

## STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND THIRTEEN

—  
S.P. 297 - L.D. 872

**An Act To Improve the Quality of Guardian ad Litem Services for the  
Children and Families of Maine**

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

Sec. 1. 4 MRSA c. 32 is enacted to read:

**CHAPTER 32**

**CHILDREN'S GUARDIANS AD LITEM**

**§1551. Definitions**

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

**1. Division.** "Division" means the Family Division within the District Court established in section 183.

**2. Guardian ad litem.** "Guardian ad litem" means a person appointed as the court's agent to represent the best interests of one or more children pursuant to Title 18-A, section 1-112, Title 19-A, section 1507 or Title 22, section 4005.

**3. Best interests of the child.** "Best interests of the child" means an outcome that serves or otherwise furthers the health, safety, well-being, education and growth of the child. In applying the standard of best interests of the child in Title 18-A and Title 19-A cases, the relevant factors set forth in Title 19-A, section 1653, subsection 3 must be considered.

**§1552. Children's guardians**

**1. Guardian ad litem roster.** The division shall assist the Chief Judge of the District Court in the establishment and maintenance of a roster of guardians ad litem pursuant to section 1553.

**2. Administration of guardians ad litem under Title 19-A.** For guardians ad litem appointed under Title 19-A, the division shall assist the Chief Judge of the District Court in:

A. Establishing standardized billing, itemization requirements and time reporting processes for all guardians ad litem;

B. Establishing guidelines for preparation of required reports; and

C. Collecting, maintaining and reporting data about orders of appointment, submission of required reports, caseloads and other information as directed by the Chief Judge of the District Court.

**3. Staff.** The State Court Administrator shall provide necessary professional and clerical or other staff and logistical support to the division within the limit of funds available.

**4. Public information.** The division shall provide public information about the role of guardians ad litem, how to provide comments about a guardian ad litem and the complaint process established pursuant to section 1557.

**5. Effective date.** This section takes effect January 1, 2015.

#### **§1553. Roster of guardians ad litem**

Rules adopted by the Supreme Judicial Court govern the establishment and maintenance of a roster of guardians ad litem. The rules must address:

**1. Application process.** The process for applying to be included on the roster, including application forms;

**2. Criteria.** Criteria for initial listing on the roster, including:

A. Credentials, including professional licenses and minimum education requirements;

B. Core training; and

C. Good character;

**3. Continuing education.** Continuing education requirements;

**4. Criminal background check.** Obtaining criminal history record information on an individual, including, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification;

**5. Other requirements.** Any other requirements necessary to remain in good standing and included on the roster; and

**6. Removal.** The process for removing a guardian ad litem from the roster.

#### **§1554. Guardian ad litem responsibilities**

**1. Role of guardian ad litem.** The court may appoint a guardian ad litem to provide information to assist the court in determining the best interests of the child involved in the determination of parental rights and responsibilities and guardianship of a minor under Title 18-A, in the determination of parental rights and responsibilities under Title 19-A, section 904 or 1653 and in the determination of contact with grandparents under Title 19-A, section 1803. The court shall appoint a guardian ad litem in a child protection case under Title 22, chapter 1071.

**2. Standards of conduct.** Guardians ad litem shall abide by the standards of conduct as adopted by rule by the Supreme Judicial Court.

**3. General responsibilities.** A person appointed by the court to serve as a guardian ad litem acts as the court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem. As a quasi-judicial officer, the guardian ad litem shall perform the assigned duties independently and impartially in all relevant matters within the scope of the order of appointment, respecting the court's obligation to dispose of all judicial matters promptly, efficiently and fairly as provided in the Maine Code of Judicial Conduct. A guardian ad litem shall:

A. Represent consistently the best interests of the child and provide information to the court that assists the court in determining the best interests of the child;

B. Understand and uphold the law and court orders related to the guardian ad litem's appointment;

C. Maintain the highest standards of professionalism, cultural sensitivity and ethics;

D. Recognize that timely resolution of each matter serves the best interests of the child and the child's need for stability;

E. 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;

F. Communicate in a developmentally appropriate way with the child;

G. Make well-reasoned and factually based written recommendations regarding the best interests of the child as directed by the order of appointment;

H. Pursuant to the order of appointment, include parties in the investigation, use effective communication techniques, recognize limitations that may be imposed by the financial resources of the parties as applicable and be aware of the cultural and socioeconomic status of the parties; and

I. Complete assignments and written reports in a timely manner and communicate effectively with the court in motions, reports, recommendations and testimony.

#### **§1555. Appointment of guardians ad litem in Title 18-A and Title 19-A cases**

**1. Appointment of guardian ad litem.** In proceedings to determine parental rights and responsibilities and guardianship of a minor under Title 18-A and in contested

proceedings pursuant to Title 19-A, section 904, 1653 or 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 the child. The court may appoint a guardian ad litem on the court's own motion, on the motion of one of the parties or upon agreement of the parties.

A. A court may appoint, without any findings, any person listed on the roster. In addition, when a suitable guardian ad litem included on the roster is not available for appointment, a court may, for good cause shown and after consultation with the parties, appoint an attorney admitted to practice in this State who, after consideration by the court of all of the circumstances of the particular case, in the opinion of the appointing court has the necessary skills and experience to serve as a guardian ad litem. For the purposes of this paragraph, good cause may include the appointment of a guardian ad litem on a pro bono basis.

B. In determining whether to make an appointment, the court shall consider:

- (1) The wishes of the parties;
- (2) The age of the child;
- (3) The nature of the proceeding, including the contentiousness of the hearing;
- (4) The financial resources of the parties;
- (5) The extent to which a guardian ad litem may assist in providing information concerning the best interests of the child;
- (6) Whether the family has experienced a history of domestic abuse;
- (7) Abuse of the child by one of the parties; and
- (8) Other factors the court determines relevant.

2. Order. An appointment of a guardian ad litem must be by court order.

A. The appointment order must be written on a court-approved form and must specify the guardian ad litem's length of appointment, the specific duties for the particular case, including the filing of a written report, and fee arrangements.

B. The guardian ad litem has no authority to perform and may not be expected to perform any duties beyond those specified in the appointment order, unless subsequently ordered to do so by the court.

C. 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 ad litem must be allowed access to the child by the caretakers of the child, whether the caretakers are individuals, authorized agencies or child care providers.

D. When appointment of the guardian ad litem or the fee arrangements for payment of the guardian ad litem are not agreed to by the parties, the court shall state in the appointment order its findings, based on the criteria stated in this section, supporting the appointment of the guardian ad litem and the fee payment order.

**3. Payment for services; fees and billing; enforcement.** The order under subsection 2 must 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.

A. The fee arrangements in the order must specify hourly rates or a flat fee, the timing of payments to be made and by whom and the maximum amount of fees that may be charged for the case without further order of the court. If the payments ordered to be made before the guardian ad litem commences the investigation, if any, are not paid as ordered, the guardian ad litem shall notify the court, and the court may vacate the appointment order or take such other action it determines appropriate under the circumstances.

B. In determining the responsibility for payment, the court shall consider:

(1) The income of the parties;

(2) The marital and nonmarital assets of the parties;

(3) The division of property made or anticipated as part of the final divorce or separation;

(4) Which party requested appointment of a guardian ad litem; and

(5) Other factors considered relevant by the court, which must be stated with specificity in the appointment order.

C. The guardian ad litem shall use standardized billing, itemization requirements and time reporting processes as established by the division. The guardian ad litem may collect fees, if a collection action is necessary, pursuant to Title 14 and may not pursue collection in the action in which the guardian ad litem is appointed.

**4. Best interests of the child.** In performance of duties specified in the appointment order, the guardian ad litem shall use the standard of the best interests of the child.

**5. Wishes of the child.** 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.

**6. Report.** The guardian ad litem shall provide a copy of each report ordered by the court to the parties and the court at least 14 days before each report is due. A guardian ad litem shall provide a copy of the final written report to the parties and the court at least 14 days in advance of the final hearing. Reports are admissible as evidence and subject to cross-examination and rebuttal, whether or not objected to by a party. Any objections to a report must be filed at least 7 days before the applicable hearing.

### **§1556. Appointment of guardian ad litem in child protection cases under Title 22**

**1. Appointment of guardian ad litem.** An order appointing a guardian ad litem pursuant to Title 22, section 4005 must specify the terms and conditions of the appointment as provided in Title 22, this chapter and rules adopted by the Supreme Judicial Court.

**2. Order.** An appointment of a guardian ad litem must be by court order.

A. The appointment order must be written on a court-approved form and must specify the guardian ad litem's length of appointment and specific duties, including the filing of a written report.

B. The guardian ad litem has no authority to perform and may not be expected to perform any duties beyond those specified in the appointment order, unless subsequently ordered to do so by the court.

C. 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 shall investigate to ascertain the facts.

D. The guardian ad litem must be provided access to the child by any agency or person.

E. The guardian ad litem shall file such reports, motions, responses or objections as necessary and appropriate to the stage of the case to assist the court in identifying the best interests of the child and provide copies to all parties of record.

F. The guardian ad litem shall appear at all child protection proceedings, unless previously excused by order of the court, and other proceedings as ordered by the court. The guardian ad litem may present evidence and ensure that, when 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 must 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.

G. The guardian ad litem shall 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.

H. The guardian ad litem shall recommend appropriate services, by motion for court order if necessary, to access entitlements, to protect the child's interests and to implement a service plan.

**3. Best interests of the child.** In performance of duties specified in the appointment order, the guardian ad litem shall use the standard of the best interests of the child.

**4. Wishes of the child.** 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.

### **§1557. Complaint process**

**1. Rules.** The Supreme Judicial Court shall provide by rule for a complaint process concerning guardians ad litem appointed under Title 18-A, Title 19-A and Title 22 that provides for at least the following:

A. The ability of a party to make a complaint before the final judgment as well as after the final judgment is issued;

B. Written instructions on how to make a complaint;

C. Clear criteria for making a complaint;

D. Transparent policies and procedures concerning the investigation of complaints and the provision of information to complainants;

E. A central database to log and track complaints; and

F. Policies and procedures for using complaints and investigations for recommending the removal of a guardian ad litem from a particular case or other consequences or discipline.

**2. Complaint process.** The division shall provide written and electronic information to communicate the complaint process to the public and to all parties.

**3. Minor complaint option.** The rules may provide for a minor complaint option that authorizes corrective action without the necessity of completing the full complaint and investigatory process.

**4. Motion to remove.** The complaint process adopted pursuant to this section is in addition to the right of a party to file a motion to remove the guardian ad litem while the case is pending. The court shall hold a hearing on the motion at the request of the party filing the motion. The motion may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

### **§1558. Repeal**

This chapter is repealed October 1, 2017.

**Sec. 2. Information technology system.** In developing the request for proposals for the new case management system for the courts, the judicial branch shall require the inclusion of at least the following information about guardians ad litem:

1. Information on rostering, training status, availability and case assignment; and
2. Case management information relating to guardians ad litem, including:
  - A. Data to track orders of appointment, submission of required reports, caseloads and other relevant information; and
  - B. Data making guardian ad litem activities transparent to all parties.

**Sec. 3. Post-judgment evaluation policy and process.** The judicial branch shall develop and implement a post-judgment evaluation policy and process to collect and analyze data from the parties in cases in which guardians ad litem have been appointed.

**Sec. 4. Report.** The Chief Judge of the District Court shall report to the joint standing committee of the Legislature having jurisdiction over judiciary matters by

February 15, 2017 on the following with regard to implementing the Maine Revised Statutes, Title 4, chapter 32:

1. The adoption of rules;
2. The establishment of a complaint process;
3. The development of a post-judgment evaluation policy and process; and
4. The adoption of standards of conduct for guardians ad litem.

**Sec. 5. Appropriations and allocations.** The following appropriations and allocations are made.

**JUDICIAL DEPARTMENT**

**Courts - Supreme, Superior and District 0063**

Initiative: Provides funds for one Family Process Specialist position and one part-time Administrative Assistant position and related costs effective January 1, 2015 to provide oversight of guardians ad litem.

<b>GENERAL FUND</b>	<b>2013-14</b>	<b>2014-15</b>
POSITIONS - LEGISLATIVE COUNT	0.000	1.500
Personal Services	\$0	\$57,555
All Other	\$0	\$32,445
<b>GENERAL FUND TOTAL</b>	<b>\$0</b>	<b>\$90,000</b>

**Sec. 6. Effective date.** Those sections of this Act that require the judicial branch to develop and implement a post-judgment evaluation policy and process to collect and analyze data and that require the Chief Judge of the District Court to report to the joint standing committee of the Legislature having jurisdiction over judiciary matters take effect January 1, 2015.