail both the final judgment and a postcard to parties²⁷ in family law and child protection matters and to their attorneys. Parties and attorneys are invited to complete an electronic survey about their experience with the GAL in their case.²⁸ The postcard directs the attorneys and parties to a MJB webpage that includes four separate surveys.²⁹ Survey results will be collected and analyzed by MJB staff.

The MJB opted to evaluate GAL services through the Survey Monkey[®] online platform because it is an efficient, effective, and fiscally responsible way to collect and analyze data. The alternative would be to have a third-party evaluation expert collect and analyze data, which would require funding. If directed by the Legislature, the MJB would solicit cost-effective proposals from experts for conducting a comprehensive evaluation of Maine GAL service delivery.

Introductory language on all four surveys explains that the survey is to evaluate the GAL process and not to discipline or commend a particular GAL, and emphasizes that the survey will not affect the outcome of any case. To encourage participation, survey responses are anonymous, and the data derived will be compiled and summarized.

The MJB will use the information derived from the survey results to help assess whether any further modifications to the GAL Rules are needed.

B. GAL Services Coordinator

The MJB hired a GAL Services Coordinator in December 2015 to provide support for the implementation of quality improvements for the delivery of GAL services in accordance with the Act and Rules. In addition to implementing and assisting in implementing the requirements under the Act as described above, the GAL Services Coordinator, under the direction of the Chief Judge of the District Court, reconfigured the four-day GAL core training so that it now includes specific learning outcomes for each presentation. The mandatory educational program provides training on a wide range of topics, including mental health and trauma in children, domestic violence, substance abuse, interviewing children, cultural competency, the scope of the appointment order, ethical duties with regard to fees, and best practices for writing a GAL report.

²⁶ This section of P.L. 2015, ch. 406, § 1558(4) (as well as § 1558(3)) was not fully codified in 4 M.R.S. § 1558.

²⁷ The term “parties” does not include the Department of Health and Human Services (DHHS) caseworker or the GAL.

²⁸ A GAL is appointed in all child protection cases, but only in a small percentage of family law matters.

²⁹ There are four surveys: (1) Survey of Parents Regarding Guardians ad Litem in Child Protection Cases; (2) Survey of Parents Regarding Guardians ad Litem in Family Law Cases; (3) Survey of Attorneys Regarding Guardians ad Litem in Child Protection Cases; and, (4) Survey of Attorneys Regarding Guardians ad Litem in Family Law Cases. The surveys are attached as Appendix D.

The GAL Services Coordinator worked with the Maine State Bar Association to create a regularized training schedule. GAL Review Board members and the GAL Services Coordinator also offered informational sessions in other venues over the last year, in an effort to reach as many currently-rostered GALs as possible. The GAL Services Coordinator assisted the Chief Judge in revising the family law GAL order of appointment to require judicial officers to include: (1) the maximum number of hours, (2) the total fee a GAL is allowed to charge parties in a case, and (3) the specific responsibilities expected of the GAL.³⁰ Currently, the GAL Services Coordinator is working on a number of new projects to further improve GAL services, including developing guidelines for the preparation of GAL reports, developing plans for collection of data about GAL appointments, and developing a memorandum addressing the new requirements to be distributed to all family law attorneys.

C. Expansion of the Maine Judicial Branch Website on GAL Services

The GAL portion of the MJB website was updated with clear information about the appointment, duties, fees, and screening/training of GALs, including a link to the GAL Review Board about the GAL complaint process. The website invites the public to comment about GAL services by calling or emailing the GAL Services Coordinator at the contact location indicated on the website.

V. SUMMARY

In response to the Act, the SJC, the Legislature, and other stakeholders provided sustained focus and additional resources to improve the quality of GAL services for the children and families of Maine. Many of the goals behind the Act to Improve the Quality of GAL Services for the Children and Families of Maine have already been met. The SJC has promulgated new rules governing the qualifications, standards of conduct, and duties of GALs, and established a complaint process outside the MJB administered by an experienced professional licensing board. The Maine Judicial Branch developed and instituted targeted appointment orders for GALs. The MJB has updated its public website to include more information about GAL services and developed a process for collecting comments from the public and feedback from parties and attorneys in closed cases.

³⁰ See revised family law GAL appointment order at Appendix E. A GAL is now required to request prior authorization from the judicial officer to complete any work not delineated in the GAL's appointment order or to charge the parties more for his/her services than is listed in the Order.



Recommendations for an Improved
Process for Complaints Regarding
Guardians Ad Litem

Report to the Supreme Judicial Court by the
Judicial Branch Guardians Ad Litem Task Force

September 21, 2012

I. TASK FORCE CHARGE

On August 7, 2012, Chief Justice Saufley appointed a Guardian Ad Litem Task Force “to assist the Supreme Judicial Court in designing and presenting to the 126th Maine Legislature, a transparent, accessible and credible system for resolving complaints against Guardians ad Litem who are appointed in the State Courts.” The complete charge to the Task Force is included in Appendix A.

In Maine, Guardians *ad litem* (“guardians”) were created by statute in 1977.¹ At that time, no programmatic infrastructure was established for the effort.² It was not anticipated that the role of the guardians would expand to include a broad range of tasks, such as making specific recommendations about placement of children.³ Today, guardians in Maine are called upon to assess parenting abilities in situations where families are under extreme stress and in high conflict.

As the scope of responsibilities of guardians increased, so too has the volume of cases they handle. In 2011, guardians were appointed in 673 family matter cases. There are currently 286 guardians in Maine. Most (81%) are attorneys.

¹ 22 M.R.S. § 4005 (See P.L. 1977, ch. 118 and P.L. 1977, ch. 511); *See also* 19 M.R.S. § 752-A(1), P.L. 1993, ch. 629.

² 19-A M.R.S. § 1507. In contested proceedings in which a minor child is involved, the court may appoint a guardian ad litem for the child. 19-A M.R.S. §§ 904, 1653, 1803. The appointment may be made at any time, but the court shall make every effort to make the appointment as soon as possible after the commencement of the proceeding. *Id.* The court may appoint a guardian ad litem when the court has reason for special concern as to the welfare of a minor child. *Id.* *See also* 22 M.R.S. § 4005.

³ 22 M.R.S. § 4005. The guardian ad litem shall make a written report of the investigation, findings and recommendations and shall provide a copy of the report to each of the parties reasonably in advance of the hearing and to the court, except that the guardian ad litem need not provide a written report prior to a hearing on a preliminary protection order. The court may admit the written report into evidence. *See also* 19-A M.R.S. § 1507. The guardian ad litem shall make a report of investigations, findings and recommendations as ordered by the court, with copies of the report to each party and the court.

Approximately 15% of rostered guardians are licensed mental health providers. A small number of guardians (4%) do not possess either of these professional licensures.

In 2011, the Office of the Chief Judge of the District Court received fourteen complaints about guardians. Currently, Maine Rules for Guardians Ad Litem designate the Chief Judge for ongoing evaluations and oversight of Maine guardians. The Chief Judge may conduct a review of a guardian in response to a complaint, or on his or her own motion. The Chief Judge appoints a three-person review panel to investigate and issue a written decision.

The current process for resolving complaints against guardians does not adequately separate the complaint process from the litigation process. Parties who are dissatisfied with a guardian's performance while a case is still proceeding are instructed to file motions with, or to otherwise notify, the presiding judge. Once a case is closed, parties may file complaints with the Chief Judge of the District Court.⁴ This bifurcated process is confusing to litigants and leaves the Chief Judge with limited ability to address emergency situations during the life of the case.

For many years, the Judicial Branch and outside entities have shared a concern that a better system is needed to ensure that parties have access to an effective and efficient complaint process that inspires public trust and confidence.⁵ This year, the

⁴ M.R.G.A.L. II(4).

⁵ Office of Program Evaluation and Government Accountability. Report No. SR-GAL-05, (Maine, July 2006) and The Judicial Branch Advisory Committee on Children and Families: Recommendations for a Guardian ad Litem Program for the State of Maine, Winter 2008.

Legislature “sought the input of the Judicial Branch in the creation of such a system.”⁶

On May 31, 2012, the Supreme Judicial Court invited the public, interested parties, and stakeholders to a meeting regarding improving the Guardian Ad Litem complaint process and the Court solicited written public comment.⁷ In August, Chief Justice Saufley convened the Guardian Ad Litem Task Force⁸ and charged the group to complete work and make recommendations to the Supreme Judicial Court by the end of September 2012.

The Judicial Branch plans to report recommendations for improving the complaint process to the Legislature in October of 2012.⁹

II. TASK FORCE PROCESS

The Guardian Ad Litem Task Force included twenty members from a variety of stakeholder groups: judicial officers, attorneys in the practice of family law, mental health professionals, legislators, a guardian representative and a public member. A list of Task Force members is included in Appendix B.

Supreme Court Justice Warren M. Silver chaired the Task Force, with extraordinary assistance from member Kirsten Skorpen, Family Division Resource Coordinator, and Brandon Rubenstein, University of Maine Law Student. Additional staff

⁶ See Charter in Appendix A.

⁷ By July 24, 2012, the Court received over 25 comments. See www.courts.state.me.us/maine_courts/supreme/gal_comments.shtml

⁸ *Id.*

⁹ *Id.*

support was provided by Laura M. O'Hanlon, Chief of Court Management, and Elizabeth Maddaus, Family Division Program Coordinator.

Three Task Force meetings (August 10, August 24, and September 4) were held at the Maine Judicial Center in Augusta. Guests attending and presenting information at these meetings included Chief Justice of the Maine Supreme Court, Leigh I. Saufley; Chief Judge of the District Court, Charles C. LaVerdiere; Deputy Chief Judge of the Maine District Court, Robert E. Mullen; Executive Director of the Maine Board of Bar Overseers, Jacqueline L. Rogers; Commissioner of the Department of Professional and Financial Regulation, Anne Head; and Chief of Court Management, Laura M. O'Hanlon.

The Task Force examined the current complaint process and determined that it was not widely understood, was difficult for the public to navigate, and was not well-suited to handle complaints that arise during an open case. Members of the public have difficulty learning about the proper place to file complaints; there is no simple explanation of the process that makes clear the parameters and requirements; and there is no mechanism for the Chief Judge to do any investigative work during the pendency of a case. Currently, the Chief Judge has limited ability to respond to emergencies during litigation.

In addition to hearing presentations about the current process for resolving complaints about guardians, as well as current processes for handling complaints about attorneys and many other licensed professionals in Maine, the Task Force examined complaint processes in several other states. Wyoming, Washington, New Hampshire and Colorado have recently evaluated and modified procedures for filing complaints against

guardians.¹⁰ Task Force members agreed that the New Hampshire system provides an effective model for Maine. In New Hampshire, complaints against guardians are handled by an administrative body charged with certifying and, if necessary, disciplining guardians.¹¹

III. TASK FORCE RECOMMENDATIONS

The Task Force proposes an effective, yet economical, model for resolving complaints against guardians that uses infrastructure and resources already available to the Supreme Judicial Court. The proposed process calls for the creation of a new, volunteer Guardian Ad Litem Review Board (“Review Board”). This twelve-member group, appointed by the Supreme Judicial Court, would include ten rostered guardians and two members of the public. Every effort will be made to include mental health professionals as well as attorneys on this Board.

The proposed Review Board would be administered as a unit of the Board of Overseers of the Bar, thus minimizing the need for additional resources and capitalizing on the expertise of those who currently resolve complaints about attorneys. A current legal position within the Board of Overseers of the Bar would be partially assigned as Counsel to the Review Board.

¹⁰ See e.g., New Hampshire: <http://www.nh.gov/gal/complaints.htm>; Washington: http://www.courts.wa.gov/committee/?fa=committee.display&item_id=319&committee_id=10; and Wyoming: <http://gal.state.wy.us/index.php?page=complaint-procedure>.

¹¹ See New Hampshire Guardian ad Litem Board, Complaint Process 2011: <http://www.nh.gov/gal/>; New Hampshire Guardian ad litem Board. See also, Complaint Process. 2011. <http://www.nh.gov/gal/documents/gal-form33.pdf>

The guardian complaint process would be similar to the process currently used by the Board of Overseers of the Bar.¹² Counsel to the new Review Board would investigate complaints of guardian misconduct. Any party to a case or a judicial officer may submit a signed complaint alleging misconduct by the guardian appointed to their case. There would be no statute of limitations on the filing of complaints. Assistance would be available to complainants throughout the process.

The Guardian Ad Litem Counsel could dismiss any complaint, with or without investigation, if the matter did not constitute misconduct subject to sanction under the *Maine Rules for Guardians Ad Litem*.¹³ Counsel would notify the complainant and the guardian of the dismissal in writing. The notification would state the reason for the dismissal and the complainant would have fourteen days to appeal the Counsel's decision to dismiss the complaint to a three-member panel of the Review Board ("Panel").

If Counsel does not dismiss a complaint, it would be referred to the Panel for investigation. This Panel would include at least one member of the public and one guardian with the same professional background as the subject of the complaint. The subject of the complaint would be given a copy of the complaint and the opportunity to submit a response to the Review Panel. Counsel will share the guardian's response with the complainant, who may submit a rebuttal.

At the conclusion of the investigation, the Panel would issue a written decision: dismissal of the complaint, a remedial disposition (for example, dismissal with warning,

¹² See M. Bar. R. 71.

¹³ A separate Guardian *ad litem* task force studying the guardian ad litem rules is being held concurrently and the standards that are ultimately established will be the standards that any complaint resolution process will use when dealing with a guardian complaint.

public reprimand, monitoring, temporary or on-going suspension), or permanent removal of the guardian from the roster. A guardian could appeal the Panel's decision, most likely to a single Justice of the Supreme Judicial Court.

The Task Force discussed the broad outlines of the complaint and appeal process, recognizing that the Supreme Judicial Court would issue detailed rules should these broad recommendations be accepted. The following summarizes Task Force deliberations in several procedural areas that need further clarification from the Supreme Judicial Court.

Standing to file complaints

The Task Force discussed whether the Review Board would rely on traditional notions of standing when reviewing complaints. Some members believe that only parties or the presiding Judge should be permitted to file complaints against guardians. Others favor a broader notion of standing, including those interviewed by guardians, school personnel, and other individuals related to the case.

Statute of limitations

The Task Force discussed instituting a time limit for filing complaints and reached consensus that there should be no such limitations. Members noted, however, that older complaints would be difficult to investigate. An additional concern of delaying filing and investigation of complaints is that a problematic guardian might continue poor practice over a lengthy period of time.

Record Retention

If the statute of limitations for bringing complaints extends beyond standard record retention requirements for the primary professions¹⁴ of the guardians (legal and mental health), the Supreme Judicial Court should impose its own record retention requirements so that complaints can be investigated, prosecuted, and defended on a complete record.¹⁵

IV. CONCLUSION

Task Force members were acutely aware of the State's and the Judiciary's fiscal constraints as they made the recommendations outlined above. The need for additional resources is minimized with the decision to recommend a new, volunteer board that would operate under the administrative auspices of an existing organization with professional staff already handling similar matters.

The estimated annual cost for the proposed guardian complaint system is approximately \$100,000. The Task Force recommends that guardians pay an annual registration or rostering fee of \$100, resulting in approximately \$20,000 in annual revenue.¹⁶ Each party would pay a

¹⁴ See, e.g., M. Bar R. 7.3(n) (attorney must retain financial records 6 years after distribution of funds or property); ME ADC 10-144 Ch. 112, Ch. XII, § XII.B (Not specific to social workers, but applies to social workers who must preserve medical records either on paper or by other electronic/optical means, for a period of seven (7) years. If the patient is a minor, the record must be retained for at least six (6) years past the age of majority.)

¹⁵ See footnote 17.

¹⁶ There are 286 rostered GALs and there is a strong possibility that this number will be reduced after the \$100 fee is assessed.

one-time, \$50 fee for the appointment of a guardian. Parties would have the option of applying for a fee waiver based upon financial circumstances.¹⁷

Costs not covered by fee revenues would be covered through a line item in the Judicial Branch budget. The Task Force recommends that funds be redistributed within the Judicial Branch operating budget to cover these costs, rather than seek an additional allocation from the Legislature.

The Task Force proposes that the new complaint resolution system contain a provision requiring a five-year sunset provision, allowing for rigorous data collection and evaluation before instituting a permanent oversight model for guardians. This provision would also afford time to assess the impact of the proposed fee structure and possible alternative funding options.

The Judicial Branch Guardian Ad Litem Task Force has concluded that the current process for handling complaints against guardians could be substantially improved. In order to insure an open, efficient and cost-effective process, the Task Force recommends the creation of a twelve-member Guardian Ad Litem Review Board that would constitute three-member Review Panels to handle specific investigations. The Review Board would be administered as an independent unit under the auspices of the Board of Overseers of the Bar. A legal professional staff member of the Board of Overseers of the Bar would be assigned half-time to serve as Counsel to the Review Board and the Review Panels. The Task Force believes that this model will create the accessible and fair process that the people of Maine deserve. The Task Force further believes that the website of the Board of Overseers of the Bar could be expanded to allow for an effective, clear, and consumer-friendly complaint process.

¹⁷ If there is a fee waiver then this \$50 fee will not be assessed to a party. The Maine Judicial Information System does not capture data on fee waivers so the number of indigent parties is unknown, and therefore, the actual cost allocation is difficult to determine.

APPENDIX A

JUDICIAL BRANCH GUARDIAN AD LITEM TASK FORCE Complaint Resolution System

Type: Task Force
Established: August 7, 2012
Chair: Hon. Warren M. Silver, Supreme Judicial Court
Report date: September 21, 2012
Reports to: Supreme Judicial Court
Completion Date: October 1, 2012, subject to the continuing call of the Chief Justice

I. Purpose:

The purpose of the Task Force is to assist the Supreme Judicial Court in designing and presenting to the 126th Maine Legislature, a transparent, accessible, and credible system for resolving complaints against Guardians ad Litem who are appointed in the State Courts. The design is intended to be independent of and separate from the litigation process and the adjudication of facts and law in individual cases.

The Legislature has sought the input of the Judicial Branch in the creation of such a system. The Judicial Branch will report its recommendations to the Legislature in October of 2012. Thus, the Task Force will exist for a short term and will be called upon to work intensely through August and September of 2012.

II. Authority:

The Task Force will seek input, suggestions, and recommendations from individuals and groups within and outside Maine state government. The Task Force is authorized to study policies and procedures considered by or in effect in other states and any other model policies or procedures. The Task Force may propose recommendations generally and those in the form of proposed rules, rule amendments, statutes, orders, or policies.

There is no funding authorized for the work of the Task Force.

III. Meetings:

The Chair shall schedule the meetings of the Task Force. The Task Force shall meet as often as is necessary to complete its responsibilities. Meetings will

be held at a location announced by the Chair. Meetings will be publicly announced on the Judicial Branch website.

IV. Membership:

The membership of the Task Force shall include the following:

- Justice of the Supreme Judicial Court, Chair
- District Court Judge
- Family Law Magistrate
- The Attorney General or designee
- Probate Court Representative
- Members of the Maine Legislature
- Representative of Maine Coalition to End Domestic Violence
- Family Division Resource Coordinator
- Attorneys in the Practice of Family Law
- Representative of the Maine Guardian ad Litem Institute
- Public Member
- Others at the invitation of the Chief Justice

V. Reporting:

The Task Force will issue a report to be presented to the Supreme Judicial Court on or before September 21, 2012.

VI. Task Force Duration:

Unless the charter is extended by the Chief Justice, the Task Force will cease to exist on October 1, 2012.

Dated: August 7, 2012

Approved by:

/s/

Leigh I. Saufley
Chief Justice

**APPENDIX B
JUDICIAL BRANCH
GUARDIAN AD LITEM TASK FORCE
Membership Roster**

Associate Justice of the Supreme Judicial Court:
Justice Warren M. Silver (**Chair**)

District Court Judge:
Judge E. Paul Eggert

Family Law Magistrate:
Magistrate Paul D. Mathews

The Attorney General, or his designee:
Nora Sosnoff, Esq.

Probate Court Representative:
Judge Donna Bailey, York County Probate Court

Members of the Maine Legislature:
Representative Charles R. Priest
Representative Michael G. Beaulieu
Senator Roger J. Katz
Senator Barry J. Hobbins

Maine Coalition to End Domestic Violence Representative:
Julia Colpitts, Director MCEDV

Family Division Resource Supervisor:
Kirsten Skorpen, Family Division Resource Coordinator

Attorneys in the Practice of Family Law:
Michael P. Asen, Esq.
Audrey B. Braccio, Esq.
Kristin A. Gustafson, Esq.
Margaret T. Johnson, Esq.
David M. Lipman, Esq.
Timothy E. Robbins, Esq.

Student Staff Attorney – University of Maine School of Law:
Brandon Rubenstein

Maine Guardian ad Litem Institute Representative:
Thomasine M. Burke, Esq.

Public Member:
Dr. Jerome Collins

Member at the invitation of the Chief Justice, Supreme Judicial Court:
Alison A. Beyea, Esq., Muskie Institute

APPENDIX C

TO: GUARDIAN AD LITEM TASK FORCE
FROM: JEROME A. COLLINS M.D.
DATE: SEPTEMBER 21, 2012
RE: MINORITY COMMENTS ON REPORT TO THE SUPREME JUDICIAL COURT
BY THE JUDICIAL BRANCH GUARDIANS AD LITEM TASK FORCE

CONTEXT:

From my position as the only public member of the 19-member committee, the only one with no personal financial interest in the Guardian ad litem problem, my perspective on the problem is quite different from that of the majority of the committee. While I believe that the chairing of the meetings was fair and friendly, there were decidedly biased undercurrents amongst the participants. "Is there a GAL problem?" is still a serious issue for many. Why not just tweak the current system, which works so well (for GALs?) was another fairly significant position. And, "if 'they' want change, make them pay for it," was the surprisingly hostile position of one prominent family lawyer. I mention these few (of many) examples of bias that I felt, to indicate a strong interest on the part of a significant number of the committee in clinging to the 'status quo' to the greatest extent possible. This protective conservatism of the majority colors the document and colors my current opinion of it.

THE CURRENT DOCUMENT:

The document I received appears to be very sketchy. It pulls together many threads of issues that were discussed in our three meetings, but it leaves unresolved some very significant questions of detail. There are no instructions for users. There are no guided forms for users. There is no explanation to users in clear language how the process would work, the steps they would take, the algorithm. It is not geared towards a citizen complaint made without legal assistance. In general, user-oriented supports are absent. It desires to imitate the NH complaint process but in our estimation it falls short. Without more fleshed-out detail the document is a "tabula rasa" on which one can project ideas but without solid grounding. It leaves a great deal to the input of the Supreme Court, but disallows helpful guidance to the court and forces us to give the court a blank conceptual check, when we've never done business before and don't know if we share common ground.

THE UNDERLYING CONCEPTS:

What exactly is the conceptual nature of a complaint regarding a Guardian ad litem? Is it a legal complaint between two adversaries about allegations of harm or damage, or is it a vocational complaint about GAL performance to an oversight agency from one or more members of the public, which questions whether this worker's performance meets publicly approved/regulated standards of practice? In our opinion, the current document attempts to

merge the two ideas unsuccessfully at the expense of the consumer complaint. It strives to address the vocational questions, but in a heavily legalistic context that is apt to suffocate the consumer. Part of the problem is that GAL's vocational considerations lack a standard of practice, and GALs themselves lack an experience in how to judge standard practices of colleagues. The document makes no mention of training for all concerned in oversight that might teach these skills even the use of the court room concept of "standing" belies a legalistic bias, which would be unfamiliar and constricting to consumers.

This awkwardness can be seen in the questions raised in committee about "standing." In consumer protection agencies, the notion of "standing as traditionally applied in court (who may participate) doesn't apply. It is off-topic. Any member of the public with direct actual experience of a worker's malfunctioning may bear witness. It enhances agency oversight. This awkwardness and conceptual model confusion makes the creation of the new complaint process worrisome. In NH it was found after an initial placement of the complaint process in the Judicial Branch the lack of experience of this branch in dealing with vocational issues and consumer protection necessitated a move to the licensing bureau. We feel that this is very apt to happen in Maine.

THE 12 MEMBER REVIEW BOARD:

This board with 12 members, two of whom would be from the public, with the other 10 being Guardians ad litem, seems to us to stack the decks wildly in favor of GALs. But it is a problem, not just in terms of numbers and composition. It is also a problem of how such a board would function in carrying out its duties. There is absolutely no tradition amongst the GALs in Maine or within their trade organization for self-policing. There is little in the role or experience of GALs that prepares them to address consumer protection issues. Trade organizations, such as MEGALI, (and others) are well known for their tolerance of malfunctioning even as it approaches a level of public scandal. Further what standards of practice would the panel be using? How would they judge a failing? Would any of the panels have experience in assessing vocational functioning? It raises a host of questions about the knowledge skill and experience necessary to make critical vocational and consumer protective judgments.

In addition, there is also the very important question of attitude towards the public on the part of GALs. They see themselves as allies of judges and of the children they deal with. They are habituated to stand apart from the parties and exhibit independence. From our experience there is very often significant defensiveness to criticism on the part of these lightly trained GALs and of their trade organization. Some of these attitudinal biases surfaced during the recent committee meetings. Examples: "Is there a problem?"; "Do we need a new program?"

In our view board composition and board training for the oversight role need to be reconsidered.

FINANCING:

In brief, it is our view, as a matter of principle, that the public shouldn't have to pay to make a vocational complaint to the oversight agency about one of their workers, be that oversight the responsibility of the Judicial Branch or of the Administrative Branch. It should be

noted that there is currently no charge for public complaints by Maine's licensing boards. A fee to make a complaint sends a perhaps unintentionally off-putting message to the public: your complaint will cost you. It is a deterrent; we don't really want to know. One member of the committee expressed the issue with considerable animus: "Make them pay!", and suggested complaints were "an ego issue." It raises a serious oversight question: Does the Judicial Branch truly want to know about malfunctioning officers of the court in order to correct these situations? "Make them pay!" is not an attitude that encourages the public to assist the Judicial Branch in its oversight.

GAL OVERSIGHT AND LICENSING BOARD OVERSIGHT:

Although it was mentioned in the committee, the jurisdictional conflict about a GAL whose actions appear to be malpractice of their base profession is not addressed in the current proposal. It is a serious consumer protection issue that a professional could avoid corrective action from complaints to their licensing board by needing to address GAL complaints at the Judicial Branch first. It is a serious problem, troubling to the public. There needs to be a corrective plan developed with the licensing boards.

WILL THE "NEW COMPLAINT PROCESS" BE USED BY THE PUBLIC?

At the moment, there is an unofficial, recent embargo by the public on GAL complaints. This action has arisen, because many people felt that the current complaint process was demeaning, always resulted in dismissal-even in the face of serious considerations. People also felt that the seemingly inevitable dismissal whitewashed malfunctioning GALs and gave no consumer warning of bad actors. Will the new process be used? Hard to say, but its use will definitely be limited without our endorsement. Your limited "statistics" are apt to be even better!

I regret having to address so many problems on the eve of submitting a proposal to the Supreme Court, but so many ideas were presented in the committee meetings without clear direction-other than broad principle-being agreed on that seeing a written proposal surfaces many concerns. These are expressed here as clearly as possible; however, I'd be pleased to explain further, if appropriate.

SUMMARY OF EXPANDED GAL CORE RESPONSIBILITIES AS DESCRIBED IN
M.R.G.A.L 4

The earlier GAL Rules included three core obligations of the GAL in its section on standards of practice: (1) exercise independent judgment, (2) protect child's interest, and (3) faithfully perform duties.¹

Those core obligations were expanded in the Act to include the following standards of conduct: (1) perform assigned duties independently and impartially within the scope of his/her appointment order (2) represent consistently the best interest of the child and provide information to the court that assists the court in determining the best interest (3) understand and uphold the law and court orders related to the appointment order (4) maintain the highest standards of professionalism, cultural sensitivity and ethics (5) recognize timely resolution serves the best interest of the child and the child's need for stability (6) within the scope of authority defined by statute or court order complete a thorough, timely, appropriate and fair investigation (7) communicate in a developmentally appropriate way with the child (8) make well-reasoned and factually based written recommendations regarding the best interest of the child (9) include parties in the investigation, use effective communication techniques, recognize limitations that may be imposed by financial resources of the parties, and be aware of the cultural and socioeconomic status of the parties (10) complete assignments and written reports in a timely manner and communicate effectively with the court in motions, reports, recommendations and testimony.²

The Act and M.R.G.A.L. 4 also delineated the duties of GALs in family law and in child protection cases, as follows:

Family law GAL duties. The Act requires the family law GAL to act in the best interest of the child, make the child's wishes known to the court, and file a timely report.³ The basic duties of a GAL in a family law case under M.R.G.A.L. 4 include (depending on the terms of the appointment order):⁴ (1) meeting and interviewing the child (if over 3 years old) in the home; (2) interviewing the parent(s) and other adult(s) who reside in the home; (3) completing and filing a written report of his/her investigation, findings, and recommendations. The GAL is also required to act in the best interest of the child and make the wishes of the child known to the court if the child has expressed them, regardless of the recommendation of the GAL.⁵ The court also has the discretion to include other duties in a family law appointment order as listed in M.R.G.A.L. 4(b)(4)(D)(iii).

Child protection GAL duties. The duties of the child protection GAL now under the Act, Title 22, and M.R.G.A.L 4 are: (1) to have face-to-face contact with the child seven days after appointment, and at least once every three months thereafter; (2) file a GAL report once every six months; (3) act in the best interest of the child; (4) conduct an investigation that includes, if appropriate, a review of mental health, medical, and school records, and interviews with parents, foster parents, teachers, caseworkers and other persons involved in caring or treating the child; (5) make the wishes of the child known to the court, even if he/she disagrees with those wishes; (6) file necessary court motions to assist the court in acting in a child's best interest; (7) participate in hearings; (8) protect the child as a witness; (9) make recommendations to the court and advocate for services to protect a child's best interest; (10) participate in the development and implementation of plans or orders that affect the best interest of the child; (11) monitor reunification plans.⁶ The court also has the authority to authorize additional duties such as those outlined in M.R.G.A.L. 4(c)(9).

STATE OF MAINE
SUPREME JUDICIAL COURT

APPOINTMENTS TO
GUARDIAN AD LITEM REVIEW BOARD

Effective September 1, 2015

WHEREAS, the Maine Supreme Judicial Court adopted the Maine Rules for Guardians Ad Litem,

WHEREAS, Rule 7 of the Maine Rules for Guardians Ad Litem establish the Guardian Ad Litem Review Board as an independent unit within the Board of Overseers of the Bar to administer the regulation of guardians ad litem,

WHEREAS, Rule 7(a)(2) provides that the Maine Supreme Judicial Court shall appoint twelve people to serve on the Review Board, eight of whom shall be on the roster of guardians ad litem and four of whom shall be public members, and shall periodically designate one member of the Board as Chair and another as Vice Chair,

NOW, THEREFORE, all of the Justices concurring therein, it is hereby ORDERED that:

Karen Boston, Wayne Doane, Malcolm Dow, Brenda Harvey, Catherine Miller, and Dana Prescott, are hereby appointed as members of the Review Board to serve until September 1, 2017.

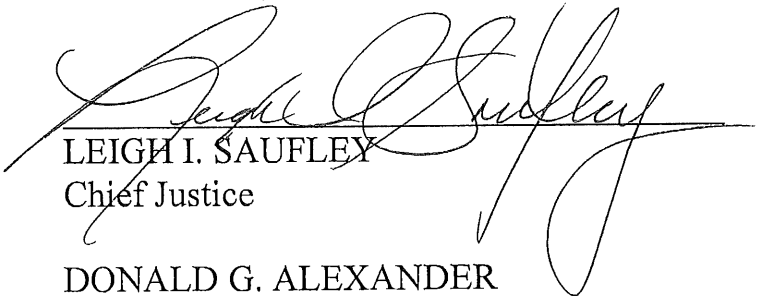
It IS FURTHER ORDERED that:

Kenneth Altshuler, Lisa Bryant, David Dutremble, Christopher Leddy, Diane Tennes, and Mary Zmigrodski, are hereby appointed as members of the Review Board to serve until September 1, 2019.

Dana Prescott shall serve as Chair.
Dianne Tennes shall serve as Vice-Chair.

Dated: September 1, 2015

For the Court,

A handwritten signature in black ink, appearing to read "Leigh I. Saufley", written over a horizontal line. The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

LEIGH I. SAUFLEY
Chief Justice

DONALD G. ALEXANDER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
JEFFRY L. HJELM
THOMAS E. HUMPHREY
Associate Justices

MAINE GUARDIAN AD LITEM REVIEW BOARD

Eligible for Reappointment - September 1, 2017:

GAL Roster Members

Chair Dana Prescott, Esq., Saco

Karen Boston, Esq., Augusta

Wayne Doane, Esq., Exeter

Catherine Miller, Esq., Portland

Public Members

Malcolm Dow, Hollis Center

Brenda Harvey, Gardiner

Eligible for Reappointment - September 1, 2019:

GAL Roster Members

Vice-Chair Diane Tennes, Ph.D., LADC, Bangor

Kenneth Altshuler, Esq., Portland

Christopher Leddy, Esq., South Portland

Mary Zmigrodski, Esq., Augusta

Public Members

Lisa Bryant, Falmouth

David Dutremble, Biddeford



Survey of Parents Regarding Guardians ad Litem in Child Protection Cases

According to our records, you were a parent involved in a child protection case in which a guardian ad litem was appointed. We welcome your response to this survey and appreciate your taking the time to answer the survey questions. We would ask please that you respond to the survey within the next fourteen days.

We want to assure you that if you respond to the survey, your survey responses will be anonymous. Your responses will be combined with responses from other people who have responded to their own survey, and all of the responses received will be summarized in a report. That report will be used in the evaluation process of guardian ad litem services.

Because we want to ensure the integrity of the survey process, only one survey may be submitted by each parent.

PLEASE NOTE: The information received from any survey will not change the outcome of any completed case. The information received from any survey will not result in any action taken against, or commendation for, a particular guardian ad litem. Completion of the survey will not serve in any way as a motion, appeal or complaint by any party challenging the outcome of a case, or as a complaint about the services of the guardian ad litem.

1. Did the GAL meet with your child(ren)?

Yes

No

Other/Comment:

2. Did the GAL express your child(ren)'s wishes to the court?

Yes

No

Other/Comment:

3. Did the GAL meet with you?

Yes

No

Other/Comment:

4. Did the GAL file his/her written report in the timeframe ordered?

Yes

No

Other/Comment:

5. Was the GAL's report understandable?

Yes

No

Other/Comment:

6. Was the GAL's report accurate?

Yes

No

Other/Comment:

7. Did the GAL agree with your position?

Yes

No

Other/Comment:

8. Did the GAL help the parties to resolve any of the issues in the case?

Yes

No

Other/Comment:

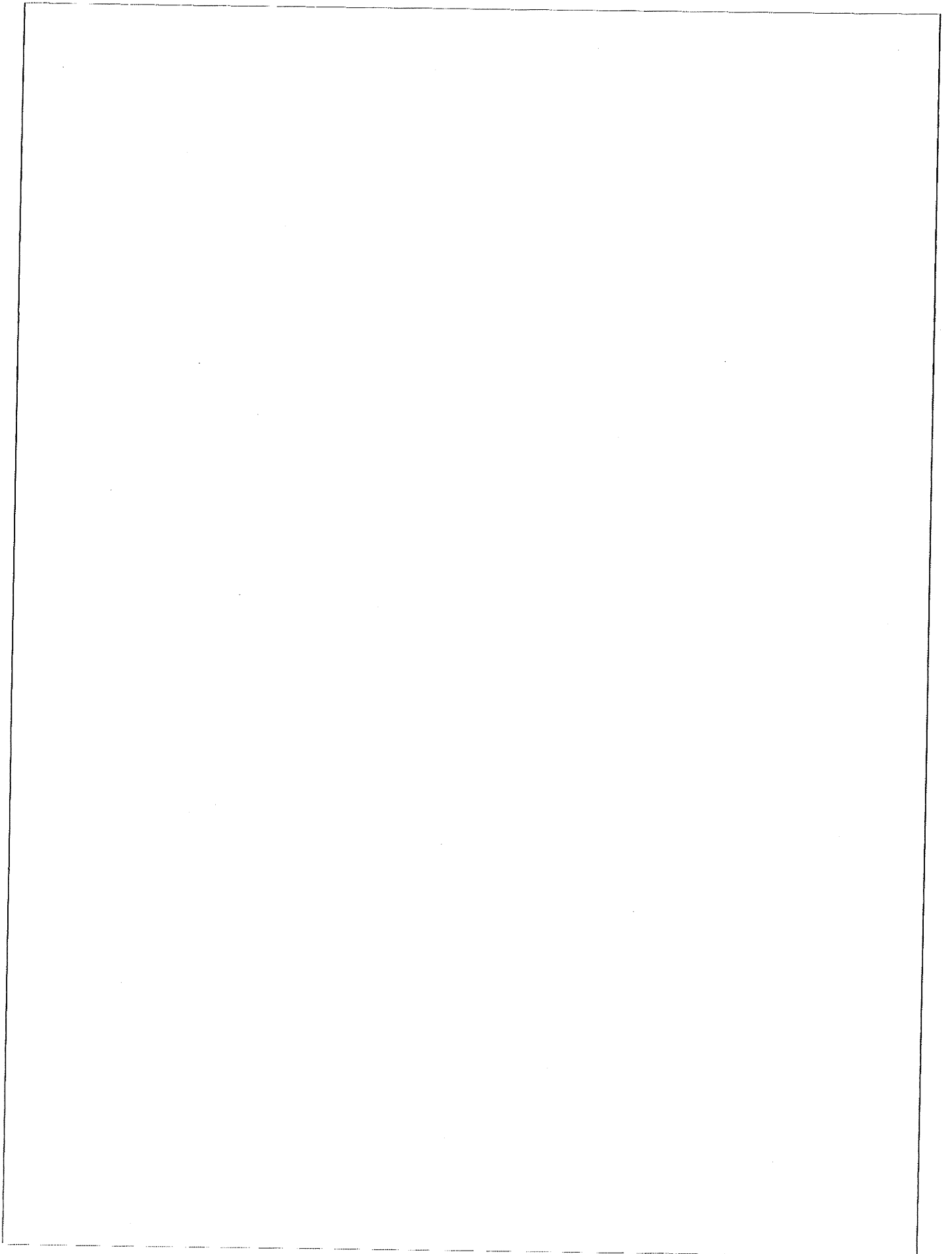
9. Did the GAL treat you with courtesy and respect?

Yes

No

Other/Comment:

10. If you have any comments or ideas on how to improve GAL services you are willing to share, please include them here.





Survey of Parents Regarding Guardians ad Litem in Family Law Cases

According to our records, you were a parent involved in a family law case in which a guardian ad litem was appointed. We welcome your response to this survey and appreciate your taking the time to answer the survey questions. We would ask please that you respond to the survey within the next fourteen days.

We want to assure you that if you respond to the survey, your survey responses will be anonymous. Your responses will be combined with responses from other people who have responded to their own survey, and all of the responses received will be summarized in a report. That report will be used in the evaluation process of guardian ad litem services.

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1. Did an attorney represent you?

Yes

No

2. Did an attorney represent the other parent?

Yes

No

3. Did the GAL meet with your child(ren)?

Yes

No

Other/Comment:

4. Did the GAL express your child(ren)'s wishes to the court?

Yes

No

Other/Comment:

5. Did the GAL speak with all of the people who the court required him or her to contact?

Yes

No

Other/Comment:

6. Did the GAL file his/her written report in the timeframe ordered?

Yes

No

Other/Comment:

7. Was the GAL's report understandable?

Yes

No

Other/Comment:

8. Was the GAL's report accurate?

Yes

No

Other/Comment:

9. Did the GAL agree with your position?

Yes

No

Other/Comment:

10. Did the GAL help the parties to resolve any of the issues in the case?

Yes

No

Other/Comment:

11. Did the GAL treat you with courtesy and respect?

Yes

No

Other/Comment:

12. If you have any comments or ideas that you are willing to share about how to improve GAL services, please include them here.



Survey of Attorneys Regarding Guardians ad Litem in Child Protection Cases

According to our records, you were an attorney for a parent involved in child protection case in which a guardian ad litem was appointed. We welcome your response to this survey with respect to that case and appreciate your taking the time to answer the survey questions. We would ask please that you respond to the survey within the next fourteen days.

We want to assure you that if you respond to the survey, your survey responses will be anonymous. Your responses will be combined with responses from other people who have responded to their own survey, and all of the responses received will be summarized in a report. That report will be used in the evaluation process of guardian ad litem services.

Because we want to ensure the integrity of the survey process, each attorney may submit only one survey for each child protection matter.

PLEASE NOTE: The information received from any survey will not change the outcome of any completed case. The information received from any survey will not result in any action taken against, or commendation for, a particular guardian ad litem. Completion of the survey will not serve in any way as a motion, appeal or complaint by any party challenging the outcome of a case, or as a complaint about the services of the guardian ad litem.

1. Did the GAL meet with the child(ren)?

Yes

No

Other/Comment:

2. Did the GAL express the child(ren)'s wishes to the court?

Yes

No

Other/Comment:

3. Did the GAL meet with your client?

Yes

No

Other/Comment:

4. Did the GAL file his/her written report in the timeframe ordered?

Yes

No

Other/Comment:

5. Was the GAL's report understandable?

Yes

No

Other/Comment:

6. Was the GAL's report accurate?

Yes

No

Other/Comment:

7. Did the GAL agree with your position?

Yes

No

Other/Comment:

8. Did the GAL help the parties to resolve any of the issues in the case?

Yes

No

Other/Comment:

9. Did the GAL treat you with courtesy and respect?

Yes

No

Other/Comment:

10. Did the GAL treat your client with courtesy and respect?

Yes

No

Other/Comment:

11. If you have any comments or ideas on how to improve GAL services you are willing to share, please include them here.



Survey of Attorneys Regarding Guardians ad Litem in Family Law Cases

According to our records, you were an attorney for a parent involved in a family law case in which a guardian ad litem was appointed. We welcome your response to this survey with respect to that case and appreciate your taking the time to answer the survey questions. We would ask please that you respond to the survey within the next fourteen days.

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PLEASE NOTE: The information received from any survey will not change the outcome of any completed case. The information received from any survey will not result in any action taken against, or commendation for, a particular guardian ad litem. Completion of the survey will not serve in any way as a motion, appeal or complaint by any party challenging the outcome of a case, or as a complaint about the services of the guardian ad litem.

1. Did the GAL meet with the child(ren)?

Yes

No

Other/Comment:

2. Did the GAL express the child(ren)'s wishes to the court?

Yes

No

Other/Comment:

3. Did the GAL speak with all of the people who the court required him or her to contact?

Yes

No

Other/Comment:

4. Did the GAL file his/her written report in the timeframe ordered?

Yes

No

Other/Comment:

5. Was the GAL's report understandable?

Yes

No

Other/Comment:

6. Was the GAL's report accurate?

Yes

No

Other/Comment:

7. Did the GAL agree with your position?

Yes

No

Other/Comment:

8. Did the GAL help the parties to resolve any of the issues in the case?

Yes

No

Other/Comment:

9. Did the GAL treat you with courtesy and respect?

Yes

No

Other/Comment:

10. Did the GAL treat your client with courtesy and respect?

Yes

No

Other/Comment:

11. If you have any comments or ideas that you are willing to share about how to improve GAL services, please include them here.

STATE OF MAINE

DISTRICT COURT _____
Location _____
Docket No. _____

Plaintiff

ORDER APPOINTING GUARDIAN AD LITEM (GAL)

Limited-Purpose Standard Expanded

v.

Defendant

APPOINTMENT

1. Pursuant to 19-A M.R.S. §1507(1) and subject to the conditions set forth below, the Court appoints a guardian ad litem (GAL) for the following child(ren) in this matter whose name(s) and date(s) of birth are: _____

2. The GAL appointed by the court and listed below is currently on the roster of qualified Maine GALs; **or**
- The GAL appointed by the court and listed below is a qualified attorney licensed to practice in Maine who is not currently listed on the GAL roster. The following findings establish good cause for appointing an unrostered GAL:
- the GAL has agreed to serve in a *pro bono* capacity; or
 - (other) _____

The GAL's name is: _____

The GAL's contact information is: _____

3. Neither party objects to the GAL appointment or the fee arrangements specified below; **or**
- Plaintiff/Defendant objects to appointment of a GAL but, after careful consideration, the Court concludes the following factors in 4 M.R.S. § 1555(1)(B) support the appointment: _____

_____ ; **and/or**

- Plaintiff/Defendant objects to the fee arrangement below but, after careful consideration, the Court concludes the following factors in M.R.G.A.L. 4(b)(4)(C) support the fee arrangement _____

TYPE OF GAL APPOINTMENT AND GAL'S INVESTIGATIVE DUTIES

(Choose one: limited-purpose, standard or expanded)

4. **Limited-Purpose Appointment.**

A. **Duties.** The GAL must perform the following specific duties: _____

The GAL shall appear at the interim / final hearing in this matter to testify and be available for cross-examination.

The GAL may not perform and is not expected to perform any duties beyond those specified in this order (including responding to telephone calls, emails, and other communications from the parties) unless or until a new order is entered.

B. **Duration.** This GAL appointment terminates at the end of the interim / final hearing.

4. **Standard Appointment.**

A. **Duties.** The GAL shall appear at the final hearing in this matter to testify and to be available for cross-examination. Before the hearing, the GAL must perform the following specific duties:

Observe the child(ren) in the home or homes where the child(ren) regularly reside, and for each child over age 3, conduct a face-to-face interview with the child; and

Interview each parent and any adult who resides in the home(s) where the child(ren) regularly reside.

The GAL may not perform and is not expected to perform any duties beyond those specified in this order (including responding to extra communications by the parties) unless or until a new appointment order is entered.

B. **Duration.** This appointment expires: on _____ (date) or when ordered by the court (usually after the final hearing).

4. **Expanded Appointment.**

A. **Duties.** Until this appointment expires, the GAL shall appear at all hearings in this matter to testify and to be available for cross-examination. Before the hearing, the GAL must perform the following specific duties:

Observe the child(ren) in the home or homes where the child(ren) regularly reside, and for each child over the age of 3, conduct a face-to-face interview with the child; and

Interview each parent and any adult who resides in the home(s) where the child(ren) regularly reside;

Interview the following teachers and other people who have knowledge of the child or family: _____;

Review _____'s mental health medical and/or educational records;

Engage a qualified medical or mental health educational provider to evaluate _____ by _____ (date) with the cost not to exceed: \$ _____;

By _____ (date), procure counseling for these child(ren): _____;

Subpoena witnesses and documents and examine and cross-examine witnesses;

Serve as a contact person between the parents and the child(ren) as follows _____;

Appear at Mediation (in person) and/or the Status Conference (telephonically) and/or the other court-related event(s) listed here: _____;

Other: _____.

The GAL may not perform and is not expected to perform any duties beyond those specified in this order (including responding to excessive communications by the parties) unless or until a new appointment order is entered.

B. **Duration.** This appointment expires: on _____ (date) or when ordered by the court (usually after the final hearing).

WRITTEN REPORT

5. (Choose one):

The GAL is not required to submit a written report before testifying at the hearing (*limited appointments only*), or

The GAL shall submit a written report to the court and to the parties 14 days before the hearing, unless the GAL has been notified that the case has settled, in which case no written report is required. If the GAL is notified by a party that the case has settled before the GAL has completed the written report, the GAL may not bill the parties for any further work on the written report.

The written report, if required, shall include the results of the GAL's investigation and the GAL's recommendations on the following issues: _____

FEE ARRANGEMENT

6. The GAL shall use the standardized billing, itemization requirements and time reporting processes established by the Family Division.

A. The total fee amount is as follows (*choose one*):

- The GAL will complete all the duties required in this appointment order for a flat fee of \$ _____.
- The GAL may charge a total fee of no more than \$ _____ by spending no more than _____ total hours on this matter at the hourly rate of \$ _____/ hr. (Additional hours and fees require prior court approval.)

B. The GAL's fee shall be paid as follows:

- On or before _____ (date), Plaintiff shall pay \$ _____ and Defendant shall pay \$ _____. These amounts are subject to re-allocation at the final hearing.
- In addition, the GAL shall submit an itemized bill to the parties on a monthly / bi-weekly basis.
 - Plaintiff shall pay _____% of each bill and Defendant shall pay _____% of each bill, subject to re-allocation at the final hearing. Each party shall pay the GAL within 14 days after receiving the each bill; **or**
 - Plaintiff shall pay \$ _____ per week / month toward the GAL fees and expenses and Defendant shall pay \$ _____ per week / month toward the GAL fees and expenses, subject to reallocation at the final hearing.

The final fee payments shall be made within 14 days after the filing of the written report or, if no written report is required because the case has settled, within 14 days after the court has adopted the settlement. If the fee is not paid in accordance with this order, the GAL shall notify the court and the parties, and the court may vacate the appointment or take such other action it deems appropriate under the circumstances.

GENERAL PROVISIONS APPLICABLE TO ALL GAL APPOINTMENTS

- 7. The GAL has quasi-judicial immunity from liability resulting from actions undertaken pursuant to her/his appointment.
- 8. The GAL shall make the wishes of the child(ren) known to the court if the child(ren) has/have expressed them, regardless of the recommendation of the GAL.
- 9. Given the confidential nature of the material that may be reviewed by the GAL, all of the GAL's reports shall be confidential and sealed after the report is submitted to the court and to the parties. The reports shall not be disclosed by the parties or the GAL or further released by the Court, except as otherwise ordered by the Court.
- 10. The parties in this matter shall fully cooperate with the GAL's investigation, including, but not limited to, participating in interviews, making themselves and the child(ren) available to the GAL at such reasonable times and places as he or she may request for the purposes of carrying out the duties specified in this appointment order, and signing releases permitting the GAL to access all medical, mental health, or education records that the GAL has been ordered (above) to review.
- 11. The guardian ad litem may advocate for special procedures to protect the child witness from unnecessary psychological harm resulting from the child's testimony, with or without the consent of other parties.
- 12. The parties are restrained and enjoined from exercising undue influence over the child(ren) who are involved in this litigation. Undue influence includes coaching the child(ren) as to their communications or interactions with the GAL or the Court, or orchestrating the child(ren)'s actions with respect to the GAL or the court.

The Clerk is directed to incorporate this Order by reference into the docket for this case, pursuant to Rule 79(a), Maine Rules of Civil Procedure.

Date: _____

Judge/ Magistrate, Maine District Court