

# MAINE STATE LEGISLATURE

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# Recommendations for Amending the Maine Rules for Guardians Ad Litem

Report to the Supreme Judicial Court by the  
Guardian Ad Litem Stakeholders Group

January 14, 2013

## I. BACKGROUND

Title 22 of the Maine Revised Statutes generally requires that guardians ad litem be appointed by the court in all child protective proceedings to “act in pursuit of the best interests of the child.”<sup>1</sup> The statute establishes certain minimum tasks that Title 22 guardians ad litem must perform, but provides discretion to individual courts for tailoring these tasks to a particular case and to the Supreme Judicial Court to establish minimum qualifications for Title 22 guardians ad litem. In addition, in contested family matters proceedings, Title 19-A of the Maine Revised Statutes authorizes but does not require the court to appoint a guardian ad litem “when the court has reason for special concern as to the welfare of a minor child.”<sup>2</sup> A Title 19-A guardian ad litem “shall use the standard of the best interest of the child” in undertaking his or her duties. Courts are given broad discretion to enumerate the duties of Title 19-A guardians ad litem in each individual case, and the Supreme Judicial Court is authorized to establish the qualifications for appointment as a Title 19-A guardian.

In accordance with these statutory mandates, the Supreme Judicial Court promulgated the Maine Rules for Guardians Ad Litem (hereinafter “The Rules), with appended Standards of Practice for Guardians Ad Litem in Maine Courts (hereinafter, “The Standards”), which are intended to “set the qualifications for Guardians ad litem, standards for practice for Guardians, and [to] govern the appointment of a Guardian and the placement of a Guardian on, and the removal of a Guardian from, the Guardian Roster.”<sup>3</sup> The Rules and appended Standards were last reviewed and edited on August 4, 2004, and last amended in March of 2001. In June of 2012, Chief Justice Saufley asked Deputy Chief Judge Robert E. Mullen to convene a group of jurists to discuss the Rules and Standards and prepare suggestions for possibly redrafting the Rules.

Consequently, during the summer of 2012 Deputy Chief Judge Mullen conferred with Associate Supreme Court Justice Donald G. Alexander, District Court Judges Bruce Jordan and Patricia G. Worth, and Family Law Magistrate Paul D. Matthews. The results of those discussions were reduced to a preliminary re-draft of the Rules on July 17, 2012. The jurists

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<sup>1</sup> 22 M.R.S. § 4005(1) (2012). The full text of this statute is set forth in Appendix A.

<sup>2</sup> 19-A M.R.S. § 1507 (2012). The full text of this statute is set forth in Appendix A.

<sup>3</sup> M.R.G.A.L. I(A).

then sought to create a “stakeholders group”<sup>4</sup>—including representatives from the Family Law Section of the Maine Bar Association, the Maine Guardian Ad Litem Institute, the Family Law Advisory Commission, the Office of the Attorney General, and the public—to evaluate and to revise this initial re-draft of the Rules and Standards. The stakeholders group met monthly from August to December of 2012 at the Judicial Center in Augusta to discuss various iterations of the Rules re-draft. In the course of these discussions, the stakeholders group was aware of and attempted to address concerns regarding Maine’s guardians ad litem that had been raised in a public meeting conducted by Supreme Judicial Court Chief Justice Leigh I. Saufley, Superior Court Chief Justice Thomas Humphrey, District Court Chief Judge Charles LaVerdiere and Deputy Chief Judge Mullen on May 31, 2012, as well as in written comments solicited and received by the Judicial Branch following that meeting.<sup>5</sup>

At the final stakeholders meeting on December 14, 2012, the group approved a proposed draft of the Rules to present to the Supreme Judicial Court for its consideration.<sup>6</sup> This proposed draft is enclosed as Appendix C. The substantive recommendations incorporated in this draft are summarized below:

## II. SUMMARY OF RECOMMENDATIONS

### **Global Recommendations**

- Incorporate the Standards in the Rules, rather than appending them as a separate document.
- Employ internally consistent numbering.

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<sup>4</sup> A list of stakeholders is included in Appendix B.

<sup>5</sup> The public comments are posted on the Judicial Branch website. *See* [www.courts.state.me.us/maine\\_courts/supreme/gal\\_comments.shtml](http://www.courts.state.me.us/maine_courts/supreme/gal_comments.shtml).

<sup>6</sup> Because a separate group, the Judicial Branch Guardian Ad Litem Task Force chaired by Associate Supreme Court Justice Warren Silver, was specifically charged with designing a guardian ad litem oversight and complaint resolution process, the stakeholders group did not make recommendations regarding those areas of the Rules. *See* Report to the Judiciary Committee on Guardian ad Litem Oversight, October 1, 2012, *available at* [www.courts.state.me.us/reports\\_pubs/reports/index.html](http://www.courts.state.me.us/reports_pubs/reports/index.html).

### **Rule 1 Recommendations**

- In conformity with Rule 1 of the Maine Rules of Civil Procedure, affirmatively state that the Rules “shall be construed to secure a just, speedy, and inexpensive determination of every action”;
- Recognize that timely resolution of matters involving children serves the children’s best interests;
- Not require guardians ad litem to make written recommendations if not requested to do so by the court; and
- Emphasize the importance of timely filing of written reports where a written report has been requested.

### **Rule 2 Recommendations**

- Authorize the court to recognize the value of having experienced attorneys who are not rostered serve as guardians ad litem in certain family matter cases on a *pro bono* basis;
- Authorize the court in child protection cases to appoint an attorney to serve as a guardian ad litem in areas of the state where a court-appointed special advocate or rostered attorney is not available;
- Update and increase the core training requirements required before an individual may be listed on the guardian ad litem roster;
- Require that future applicants for the guardian ad litem roster possess a professional license that requires at least a master’s degree level of education;
- Require that applicants demonstrate good character and fitness as predicates to becoming a rostered guardian ad litem;
- Require guardians ad litem to obtain at least one hour of professionalism training per year, focusing on areas of public concern regarding guardians ad litem; and
- Clarify that the decision by the Chief Judge of the District Court whether to roster or not to roster a prospective guardian ad litem is final and not subject to appeal.

### **Rule 3 Recommendation**

- This Rule is the focus of work by the Guardian ad Litem Task Force chaired by Justice Silver, and thus the Stakeholders Group did not address Rule 3 except to recommend that it affirmatively state that a guardian ad litem may not solicit or accept any gift from a party to a case in which he or she has been appointed (nominal “gifts” from a child being exempted).

### **Rule 4 Recommendation**

- Add a cross-reference to the statute governing Title 22 guardians ad litem.

## **Rule 5 Recommendations**

- Replace outdated rule on transition to guardian ad litem qualifications that were effective March 1, 2000, with a new rule outlining the distinct appointment processes and duties of guardians ad litem in Title 19-A family matters and Title 22 child protection proceedings;
- Authorize three distinct categories of guardian ad litem appointment orders in family matters: (a) limited purpose appointment orders; (b) standard appointment orders; and (c) expanded appointment orders;
- Itemize the mandatory duties that guardians ad litem must perform under each category of appointment order as well as the optional duties that the court may order the guardian ad litem to perform pursuant to an expanded appointment order;
- Establish a presumptive deadline for appointing guardians ad litem in family matters to prevent appointments that unreasonably delay resolution of these matters;
- Enumerate the statutory factors that must be considered when a court decides whether to appoint a guardian ad litem in a family matter;
- Require that all family matter appointments be made on a standard, court-approved form that requires the court to specify the guardian ad litem's duties; the maximum number of hours to be spent on the case by the guardian ad litem; the hourly fee; the maximum fee that can be charged by the guardian ad litem; and a timeframe by which the fee shall be paid;
- Prohibit guardians ad litem from performing and billing for the performance of duties beyond those specified in the family matter appointment order unless subsequently authorized to do so by the court and clarify to the parties that the guardian ad litem is not expected to perform any duties not specified in the appointment order;
- Clarify that failure of a party (or parties) to pay the guardian ad litem's fees in a family matter may constitute grounds for vacating the appointment order but that further court involvement in collection of unpaid guardian ad litem fees may only be accomplished through a separate action pursuant to Title 14 of the Maine Revised Statutes;
- Establish a specific deadline for filing a required written guardian ad litem report in family matters; and
- Itemize and update the mandatory duties for guardians ad litem appointed in child protection proceedings, incorporating, where appropriate, portions of the Standards and adhering to the relevant statutory framework.

## **Rule 6 Recommendation**

- This new rule would incorporate portions of the Standards that are applicable to both family matters and child protection proceedings.

## **Rule 7 Recommendations**

- This new rule would incorporate the mandatory reporting, confidentiality, and termination of service portions of the Standards.

## APPENDIX A

### GUARDIAN AD LITEM STATUTES

#### **I. Title 22 / Child Protective Proceedings:**

§ 4005. *Parties' rights to representation; legal counsel*

*1. Child; guardian ad litem.* The following provisions shall govern guardians ad litem. The term guardian ad litem is inclusive of lay court appointed special advocates under Title 4, chapter 31.

A. The court, in every child protection proceeding except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders, shall appoint a guardian ad litem for the child. The guardian ad litem's reasonable costs and expenses must be paid by the District Court. The appointment must be made as soon as possible after the proceeding is initiated. Guardians ad litem appointed on or after March 1, 2000 must meet the qualifications established by the Supreme Judicial Court.

B. The guardian ad litem shall act in pursuit of the best interests of the child. The guardian ad litem must be given access to all reports and records relevant to the case and investigate to ascertain the facts. The investigation must include, when possible and appropriate, the following:

- (1) Review of relevant mental health records and materials;
- (2) Review of relevant medical records;
- (3) Review of relevant school records and other pertinent materials;
- (4) Interviews with the child with or without other persons present; and
- (5) Interviews with parents, foster parents, teachers, caseworkers and other persons who have been involved in caring for or treating the child.

The guardian ad litem shall have face-to-face contact with the child in the child's home or foster home within 7 days of appointment by the court and at least once every 3 months thereafter or on a schedule established by the court for reasons specific to the child and family. The guardian ad litem shall report to the court and all parties in writing at 6-month intervals, or as is otherwise ordered by the court, regarding the guardian ad litem's activities on behalf of the child and recommendations concerning the manner in which the court should proceed in the best interest of the child. The court may provide an opportunity for the child to address the court personally if the child requests to do so or if the guardian ad litem believes it is in the child's best interest.

C. The guardian ad litem may subpoena, examine and cross-examine witnesses and shall make a recommendation to the court.

D. 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.

E. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed his wishes, regardless of the recommendation of the guardian ad litem.

F. The guardian ad litem or the child may request the court to appoint legal counsel for the child. The District Court shall pay reasonable costs and expenses of the child's legal counsel.

G. A person serving as a guardian ad litem under this section 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.

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## **II. Title 19-A / Family Matters Proceedings**

### *§1507. Appointment of guardian ad litem in contested proceedings*

*1. Guardian ad litem; appointment.* In contested proceedings under sections 904, 1653 and 1803 in which a minor child is involved, the court may appoint a guardian ad litem for the child. 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. The court may appoint a guardian ad litem when the court has reason for special concern as to the welfare of a minor child. 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 to which a guardian ad litem may assist in providing information concerning the best interest of the child;
- F. Whether the family has experienced a history of domestic abuse;
- G. Abuse of the child by one of the parties; and
- H. Other factors the court determines relevant.

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

*2. Qualifications.* A guardian ad litem appointed on or after March 1, 2000 must meet the qualifications established by the Supreme Judicial Court.



3. *Duties.* The guardian ad litem has both mandatory and optional duties.

A. A guardian ad litem shall:

- (1) Interview the child face-to-face with or without another person present; and
- (3) Make a written report of investigations, findings and recommendations as ordered by the court, with copies of the report to each party and the court.

B. The court shall specify the optional duties of the guardian ad litem. The optional duties of the guardian ad litem may include:

- (1) Interviewing the parents, teachers and other people who have knowledge of the child or family;
- (2) Reviewing mental health, medical and school records of the child;
- (3) Reviewing mental health and medical records of the parents;
- (4) Having qualified people perform medical and mental evaluations of the child;
- (5) Having qualified people perform medical and mental evaluations of the parents;
- (6) Procuring counseling for the child;
- (7) Retaining an attorney to represent the guardian ad litem in the pending proceeding, with approval of the court;
- (8) Subpoenaing witnesses and documents and examining and cross-examining witnesses;
- (9) Serving as a contact person between the parents and the child; or
- (10) Other duties that the court determines necessary, including, but not limited to, filing pleadings.

If, in order to perform the duties, the guardian ad litem needs information concerning the child or parents, the court may order the parents to sign an authorization form allowing the release of the necessary information. The guardian ad litem must be allowed access to the child by caretakers of the child, whether the caretakers are individuals, authorized agencies or child care providers.

4. *Best interest of the child.* The guardian ad litem shall use the standard of the best interest of the child as set forth in section 1653, subsection 3. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed them, regardless of the recommendation of the guardian ad litem.

5. *Written report.* A guardian ad litem shall make a final written report to the parties and the court reasonably in advance of the hearing. The report is admissible as evidence and subject to cross-examination and rebuttal, whether or not objected to by a party.

6. *Court's agent.* A person serving as a guardian ad litem under this section 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.

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

- A. The income of the parties;
- B. The marital and nonmarital assets of the parties;
- C. The division of property made as part of the final divorce;
- D. Which party requested appointment of a guardian ad litem; and
- E. Other relevant factors.

8. *Notice.* 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.

## APPENDIX B

### MEMBERS OF THE GUARDIAN AD LITEM STAKEHOLDERS GROUP

*Associate Justice of the Supreme Judicial Court:*

Justice Donald G. Alexander

*District Court Judges:*

Deputy Chief Judge Robert E. Mullen (**Chair**)

Judge Patricia G. Worth

*Family Law Magistrate:*

Magistrate Paul D. Matthews

*Office of the Attorney General:*

Nora Sosnoff, Esq.

*Family Law Section of the Maine Bar Association:*

Margaret C. Lavoie, Esq.

Ilse Teeters-Trumpy, Esq.

*Maine Guardian ad Litem Institute:*

Thomasine M. Burke, Esq.

Heather T. Whiting, Esq.

*Maine Coalition to End Domestic Violence:*

Margo Bastie

*Judicial Branch Staff*

Tracie L. Adamson, Esq., Family Division Manager

Mary Ann Lynch, Esq., Government & Media Counsel

Kirsten Skorpen, MSW, Family Division Resource Coordinator

Janet A. Stocco, Esq., Lead Law Clerk to the Maine District Court

*Public*\*

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\* Dr. Jerome Collins was invited to join the Stakeholders Group as a representative of the public; he initially participated but resigned his position on October 16, 2012.

## APPENDIX C

### PROPOSED DRAFT: MAINE RULES FOR GUARDIANS AD LITEM

#### **RULE 1. AUTHORITY, SCOPE, GOALS, AND DEFINITIONS**

**(a) Authority and Scope.** These Rules, are adopted pursuant to 19-A M.R.S. § 1507 and 22 M.R.S. § 4005, to address practice and performance of guardians ad litem in the District Court and the Superior Court. They govern the qualifications for guardians ad litem, standards for practice for guardians, the appointment of a guardian, and the placement of a guardian on, and the removal of a guardian from, the Guardian Roster.

**(b) Goals.** These Rules and the incorporated Standards are designed to govern and define the services provided by guardians ad litem to the court and to promote the best interests of the children they are appointed to represent. These Rules shall be construed to secure the just, speedy and inexpensive determination of every action. When appointed pursuant to these Rules a guardian is a quasi-judicial officer of the court, primarily subject to and governed by the court in the individual proceeding and by the guardian ad litem oversight process more generally. A guardian must tailor his or her work to the particular needs and circumstances of each case, as identified in the court order appointing the guardian, but, in general, a guardian must:

(1) represent consistently the best interests of the child and advocate on behalf of the child's best interests;

(2) understand and uphold the law and court orders related to the guardian's appointment;

(3) maintain the highest standards of professionalism, cultural sensitivity, and ethics;

(4) recognize that timely resolution of each matter serves the best interests of the child and the child's need for stability;

(5) within the scope of authority defined by statute or court order, plan, carry out, document, and complete thorough, appropriate, and fair investigations in a timely fashion;

(6) work effectively and efficiently with other professionals involved in the assessment or treatment of the child and/or parties to a child's case,

(7) communicate in a developmentally appropriate way with the child; advocate that steps are taken to protect the child from harmful communication;

(8) make well-reasoned and factually based recommendations regarding the best interests of the child when requested by the court;

(9) include parties in the investigation, use effective communication techniques, recognize limitations that may be imposed by the financial resources of the parties, and be sensitive to the cultural and socioeconomic status of the parties; and

(10) complete assignments and written reports in a timely manner and communicate effectively with the court in motions, reports, recommendations and testimony.

**(c) Definitions.** As used in these Rules and Standards, the following terms have the following definitions:

(1) *Chief Judge.* "Chief Judge" means the Chief Judge of the District Court, or the Chief Judge's designee;

(2) *Guardian.* "Guardian" means a guardian ad litem appointed to represent the best interests of one or more children pursuant to 19-A M.R.S. § 1507 or 22 M.R.S. § 4005;

(3) *Judge or Court.* "Judge" or "Court" means a Justice of the Superior Court, a Judge of the District Court or a Family Law Magistrate.

(4) *Roster.* "Roster" means the roster of Guardians maintained by the Chief Judge.

## **RULE 2. GUARDIANS AD LITEM**

### **(a) Appointment.**

**(1) Title 19-A Proceedings.** In Title 19-A proceedings a judge may appoint, without any findings, any person listed on the Roster. In addition, a judge may, for good cause shown and after consultation with the parties, appoint any attorney who, after consideration of all of the circumstances of the particular case, in the opinion of the appointing judge has the necessary skills and experience to serve as a guardian and to represent the best interests of the child or children in that matter. The appointment of an unrostered attorney will be on a pro bono basis.

**(2) Child Protection Proceedings.** Guardians appointed in child protection proceedings pursuant to 22 M.R.S. § 4005 shall be either a court-appointed special advocate or an attorney listed on the Roster. If both a court-appointed

special advocate and a rostered attorney are not available, the court may appoint another attorney.

**(b) Application, Selection, and Placement of Guardians on Roster.**

**(1) Application.**

A. *Form.* Roster applications shall be submitted on the official form that can be obtained from the Family Division of the Maine District Court. The Chief Judge may accept an application filed on a substitute form if the Chief Judge determines that substantially all of the information required by the official form has been furnished. The Chief Judge may reject an application that is incomplete or does not meet applicable criteria, or the Chief Judge may require an applicant to provide additional information or explanation.

B. *Application Periods.* The Chief Judge will accept applications and will review them periodically.

**(2) Selection, Qualifications.** The Chief Judge shall screen applications utilizing the criteria set forth in this section.

**(3) Criteria for Initial Listing on the Roster.** To become listed in the Roster an applicant must demonstrate:

A. *Credentials.*

1. A current valid license to practice law in the State of Maine;

2. A current valid license to practice as an LCSW, LPC LCPC, LMSW, LMFT, LPaC, psychologist or psychiatrist in the State of Maine; or<sup>\*</sup>

3. A Certification of Qualification by the Director of the CASA program, provided that a CASA Certification qualified individual may only be appointed a guardian pursuant to 22 M.R.S. § 4005.

B. *Core Training.* Attendance at a guardian training with a curriculum of at least 18 hours for Title 19-A rostering and 23 hours for Title 22 rostering that has been approved by the Chief Judge satisfies this requirement. The curriculum must include specified learning outcomes and activities designed to meet these outcomes, and must cover Titles 19-A and 22, dynamics of domestic abuse and its effect on children, dynamics of separation and

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\* Annotation: The stakeholders suggest removing an LSW license, which requires only a bachelor's degree, from the list of licensures that form the predicate of a guardian application. Each of the other licenses requires at least a master's degree. The stakeholders recommend that the 10 existing LSW guardians be grandfathered and permitted to retain their guardian status.

divorce and its effect on children, child development, timing and impact of court related events from a child's perspective, the effects of abuse, neglect and trauma on children, substance abuse, mental health, family finance and the impact of separation and divorce, legal issues and processes, professionalism as a guardian, the duties and obligations of the guardian as an agent of the court and interviewing techniques.

For a guardian acting under the auspices of the CASA program, successful completion of CASA training satisfies this requirement. CASA Guardians who accept appointment in non-CASA cases must complete the core training requirements.

C. *Good Character.* The applicant must demonstrate to the Chief Judge that they are presently of good character and fitness to serve as a guardian ad litem.

**(4) Placement on Roster.** The Chief Judge shall notify applicants of the results of the application screening process. Applicants who pass application screening are conditionally accepted, and shall complete a release authorizing the Administrative Office of the Courts to conduct a background check, comprised of (A) a criminal history information check, (B) child protective services information check, and (C) a certificate of good standing from the licensing authority for the Applicant's profession, and disclosure of any disciplinary action taken regarding the applicant in the 10 years preceding the date of the application.

Applicants whose background check results are satisfactory to the Chief Judge will be finally accepted and placed on the roster. Applicants whose background check results are not satisfactory to the Chief Judge shall not be finally accepted and placed on the roster.

Applicants whose initial checks indicate a material problem may be disqualified or asked for additional information or releases.

The decision of the Chief Judge is final and not subject to appeal.

**(5) Continuing Education Requirements.** Unless these requirements are waived by the Chief Judge, a guardian shall attend and complete any continuing professional education events or seminars designated as mandatory by the Chief Judge. In addition, in each 12 month period a guardian must annually participate in a total of at least 6 hours of continuing professional education programs applicable to one or more of the issues identified as core training issues in Rule 2(b)(3)(B). At least one credit hour shall be primarily concerned with professionalism education. Qualifying professionalism education topics include professional responsibility as a guardian, legal ethics related to guardian work, conflicts of interest, diversity

awareness in the legal profession, confidentiality of guardian records in Titles 19-A and/or 22 cases, communication with parents involved in Titles 19-A and/or 22 cases and their children, and complaint avoidance topics such as file management and billing practices.

Completion of the specified training hours shall be demonstrated by filing a statement, on a form approved by the Chief Judge, by August 31 of each year. A guardian who does not file the statement of completion of the requisite number of training hours by August 31 of each year shall be subject to sanctions, which could include permanent removal from the roster.

**(6) Acceptance of Court Referrals.** A guardian should anticipate being asked to accept at least one pro bono or reduced fee referral from the judicial branch per calendar year, other than Title 22 cases, and should do so to the extent consistent with the guardian's other professional, personal, and other public interest service.

**(7) Guardian Resignation or Leave of Absence.** A guardian may resign from the Roster at any time. A guardian may request a leave of absence from the Roster from the Chief Judge who may accept the request, reject it, or condition acceptance on such terms as the Chief Judge believes are in the best interests of the Judicial Branch.

### **RULE 3. GUARDIAN OVERSIGHT\***

**(a) Standards of Conduct.** A guardian shall comply with the requirements of 19-A M.R.S. § 1507 and 22 M.R.S. § 4005, and these Rules, as applicable to a particular case, and with the terms of a judge's order appointing the guardian.

A guardian may not solicit or accept any gift from a party to a case in which the guardian has been appointed.\*\*

This provision shall be strictly construed. These provisions do not apply to payment of the guardian's fees and professional expenses as authorized by the court. If the guardian is an attorney, she or he acts in his or her capacity as a guardian, rather than as an attorney, and information he or she receives is not subject to the attorney-client privilege, but is instead governed by Rule 7.

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\* Annotation: This Rule is the focus of work by the Task Force chaired by Justice Silver.

\*\* Annotation: The stakeholders felt it important not to prevent guardians from accepting token gifts of nominal value from the child(ren) in the case – e.g., drawings the child made for the guardian.



**(b) Ongoing Evaluations, Reports and Oversight.** A guardian is subject to ongoing oversight. The Chief Judge may initiate a review of a guardian based upon his or her own motion, a review of the guardian's reports, complaints received pursuant to subdivision (c), an observation of performance by a judge, or any combination of these sources.

Nothing in these rules limits a judge's right to regulate a guardian or remove a guardian from his or her role in a particular proceeding on motion of a party after notice and hearing, or on the judge's own motion; or the CASA Director's right to regulate or remove a guardian acting under the auspices of CASA.

**(c) Complaints, Reviews, and Appeals.** [Note: the process for addressing complaints, reviews, appeals, and suspension and removal of guardians ad litem is being separately considered by the Guardian ad Litem Task Force. Those processes are not addressed in these draft amendments.]

**(1) Response to Complaints.** The Chief Judge shall maintain a docket of all complaints filed concerning the performance of guardians. Complaints about the performance of a guardian in a pending case are to be directed by motion to the judge who appointed the guardian or to the judge who is conducting hearings in the case.

The Chief Judge will not take any action with respect to, or initiate a review with respect to, a complaint arising from a pending case. When a complaint, other than a complaint in a pending case, is received the Chief Judge shall screen the complaint, and may discuss the complaint with the guardian or other participants in confidence.

The Chief Judge shall then consider all information available and may dismiss the complaint without further action.

If the Chief Judge decides to review the complaint further, it shall be done under the review procedures set out in Paragraph B.

**(2) Review Procedures.** The Chief Judge may conduct a review of a guardian in response to a complaint, or on his or her own motion. If the Chief Judge initiates a review of a guardian for any reason(s), the Chief Judge shall notify the guardian of the pending review in writing.

A review panel appointed by the Chief Judge shall review all pertinent information, including interviews with or written statements from the guardian, the complainant, parties, counsel and court personnel. The panel shall be comprised of one guardian who is listed on the roster, one attorney and one member of the public.

Upon request, the guardian may review the complaint and other information developed by the review panel. The guardian may provide the panel with a written response.

Thereafter, the review panel may terminate the review without action or may notify the guardian in writing of any proposed action.

If the guardian requests a hearing before the panel on the proposed action, the guardian must request one in writing within 14 days of the date of the notice of proposed action.

The review panel shall issue a written decision.

Proceedings of the review panel are normally confidential. Only the Chief Judge, the panel, the complainant, the guardian, and in the case of an appeal, the Supreme Judicial Court, shall have access to the proceedings or decision.

The panel may, by majority vote, open the hearing or the decision to the public after considering the complainant's and guardian's positions, the public interest in access to information, any special need to protect the confidentiality of witnesses or testimony in the particular proceeding, the presence in the proceedings of matters that are otherwise confidential by law, the extent and nature of public awareness of the proceedings or their subject matter, and any special factors that may be relevant in the particular situation.

The Chief Judge, or the Single Justice of the Supreme Judicial Court, upon a finding that the complaint gives rise to a probable fundamental violation of the licensing standards of the guardian's underlying profession, may make a referral for further action to the appropriate Board or Commission.

**(3) Temporary or Emergency Removal.** The Chief Judge may remove or suspend a Guardian from the roster prior to initiation or completion of the review procedure set forth in Section 4, paragraph B upon the Chief Judge's determination that it is in the best interests of the Judicial Branch to do so.

#### **RULE 4. IMMUNITY**

Pursuant to 19-A M.R.S. § 1507(6), 22 M.R.S. § 4005(1)(G), and to these Rules, guardians are entitled to quasi-judicial immunity from liability for actions undertaken pursuant to their appointments and these Rules.

## **RULE 5. COURT APPOINTMENT AND DUTIES**

**(a) Appointment to a Case.** A guardian shall act in a case only as authorized by:

(1) a limited purpose appointment order issued pursuant to Rule 5(b)(5) and 19-A M.R.S. § 1507;

(2) a standard appointment order issued pursuant to Rule 5(b)(6) and 19-A M.R.S. § 1507;

(3) an expanded appointment order issued pursuant to Rule 5(b)(7) and 19-A M.R.S. § 1507; or

(4) an appointment order issued pursuant to Rule 5(c) and 22 M.R.S. § 4005.

### **(b) Title 19-A Appointments**

**(1) Consideration of Appointment.** In contested proceedings pursuant to 19-A M.R.S. §§ 904, 1653 and 1803 in which a minor child is involved, the court may appoint a guardian ad litem for the child when the court has reason for special concern as to the welfare of a minor child. A guardian ad litem may be appointed by agreement of the parties, or on motion by one of the parties, or by the court, acting on its own motion.

**(2) Timing of Motion for Appointment.** Any motion or request to the court for appointment of a guardian ad litem shall be filed no later than the conference with the court following the first scheduled mediation session or 60 days after the first conference with the court, if mediation is waived. A motion or request for appointment of a guardian ad litem may be considered at a later time only if the court finds that:

A. there is good cause for the late motion;

B. the reasons for the late motion could not have been anticipated at a point when a timely motion could have been filed; and

C. the appointment will not unreasonably delay resolution of the matter or harm the best interest of the child in achieving clarity in parental rights and responsibilities for the child.

**(3) Factors to Consider.** 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 to which a guardian ad litem may assist in providing information concerning the best interest of the child;

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

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

H. Other factors the court determines relevant.

**(4) Contents of Appointment Order.** The appointment shall be by court order, which shall be a limited purpose appointment order, a standard appointment order or an expanded appointment order. The appointment order, which must be written on the court-approved form, shall specify the guardian's length of appointment, duties, including the filing of a written report pursuant to 19-A M.R.S. § 1507(5), and fee arrangements, including hourly rates, timing of payments to be made by the parties, and the maximum amount of fees that may be charged for the case without further order of the court. Collection of payment of fees, if a collection action is necessary, shall proceed pursuant to Title 14, and shall not be pursued in the action in which the guardian is appointed.

The guardian may not perform and will not be expected to perform any duties beyond those specified in the appointment order, unless subsequently ordered to do so by the court.

Pursuant to 19-A M.R.S. 1507(7) the payment order shall specify that payment for the services of the guardian ad litem is the responsibility of the parties, with the terms of payment specified in the order. In determining the responsibility for payment, the court shall consider:

A. The income of the parties;

B. The marital and nonmarital assets of the parties;

C. The division of property made or anticipated as part of the final divorce or separation;

D. Which party requested appointment of a guardian ad litem; and

E. Other factors deemed relevant by the court, which shall be stated with specificity in the appointment order.

When appointment of the guardian or the fee arrangements for payment of the guardian are not agreed to by the parties, the court shall state in the

appointment order its findings, based on the criteria stated above, supporting the appointment of the guardian and the fee payment order.

If, in order to perform any specified duties, the guardian ad litem needs information concerning the child or parents, the court may order the parents to sign an authorization form allowing the release of the necessary information. The court order may specify that the guardian must be allowed access to the child by caretakers of the child, whether the caretakers are individuals, authorized agencies or childcare providers.

**(5) Limited Purpose Appointment Order.** The court may appoint a guardian for a specified, limited purpose or purposes. The order must specify the duties that the guardian shall perform, the duration of the appointment, the maximum number of hours that may be spent on the case by the guardian, the hourly fee rate, and the maximum fee that may be charged by the guardian. The order shall further specify when the fee shall be paid and by whom. If the payments ordered to be made before the guardian commences the investigation, if any, are not paid as ordered, the guardian shall notify the court, and the court may vacate the appointment order or take such other action it deems appropriate under the circumstances.

**(6) Standard Appointment Order.** The standard appointment order shall list the duties of the guardian to be performed pursuant to the order.

A. Those duties, in each standard appointment order, shall be:

1. Observing the child or children in the home or homes where the child or children regularly reside, and for each child over the age of 3, a face-to-face interview with the child; and

2. An interview with each parent and each other adult who resides in the home or homes where the child or children regularly reside;

3. Completing and filing a written report of investigations, findings and recommendations as ordered by the court when the case is to proceed to a contested hearing, with copies of the report to each party and the court, within the time specified in the appointment order.

B. For the performance of these duties, the appointment order shall specify a maximum fee and direct that a specified sum-be paid within a set time before the guardian commences the investigation, with the remainder to be paid within 14 days of the filing of the written report. If the payments ordered to be made before the guardian commences the investigation are not paid as ordered, the guardian shall notify the court, and the court may vacate the appointment order or take such other action it deems appropriate under

the circumstances.

**(7) Expanded Appointment Order.** The original appointment order or an amended appointment order may specify any additional duties of the guardian that shall be individually approved by the court.

A. The additional duties may include:

1. Interviewing teachers and other people who have knowledge of the child or family;
2. Reviewing mental health, medical and school records of the child;
3. Reviewing mental health and medical records of the parents;
4. Having qualified people perform medical and mental evaluations of the child, within a time and at a cost to be stated in the order;
5. Having qualified people perform medical and mental evaluations of the parents, within a time and at a cost to be stated in the order;
6. Procuring counseling for the child;
7. Retaining an attorney to represent the guardian ad litem in the pending proceeding, with approval of the court;
8. Subpoenaing witnesses and documents and examining and cross-examining witnesses;
9. Serving as a contact person between the parents and the child; or
10. Other duties that the court determines necessary, including, but not limited to, filing pleadings and testifying in court.

B. If any additional duties are ordered to be performed pursuant to the original appointment order or an amendment of that order, the timing, report preparation deadlines, fee arrangements, and maximum fee limits set in the original appointment order shall be amended to recognize the additional duties set to be performed pursuant to the appointment order.

**(8) Best Interest of the child.** In performance of duties pursuant to 19-A M.R.S. § 1507, the guardian ad litem shall use the standard of the best interest of the child as stated in 19-A M.R.S. §1653(3).

The guardian ad litem shall make the wishes of the child known to the court if the child has expressed them, regardless of the recommendation of the guardian ad litem, however, the guardian shall not encourage a child to express his or her wishes or choose between parents, unless the child has chosen to express such wishes to the guardian without prompting from the guardian.

**(9) Written report.** A guardian ad litem shall provide a copy of any required final written report to the parties and the court at least 14 days in advance of the final hearing. The report is admissible as evidence and subject to cross-examination and rebuttal, whether or not objected to by a party. Any objections to the report shall be filed at least 7 days in advance of the final hearing.

**(10) Court's agent.** A person serving as a guardian ad litem pursuant to 19-A M.R.S. § 1507 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. As a quasi-judicial officer, the guardian shall exercise the guardian's independent judgment on behalf of the child in all relevant matters, respecting the court's obligation to "dispose of all judicial matters promptly, efficiently, and fairly," Maine Code of Judicial Conduct § 3(B)(8).

**(c) Title 22 Appointment Order.** Guardian appointment orders pursuant to 22 M.R.S. § 4005 shall specify the terms and conditions of the guardian's appointment as stated in Title 22 and in these Rules.

**(1) Exercise of Independent Judgment.** A guardian, appointed pursuant to 22 M.R.S. § 4005, acts as the court's agent. Accordingly, a guardian shall be guided by the best interests of the child and shall exercise the guardian's independent judgment on behalf of the child in all relevant matters, respecting the obligation of all judicial officers to dispose of all judicial matters promptly, efficiently, and fairly. These standards represent a compilation of "best practices" for guardians ad litem. A guardian is not required to engage in all of the activities listed in every case, but is expected to tailor the guardian's activities to the individual circumstances of each child and each case, being guided in all instances by the terms and conditions stated in the appointment order and the guardian's evaluation of the best interests of the child.

**(2) Meet and Interview Child.** Irrespective of the child's age, the guardian ad litem should visit with the child as soon as possible after appointment, consistent with statutory requirements or the order of appointment, or both. Unless otherwise specified by the court, the initial meeting must take place within 7 days. The guardian should meet with the child prior to court hearings and when apprised of emergencies or significant events impacting on the child. Unless otherwise specified by the court, the guardian must meet with the child at least quarterly.

**(3) Investigation.** To support the child's best interests, the guardian should be given access to all reports and records relevant to the case and investigate to

ascertain the facts. The investigation must include, when possible and appropriate, the following:

- A. Review of relevant mental health records and materials;
- B. Review of relevant medical records;
- C. Review of relevant school records and other pertinent materials;
- D. Interviews with the child with or without other persons present; and
- E. Interviews with parents, foster parents, teachers, caseworkers and other persons who have been involved in caring for or treating the child.

**(4) Additional Powers.** Pursuant to the statutes, rules, and Rule 5(c)(1), a guardian has a broad permissible scope of activity and authority. However, in most cases completion of all activities and the exercise of all powers are not necessary. Accordingly, in addition to the above elements, the guardian's investigation may include, but is not limited to:

- A. Reviewing the court files of siblings and other family members, and other case-related records of involved social service agencies and other service providers;
- B. Contacting lawyers for other parties and guardians ad litem in the case and in other relevant cases for background information;
- C. Obtaining necessary authorizations for the release of information;
- D. Interviewing individuals involved with the child, including school personnel, child welfare case workers, foster parents and other caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses;
- E. Reviewing relevant photographs, video or audio tapes and other evidence; and
- F. Attending and participating in, where appropriate, treatment, placement, administrative hearings, other proceedings involving legal issues, and school case conferences concerning the child as needed;
- G. Assessing any physical, sexual, developmental, and/or emotional risks to or abuse of the child by utilizing: risk assessment tools; evaluations, assessments, and reports; medical records; observation; and interviews with appropriate persons;



H. Working effectively with other professionals involved in the assessment or treatment of the child and/or parties to a child's case, to include:

1. identifying the need for assessments related to domestic violence, abuse of a child, chemical dependency, mental health, and/or special developmental, educational, or medical needs of a child and making referrals to appropriate specialists or treatment programs;

2. requesting educational testing of, or an individualized education plan for a child;

3. understanding measurement tools, risk assessments, and reports related to domestic violence, abuse of a child, chemical dependence, mental health, and/or the special needs of a child; and

4. understanding scientific data related to paternity and/or medical needs of a child; disclosing information to other professionals, when it is in the child's best interests to do so, in order that they can adequately perform their functions, and reviewing tentative conclusions or recommendations with them in order to test their validity or appropriateness;

I. include parties in the investigation, effective communication techniques, and be sensitive to the culture and socio-economic status of the parties.

**(5) Child's Wishes.** The guardian shall make the wishes of the child known to the court if the child has expressed his/her wishes, regardless of the recommendation of the guardian.

**(6) Appointment of Counsel for Guardian.** A guardian may petition the court to appoint a lawyer to represent the guardian when, in the judgment of the guardian, such appointment is necessary to protect the legitimacy of the guardian's role. The guardian should understand that such an appointment is highly unusual, and that extraordinary cause will be necessary for such an appointment if the guardian is an attorney.

**(7) Recommendations to the Court.** For interim or preliminary protection hearings, the guardian should, except as otherwise required, appear in court and offer recommendations subject to questions by the court and parties or counsel. The guardian should present written recommendations to the parties and the court reasonably in advance of any interim or final hearing. The report shall be based on the guardian's investigation and evaluation and provide reasons in support of these recommendations. In Title 22 proceedings, unless otherwise

specified by the court, the guardian must make a subsequent report at least semi-annually.

Whether or not the guardian's report is objected to, the report may be reviewed by the court and is fully admissible. Whether or not the guardian's report is objected to, the guardian ad litem may offer evidence to the court.

**(8) Access to Child, Parties, Caregivers, Records.** The guardian shall be provided access to the child by any agency or person. The guardian should meet with the child in the child's placement as often as necessary to determine that the child is safe and to ascertain and represent the child's best interests.

Unless otherwise provided by law, the guardian shall be provided, upon request, with all reports relevant to the case made to or by any agency or any person and shall have access to all relevant records of such agencies or persons relating to the child or the child's family members or placements of the child.

**(9) Explanation of Court Process.** The guardian shall explain, when appropriate, the court process and the role of the guardian ad litem to the child. The guardian will assure, when necessary, that the child is informed of the purpose of court proceeding.

**(10) Filing of Pleadings.** The guardian should file such reports, motions, responses or objections as necessary to represent the best interests of the child, and must provide copies to all parties of record. Relief requested may include, but is not limited to:

- A. A mental or physical examination of a party or the child;
- B. A parenting, custody or visitation evaluation;
- C. An increase, decrease, or termination of contact, or the imposition of conditions on contact;
- D. Restraining or enjoining a change of placement;
- E. Contempt for noncompliance with a court order;
- F. Termination of the parent-child relationship;
- G. Child support;
- H. A protective order concerning the child's privileged communications or tangible or intangible property;
- I. Request for services for child or family; and
- J. Dismissal of petitions or motions.

**(11) Participation in Hearing.** The guardian ad litem shall appear at all proceedings to represent the child's best interests, unless previously excused by order of the court. The guardian ad litem may present evidence and ensure that, where appropriate, witnesses are called and examined, including, but not limited to, foster parents and psychiatric, psychological, medical, or other expert witnesses. If the guardian ad litem testifies, the guardian ad litem shall be duly sworn as a witness and be subject to cross-examination.

In the event any new developments or significant changes in the child's circumstances occur during the pendency of the court process, the guardian ad litem may file appropriate pleadings.

**(12) Protection of Child as Witness.** The guardian ad litem should protect the interests of the child who is a witness in any judicial proceeding relating to the case in which the guardian ad litem has been appointed. The guardian ad litem may advocate for special procedures, including, but not limited to, 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.

**(13) Court Orders.** The guardian should request orders that are clear, specific, and, where appropriate, include a time line for the assessment, services, placement, treatment and evaluation of the child and the child's family.

**(14) Participation.** The guardian should participate in the development and negotiation, including mediation, of any plans or orders that affect the best interests of the child. The guardian should monitor implementation of service plans and court orders, through the termination or expiration of the guardian's appointment, to determine whether services ordered by the court are being provided in a timely manner.

**(15) Development of Services.** The guardian should advocate for appropriate services (by motion for court order if necessary) to access entitlements, to protect the child's interests and to implement a service plan. These services may include, but not be limited to:

- A. Family preservation prevention or reunification services;
- B. Sibling and family visitation;
- C. Child support;
- D. Domestic violence prevention, intervention, and treatment;
- E. Medical and mental health care;
- F. Drug and alcohol treatment;

- G. Parenting education;
- H. Semi-independent and independent living services;
- I. Foster care;
- J. Termination of parental rights action;
- K. Adoption services;
- L. Education;
- M. Recreational or social services; and
- N. Housing.

**(16) Supplementary Family Services.** When needs created by a disability are not otherwise being addressed, the guardian ad litem should advocate that a child or a child's family is referred to appropriate supplemental services to address the child's physical, mental, or developmental disabilities. These services may include, but are not limited to:

- A. Special education and related services;
- B. Supplemental security income (SSI) to help support needed services;
- C. Therapeutic foster or group home care; and
- D. Residential/inpatient and outpatient psychiatric treatment.

## **RULE 6. STANDARDS OF PERFORMANCE**

**(a) Faithfully perform duties.** The guardian must maintain independent representation of the best interests of the child and perform the guardian's duties faithfully. Upon failure of the guardian to do so, the appointing court may discharge the guardian and appoint a successor or, in Title 19-A cases, proceed without a guardian.

**(b) Develop Understanding of Litigation.** Commencing upon appointment the guardian should, to the extent reasonably possible, considering the resources authorized for the guardian:

- (1) Obtain copies of all relevant pleadings and notices;
- (2) In Title 22 cases, unless excused by the court, and in Title 19-A cases, when directed by the court, participate in depositions, negotiations, and discovery that are relevant to the child's best interests, and participate in all case

management, pretrial or other conferences, and hearings, unless excused by the court;

(3) Confirm with the Court Clerk that he or she has been appointed. The Clerk shall send copies of all subsequent notices and orders to the guardian. Parties and their counsel are on notice that the guardian is entitled to copies of all pleadings and correspondence with the court and is entitled to reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;

(4) Do not cause case delays, and attempt to reduce case delays and if unnecessary delays are encountered, remind the court or its staff of the need to speedily resolve children's issues.

## **RULE 7. MANDATORY REPORTING, CONFIDENTIALITY, AND TERMINATION OF SERVICE**

**(a) Mandated Reporting.** Pursuant to 22 M.R.S. § 4011-A, while acting in their professional capacity as guardian, guardians are mandated reporters, and if a guardian knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected, must make an immediate report to the Department of Health and Human Services.

**(b) Confidentiality.** A guardian shall observe all statutes, rules and regulations concerning confidentiality. A guardian shall not disclose information or participate in the disclosure of information relating to an appointed case to any person who is not a party to the case, except as necessary to perform the guardian ad litem's duties, or as may be specifically provided by law or by these Rules. Communications made to a guardian, including those made to a guardian by a child, are not privileged and may or may not be disclosed to the parties, the court or to professionals providing services to the child or the family based on the guardian's evaluation of the best interests of the child. A guardian's notes and work papers are privileged and shall not be disclosed to any person. A court may review a guardian's decision not to disclose information after an in-camera examination of the information in question. If the guardian is an attorney, she or he acts in his capacity as a guardian, rather than as an attorney, and information he or she receives is not subject to the attorney-client privilege.

A guardian may, when it is in the best interests of a child, initiate or participate in ex parte communications about a particular case pursuant to the Maine Code of Judicial Conduct, Canon 3(B)(7)(c). However, as a matter of due process and

fundamental fairness, the guardian or the court must promptly disclose the nature of the communication to the parties or their counsel, unless such disclosure is likely to present a risk of harm to the child or a party, in which case the court will take such steps as are necessary to alleviate the potential for harm, and when the danger of harm has passed, disclose the nature of the communication to the parties or their counsel.

**(c) Conflicts.** If a guardian determines that there is a conflict of interest requiring withdrawal, the guardian should continue to perform as the guardian ad litem and seek permission from the court to withdraw. The guardian should request appointment of a successor guardian without revealing the details of the conflict, unless the guardian determines that it is in the child's best interests to do so.

If a guardian ad litem is also appointed for siblings, there may also be a conflict which could require that the guardian seek to withdraw from representing all of the children.

**(d) Withdrawal.** A guardian may seek to withdraw by filing a motion with the court that appointed the guardian. The guardian must continue representation until the motion is granted, and if the court's order so provides, until a successor guardian is appointed. In Title 19-A cases, an order that appoints a guardian "for the duration of the case" does not obligate the guardian to serve once a final judgment has been rendered. In Title 22 cases, an order that appoints a guardian "for the duration of the case" obligates the guardian to serve until final action, including adoption of the child.