

STATE OF MAINE
SUPREME JUDICIAL COURT
REPEAL AND ADOPTION OF NEW
MAINE RULES FOR GUARDIANS AD LITEM

2015 Me. Rules 09

Effective: September 1, 2015,
as provided in Rule 11

All of the Justices concurring therein, the Maine Rules for Guardians ad Litem are repealed in their entirety and replaced with the following, to be effective on the date indicated above as provided in Rule 11. To aid in understanding of some Rules, Reporter's Notes appear after the text of certain Rules. The Reporter's Notes state the reason for recommending the language of the Rule, but the Reporter's Notes are not part of the Rule adopted by the Court.

MAINE RULES FOR GUARDIANS AD LITEM
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MAINE RULES FOR GUARDIANS AD LITEM

RULE 1. AUTHORITY, SCOPE, GOALS, AND DEFINITIONS

(a) Authority and Scope. These Rules are adopted pursuant to 4 M.R.S. §§ 1551 to 1557, 18-A M.R.S. § 1-112, 19-A M.R.S. § 1507, and 22 M.R.S. § 4005, to address practice and performance of guardians ad litem for children in the District Court, the Superior Court, and the Probate Court. They govern the qualifications for guardians ad litem, standards of conduct for guardians ad litem, appointment of guardians ad litem, and placement of guardians ad litem on, and removal of guardians ad litem from, the guardian ad litem Roster.

(b) Goals. These Rules 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 whose interests 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 ad litem 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 ad litem must tailor his or her work to the particular needs and circumstances of each case as identified in the court order appointing the guardian ad litem, but, in general, a guardian ad litem shall

(1) Represent consistently the best interest of the child and provide information to the court that assists the court in determining the best interest of the child;

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

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

(4) Recognize that timely resolution of each matter serves the best interest 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) Communicate in a developmentally appropriate way with the child;
- (7) Make well-reasoned and factually based recommendations regarding the best interest of the child as directed by the order of appointment;
- (8) 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
- (9) 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, the following terms have the following definitions:

- (1) *Best interest of the child.* “Best interest of the child” means an outcome that serves or otherwise advances the health, safety, well-being, education, and growth of the child.
- (2) *Board Clerk.* “Board Clerk” means the attorney employed by the Board of Overseers to perform advisory, review, and administrative functions as set forth in the Maine Bar Rules and these Rules.
- (3) *Board Counsel.* “Board Counsel” means an attorney employed by the Board of Overseers to perform the prosecutorial function in guardian ad litem disciplinary matters, or Special Counsel retained by the Board of Overseers under these Rules.
- (4) *Board of Overseers.* “Board of Overseers” means the Board of Overseers of the Bar.
- (5) *CASA and CASA Program.* “CASA” means a court appointed special advocate, and “CASA Program” means the Court Appointed Special Advocate Program established in Title 4, Chapter 31.

(6) *Central Intake Office.* “Central Intake Office” means the office staffed by the Board Clerk that has certain administrative and review functions as set forth in the Maine Bar Rules and these Rules.

(7) *Chief Judge.* “Chief Judge” means the Chief Judge of the District Court or the Chief Judge’s designee.

(8) *Complainant.* “Complainant” means a person who files a complaint against a guardian ad litem pursuant to the Guardian ad Litem Review Board Complaint System.

(9) *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 18-A M.R.S. § 1-112, 19-A M.R.S. § 1507, or 22 M.R.S. § 4005.

(10) *Guardian ad Litem Review Board Complaint System.* “Guardian ad Litem Review Board Complaint System” means the complaint system established in Rule 9.

(11) *Judge, court, or judicial officer.* “Judge,” “court,” or “judicial officer” means a Justice of the Superior Court, a Judge of the District Court, a Judge of Probate, or a Family Law Magistrate.

(12) *Maine Supreme Judicial Court.* “Maine Supreme Judicial Court” means the Maine Supreme Judicial Court, or a single Justice thereof.

(13) *Office of the Chief Judge.* “Office of the Chief Judge” means the administrative office of the Chief Judge of the District Court.

(14) *Public member.* “Public member” means a member of the Review Board who is not a rostered guardian ad litem.

(15) *Respondent.* “Respondent” means a guardian ad litem who is the subject of an action filed pursuant to the Guardian ad Litem Review Board Complaint System.

(16) *Review Board.* “Review Board” means the Guardian ad Litem Review Board established in Rule 7.

(17) *Roster*. “Roster” means the roster of guardians ad litem maintained by the Chief Judge that separately identifies CASAs and individuals approved to serve as guardians ad litem in Title 18-A proceedings, Title 19-A proceedings, and/or Title 22 proceedings.

(18) *Sanction*. “Sanction” means a public disciplinary action pursuant to Rule 9 of these Rules and includes reprimand and removal of a guardian ad litem from the Roster for misconduct but does not include removal of the guardian ad litem from the Roster for incapacity.

(19) *Serious crime*. “Serious crime” means any crime defined as a “serious crime” in Maine Bar Rule 23 or any crime in which the victim is a child.

RULE 2. GUARDIANS AD LITEM

(a) Appointment.

(1) *Title 18-A and 19-A Proceedings*. In Title 18-A and Title 19-A proceedings, a judge may appoint any person listed on the Roster to serve as a guardian ad litem in that proceeding. 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 providing the parties with an opportunity to be heard, appoint an attorney admitted to practice in this State whom the court determines to have the necessary skills and experience to serve as a guardian ad litem in that case, provided that the attorney has not been removed or suspended from the Roster, and has not surrendered his or her appointment to the Roster. For the purposes of this paragraph, good cause may include the appointment of a guardian ad litem on a pro bono basis.

(2) *Child Protection Proceedings*. Guardians ad litem appointed in child protection proceedings pursuant to 22 M.R.S. § 4005 shall be either a CASA or an attorney listed on the Roster. If neither a CASA nor an attorney from the Roster is available, the court may appoint another attorney, provided that the attorney has not been removed or suspended from the Roster, and has not surrendered his or her appointment to the Roster.

(b) Application, Selection, and Placement of Guardians ad Litem 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.

(B) *Application Periods.* The Chief Judge will accept applications and will review them periodically, based on the operational needs of the Maine Judicial Branch.

(2) *Criteria.* To qualify for placement on the Roster, an applicant must demonstrate the following to the satisfaction of the Chief Judge:

(A) *Credentials.* The applicant must possess

(i) A current valid license to practice law in the State of Maine;

(ii) A current valid license to practice as a Licensed Clinical Social Worker (LCSW), Licensed Professional Counselor (LPC), Licensed Clinical Professional Counselor (LCPC), Licensed Master Social Worker (LMSW), Licensed Marriage Family Therapist (LMFT), Licensed Pastoral Counselor (LPaC), psychologist, or psychiatrist in the State of Maine; or

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

(B) *Core Training.* The applicant must have attended a guardian ad litem training program approved by the Chief Judge with a curriculum of at least 18 hours to be placed on the Title 18-A and/or 19-A Roster and 23 hours for the Title 22 Roster. To be approved by the Chief Judge, the training curriculum must include specified learning outcomes and activities designed to meet those outcomes, and must cover Titles 18-A, 19-A, and 22; dynamics of domestic abuse and its effect on children; dynamics of separation and divorce and their 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 financial impact of separation and divorce; legal issues and processes; ethics and professionalism as a guardian ad litem; the duties and obligations of the guardian ad litem as an agent of the court; and interviewing techniques.

For a guardian ad litem acting under the auspices of the CASA program, successful completion of CASA training satisfies this requirement. CASA training does not satisfy the core training requirement if the applicant seeks to be placed on the Roster for appointment in non-CASA cases.

(C) *Character and Fitness Evaluation.* The applicant must demonstrate to the Chief Judge that he or she is presently of good character and fitness to serve as a guardian ad litem.

(i) The applicant must disclose to the Chief Judge all prior criminal convictions in any jurisdiction or substantiations for abuse or neglect by the Maine Department of Health and Human Services or an equivalent agency in another jurisdiction. Upon receiving this information, the Chief Judge may request additional information or evidence demonstrating that the applicant presently possesses the requisite good character to serve as a guardian ad litem.

(ii) The applicant must disclose to the Chief Judge any prior history of complaints to or professional discipline by a licensing agency for any profession in any jurisdiction or the Guardian ad Litem Review Board Complaint System. Upon receiving this information, the Chief Judge may request additional information or evidence demonstrating that the applicant currently possesses the requisite good character to serve as a guardian ad litem.

(iii) The applicant must disclose to the Chief Judge any past removal from or surrender from the Roster for incapacity or similar action with respect to any other professional license in any jurisdiction. The Chief Judge may require an applicant with a history of incapacity to present additional information or evidence demonstrating that the incapacity has been removed and that the applicant is presently competent to serve in the role of a guardian ad litem.

(iv) The applicant must disclose to the Chief Judge the existence of any of the following of which he or she is aware regarding the

applicant's spouse, the parent or guardian of a child of the applicant, or any person with whom the applicant resides:

- (a) Any charge, finding, or conviction in any jurisdiction in which it has been alleged that the person abused or neglected a child, as defined by 22 M.R.S. § 4002;
- (b) Any charge, finding, or conviction in any jurisdiction in which it has been alleged that the person abused, neglected, or exploited an incapacitated or dependent adult, as defined by 22 M.R.S. § 3472; or
- (c) Any charge, finding, or conviction in any jurisdiction in which it has been alleged that the person committed a "serious crime" as defined by Rule 1(c)(19).

A decision by the Chief Judge that the applicant does not possess the requisite character and fitness to serve as a guardian ad litem is not subject to appeal.

(3) *Placement on Roster.* Applicants who the Chief Judge determines satisfy the application criteria in Rule 2(b)(2) shall, at the discretion of the Chief Judge, complete a release authorizing the Administrative Office of the Courts to conduct a background check consisting of: (A) a criminal history information check; (B) a child protective services information check; (C) a certificate of good standing from the licensing agency for the applicant's profession, which must include disclosure of any complaints to or disciplinary action taken by the agency; and (D) a report from Board Counsel disclosing any past complaints, surrender from the Roster, or disciplinary sanction imposed pursuant to Rule 9 of these Rules.

Applicants whose background check results are satisfactory to the Chief Judge and who otherwise satisfy the qualification criteria set out in this Rule will be finally accepted and placed on the Roster. Applicants whose background check results are not satisfactory to the Chief Judge shall not be placed on the Roster. The decision of the Chief Judge is final and not subject to appeal.

(4) *Maintenance of Requirements.* The requirements of Rule 2(b)(2) must be maintained in order for a guardian ad litem to remain in good standing and included on the Roster.

(5) *Acceptance of Court Referrals.* A guardian ad litem is expected to accept at least one Title 19-A pro bono or reduced-fee referral from the Judicial Branch per calendar year and shall do so to the extent consistent with the guardian ad litem's other professional, personal, and public interest service. Acting as a guardian ad litem in a Title 22 case does not satisfy this requirement.

(6) *Guardian ad Litem Resignation or Leave of Absence.* A guardian ad litem may resign from the Roster at any time. A guardian ad litem 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. The guardian ad litem must promptly notify the Review Board of the resignation or approved leave of absence.

Reporter's Notes – July 2015

The LSW license, which requires only a bachelor's degree, has been removed 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.

RULE 3. IMMUNITY

Pursuant to 18-A M.R.S. § 1-112(f), 19-A M.R.S. § 1507(6), 22 M.R.S. § 4005(1)(G), and these Rules, guardians ad litem are entitled to quasi-judicial immunity from liability for actions undertaken pursuant to their appointments and these Rules.

RULE 4. COURT APPOINTMENT AND DUTIES

(a) Appointment to a Case. An individual shall act in a case as a guardian ad litem only as authorized by

(1) A limited purpose appointment order issued pursuant to Rule 4(b)(4)(D)(i), 4 M.R.S. § 1555, and either 19-A M.R.S. § 1507 or 18-A M.R.S. § 1-112;

(2) A standard appointment order issued pursuant to Rule 4(b)(4)(D)(ii), 4 M.R.S. § 1555, and either 19-A M.R.S. § 1507 or 18-A M.R.S. § 1-112;

(3) An expanded appointment order issued pursuant to Rule 4(b)(4)(D)(iii), 4 M.R.S. § 1555, and either 19-A M.R.S. § 1507 or 18-A M.R.S. § 1-112; or

(4) An appointment order issued pursuant to Rule 4(c), 4 M.R.S. § 1556, and 22 M.R.S. § 4005.

(b) Title 18-A and 19-A Appointments.

(1) *Consideration of Appointment.* A party may file a motion for the court to appoint a guardian ad litem in proceedings to determine parental rights and responsibilities and guardianship of a minor pursuant to 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 also appoint a guardian ad litem on its own motion after notice to the parties and an opportunity to be heard. The court's adjudication of a motion for appointment of a guardian ad litem shall be governed by 18-A M.R.S. § 1-112 or 19-A M.R.S. § 1507.

(2) *Timing of Motion for Appointment.* In a Title 19-A proceeding, 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, if mediation is waived, 60 days after the first conference with the court. 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) Alleged 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 provide information as follows:

(A) The court shall specify the guardian ad litem's length of appointment; duties, including the filing of a written report pursuant to 4 M.R.S. § 1555(6) and either 19-A M.R.S. § 1507(5) or 18-A M.R.S. § 1-112(e); 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. The guardian ad litem may not perform and shall not be expected to perform any duties beyond those specified in the appointment order, unless subsequently ordered to do so by the court.

(B) 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 caretakers of the child, whether the caretakers are individuals, authorized agencies, or childcare providers.

(C) In Title 18-A proceedings, the court shall specify who is responsible for payment of the guardian ad litem's fees. In Title 19-A proceedings, the order shall specify that payment for the services of the guardian ad litem is the responsibility of the parties pursuant to 19-A M.R.S. § 1507(7), with the

terms of payment specified in the order. In determining the responsibility for payment, the court shall consider

- (i) The income and earnings of the parties;
- (ii) The marital and nonmarital assets of the parties;
- (iii) The division of property made or anticipated as part of the final divorce or separation;
- (iv) Which party requested appointment of a guardian ad litem; and
- (v) Other factors deemed relevant by the court, which shall be stated with specificity in the appointment order.

When the parties do not agree to the appointment of the guardian ad litem or the fee arrangements for payment of the guardian ad litem, the court shall state in the appointment order its findings, based on the criteria set out in this Rule, supporting the appointment of the guardian ad litem and the fee payment order. If a guardian ad litem seeks to obtain a judgment for fees based on the guardian ad litem's services and expenses, the guardian ad litem shall do so as part of the action where the guardian ad litem has been appointed. Any action to obtain satisfaction or enforcement of a resulting judgment shall proceed in a separate proceeding under Title 14.

(D) The court may issue one of the following Appointment Orders:

- (i) *Limited Purpose Appointment Order.* The court may appoint a guardian ad litem for a specified, limited purpose or purposes. The order must specify the duties that the guardian ad litem shall perform, the duration of the appointment, the maximum number of hours that may be spent on the case by the guardian ad litem, the hourly fee rate, and the maximum fee that may be charged by the guardian ad litem. The order shall further specify when the fee shall be paid and by whom. If any court-ordered payment is not paid as ordered, the guardian ad litem shall notify the court, and, after the parties receive notice and have an opportunity to be heard, the court may vacate the appointment order or take such other action it deems appropriate.

(ii) *Standard Appointment Order.* The standard appointment order shall list the duties of the guardian ad litem 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, conducting a face-to-face interview with the child;

(2) Interviewing each parent and each other adult who resides in the home or homes where the child or children regularly reside; and

(3) Completing and filing a written report of investigation, 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 ad litem commences the investigation and any interim payments, with the remainder to be paid within 14 days after the filing of the written report. If any court-ordered payment is not made, the guardian ad litem shall notify the court, and after the parties receive notice and have an opportunity to be heard, the court may vacate the appointment order or take such other action it deems appropriate under the circumstances.

(iii) *Expanded Appointment Order.* The original appointment order or an amended appointment order may specify any additional duties of the guardian ad litem 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) Arranging for and obtaining medical, educational, or mental evaluations of the child within a time and at a cost to be stated in the order;
- (5) Arranging for and obtaining medical, educational, or 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 the court orders any additional duties to be performed pursuant to the original appointment order or an amendment of that order, the court may amend any provision of the prior order that is affected by the newest order.

(c) For the performance of these duties, the appointment order shall specify a maximum fee, direct that a specified sum be paid within a set time before the guardian ad litem commences the investigation, direct the payment of any interim payments, and require that the remainder be paid within 14 days after the filing of the written

report. If any court-ordered payment is not paid, the guardian ad litem shall notify the court, and after the parties receive notice and have an opportunity to be heard, the court may vacate the appointment order or take such other action it deems appropriate under the circumstances.

(5) *Best Interest of the child.* In performance of duties in Title 18-A and Title 19-A proceedings, 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).

(6) *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.

(7) *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.

(8) *Agent of the Court.* A person serving as a guardian ad litem pursuant to 4 M.R.S. § 1555 and either 18-A M.R.S. § 1-112 or 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 guardian ad litem's duties.

(c) Title 22 Appointment Order. Guardian ad litem appointment orders entered pursuant to 4 M.R.S. § 1556 and 22 M.R.S. § 4005 shall be issued on a court-approved form and shall specify the terms and conditions of the guardian ad litem's appointment as stated in Title 22 and in these Rules. The guardian ad litem has no authority to perform and shall not be expected to perform any duties beyond those specified in the appointment order, unless subsequently ordered to do so by the court.

(1) *Meet and Interview Child.* The guardian ad litem shall be provided access to the child by any agency or person. 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 after appointment. The guardian ad litem should meet with the child prior to court hearings and when apprised of emergencies or significant events that are likely to have an impact on the child. Unless otherwise specified by the court, the guardian ad litem must meet with the child at least quarterly.

(2) *Investigation.* In pursuit of the best interest of the child, the guardian ad litem 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.

(3) *Court filings.* The guardian ad litem should 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 interest of the child and provide copies to all parties of record. 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. Relief requested may include, but is not limited to, the following:

- (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 parental rights;
- (G) Child support;

- (H) A protective order concerning the child's privileged communications or tangible or intangible property;
- (I) A request for services for child or family; and
- (J) Dismissal of petitions or motions.

(4) *Participation in Hearing.* The guardian ad litem shall appear at all child protection proceedings to represent the child's best interest, unless previously excused by order of the court, and at other proceedings as ordered by 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.

(5) *Protection of Child as Witness.* The guardian ad litem shall advocate for the interests of the child when the child is called to testify as 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.

(6) *Recommendations to the Court.* The guardian ad litem may make recommendations to the court to obtain access to appropriate services and entitlements, to protect the child's interests, and to implement a service plan.

For interim or preliminary protection hearings, the guardian ad litem should, except as otherwise required, appear in court and offer recommendations subject to questions by the court and parties or counsel. The submission of a report by the guardian ad litem and the admissibility of any such report in evidence shall be as provided by statute. The guardian ad litem may present evidence at court hearings.

(7) *Development of Services.* The guardian ad litem may advocate for appropriate services, including by motion filed with the court, to obtain access to appropriate services and entitlements, to protect the child's interests, and to implement a service plan. These services may include, but are not limited to, the following:

- (A) Family preservation or reunification services;

- (B) Sibling and family visitation;
- (C) Child support;
- (D) Domestic violence prevention, intervention, and treatment;
- (E) Medical and mental health care, including residential/inpatient and outpatient psychiatric treatment if necessary and appropriate;
- (F) Drug and alcohol treatment;
- (G) Parenting education;
- (H) Semi-independent and independent living services;
- (I) Foster care, including therapeutic foster or group home care if necessary and appropriate;
- (J) Petition for termination of parental rights;
- (K) Adoption services;
- (L) Education;
- (M) Recreational or social services;
- (N) Housing; and
- (O) Referrals for supplemental security income (SSI) or special education and related services, if necessary and appropriate.

(8) *Best interest of the child.* In performing the duties specified in the appointment order, the guardian ad litem shall use the standard of the best interest of the child.

(9) *Additional Powers.* A guardian ad litem may perform only those duties specified by court order. In some cases, however, the court may order that guardian ad litem's investigation include the following activities:

- (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 other 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, coaches, clergy, mental health professionals, physicians, law enforcement officers, and potential witnesses;
- (E) Reviewing relevant photographs, video or audio recordings, and other evidence;
- (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) Arranging for the assessment of 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) Communicating effectively with other professionals involved in the assessment or treatment of the child and/or parties to a child's case, to include the following:
 - (i) 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;
 - (ii) Requesting educational testing of, or an individualized education plan for, a child;

(iii) 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

(iv) 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 interest 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) Participating in the development and negotiation, including mediation, of any plans or orders that affect the best interest of the child; and

(J) Monitoring implementation of service plans and court orders, until the termination or expiration of the guardian ad litem's appointment, to determine whether services ordered by the court are being provided effectively and in a timely manner.

(10) *Appointment of Counsel for Guardian ad Litem.* A guardian ad litem may petition the court to appoint a lawyer to represent the guardian ad litem when, in the judgment of the guardian ad litem, such appointment is necessary to protect the legitimacy of the guardian ad litem's role.

RULE 5. STANDARDS OF CONDUCT

(a) Performance of Duties. The guardian ad litem must maintain independent representation of the best interest of the child and perform the guardian ad litem's duties faithfully.

(b) Agent of the Court. As a quasi-judicial officer, the guardian ad litem shall exercise his or her independent judgment on behalf of the child in all relevant matters, respecting the court's obligation under Canon 2.2 of the Maine Code of Judicial Conduct to "perform all judicial and administrative duties promptly, fairly, and competently."

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

(1) Obtain copies of all relevant pleadings and notices;

(2) In Title 22 cases, unless excused by the court, and in Title 18-A and 19-A cases, when directed by the court, participate in depositions, negotiations, and discovery that are relevant to the child's best interest, and participate in all case management, pretrial or other conferences, and hearings, unless excused by the court;

(3) Confirm the appointment with the clerk's office. The clerk shall send copies of all subsequent notices and orders to the guardian ad litem. Parties or their counsel shall send to the guardian ad litem copies of all pleadings and correspondence with the court, and the guardian ad litem shall be entitled to reasonable notification of case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;

(4) Not cause case delays and shall attempt to reduce case delays; and

(5) Include parties in the investigation, employ effective communication techniques, and be sensitive to the culture and socio-economic status of the parties.

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

(e) Advocate for Clear Court Orders. The guardian ad litem should request orders that are clear, specific, and, where appropriate in Title 22 cases, include a time line for the assessment, implementation of services, placement, treatment, and evaluation of the child and the child's family.

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

(g) Confidentiality. A guardian ad litem shall observe all statutes, rules, and regulations concerning confidentiality. A guardian ad litem shall not disclose information or participate in the disclosure of information relating to a 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 ad litem, including those made to a guardian ad litem by a child, are not privileged. The guardian shall exercise reasonable discretion about whether to disclose communications made by the child to the court, or to professionals providing services to the child or the family based on the guardian ad litem's evaluation of the best interest of the child. Any decision by the guardian not to disclose such information, however, shall be subject to review by the court following an *in camera* review. A guardian ad litem's notes and work papers are privileged and shall not be disclosed to any person, reserving to the court, however, the authority to order disclosure of such material as part of court proceedings if the court determines that disclosure is warranted under applicable court procedures. If the guardian ad litem is an attorney, she or he shall be deemed to act as a guardian ad litem rather than as an attorney, and information he or she receives is not subject to the attorney-client privilege.

(h) Ex Parte Communications. In extraordinary circumstances involving matters of child safety or similarly grave concerns, the guardian ad litem may initiate or participate in ex parte communications with the court about a particular case pursuant to Canon 2.9(A) of the Maine Code of Judicial Conduct. However, as a matter of due process and fundamental fairness, the guardian ad litem 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 shall take such steps as are necessary to alleviate the potential for harm, and when the danger of harm no longer exists, disclose the nature of the communication to the parties or their counsel.

(i) Conflicts of Interest and Mandatory Disclosures.

(1) *Mandatory Disqualification.* A guardian ad litem shall

(A) Decline appointment in a proceeding where the guardian ad litem has a present or prior personal, professional, business, or legal relationship with any party involved in the proceeding that would interfere with the guardian ad litem's ability to perform the functions of a guardian ad litem in accordance with these Rules and in accordance with any requirements of a judicial officer; and

(B) If a relationship described in Rule 5(i)(1)(A) arises after appointment, advise the court of the existence of such a relationship and seek permission to withdraw.

(2) *Disclosure of Prior Acquaintances.* A guardian ad litem who is aware that he or she had a relationship of any type, including but not limited to a professional, personal, or financial relationship, with any party in a case, shall

(A) At or before the time of appointment, disclose such fact to the parties and the court, either orally or in writing; and

(B) If such an acquaintance becomes known only after appointment, immediately disclose such fact to the parties and the court, either orally or in writing.

(3) *Allegations of Failure to Disclose Prior Acquaintances.* If it is alleged by a party to any proceeding in which a guardian ad litem is appointed that the guardian ad litem has failed to disclose any present or prior relationship that affects his or her objectivity, or the guardian ad litem's ability to perform the functions of a guardian ad litem in accordance with these Rules or in accordance with requirements of a judicial officer, the guardian ad litem shall

(A) Inform a judicial officer that the allegation has been made; and

(B) Respond either orally or in writing to a judicial officer and to all parties regarding the nature of the present or prior acquaintance, if any.

(4) *Duty to Report.*

(A) A guardian ad litem shall, in writing, immediately inform Board Counsel and the courts and parties in all Title 18-A, Title 19-A, and Title 22 proceedings in which the guardian ad litem is currently appointed of the existence of the following with respect to the guardian ad litem:

(i) Any criminal conviction not previously disclosed to the Review Board pursuant to Rule 2 or Rule 8;

(ii) Any pending criminal charge in any jurisdiction and any disposition of such criminal charge;

(iii) Any pending disciplinary hearing before a professional licensing agency in Maine or any other jurisdiction, including but not

limited to the filing of formal charges by Bar Counsel pursuant to Rule 9(d) of these Rules, and the disposition of such matter(s); and

(iv) Any court finding of abuse or neglect or any substantiation of abuse or neglect by the Maine Department of Health and Human Services or an equivalent agency in any other jurisdiction.

(B) A guardian ad litem shall immediately inform Board Counsel of the existence of any pending safety assessment by the Maine Department of Health and Human Services involving anyone residing in the guardian ad litem's household.

(C) A guardian ad litem shall immediately inform Board Counsel of the existence of any of the following of which he or she is aware regarding the guardian ad litem's spouse, the parent or guardian of a child of the guardian ad litem, or any person with whom the guardian ad litem resides:

(i) Any charge, finding, or conviction in which it has been alleged that the person abused or neglected a child, as defined by 22 M.R.S. § 4002;

(ii) Any charge, finding, or conviction in which it has been alleged that the person abused, neglected, or exploited an incapacitated or dependent adult, as defined by 22 M.R.S. § 3472; or

(iii) Any charge, finding, or conviction in which it has been alleged that the person committed a "serious crime" as defined by Rule 1(c)(19).

(D) Board Counsel shall inform the Chief Judge of information received by a guardian ad litem under this Rule in accordance with Rule 9(h).

(5) *Disclosure of Other Cases.* If a guardian ad litem is a party to any case in court, other than in his or her capacity as a guardian ad litem, he or she shall immediately disclose to the court in any Title 18-A, Title 19-A, or Title 22 case in which he or she is currently appointed that he or she is a party to a case in court, and the name, court location, docket number and nature of any such case, and request direction from the court as to service or continued service as a guardian ad litem.

(6) *Disclosure of Financial Relationship.* If a guardian ad litem has any financial relationship with any attorney in the case or any material witness, he or she shall immediately disclose to the judicial officer the existence and nature of that relationship, and the court shall determine whether initial or ongoing appointment of the guardian ad litem is appropriate.

(j) **Withdrawal.** A guardian ad litem may seek to withdraw by filing a motion with the court that appointed the guardian ad litem. The guardian ad litem must continue representation until the motion is granted, and if the court's order so provides, until a successor guardian ad litem is appointed.

Reporter's Notes – July 2015

Rule 5(h) authorizes guardians ad litem to engage in ex parte communications with a judicial officer only in truly extraordinary circumstances. A guardian ad litem who abuses Rule 5(h) may be subject to discipline pursuant to Rules 6 and 9.

Rule 5(i), addressing conflicts of interest and disclosures, is based on Rule 503.06 of the New Hampshire Guardian ad Litem Rules.

RULE 6. INVOLUNTARY REMOVAL FROM A PARTICULAR CASE

(a) **Removal.** A guardian ad litem may be removed from a particular case only by order of the court, either on motion of a party to the case or on the court's own motion. When removing a guardian ad litem from a case, the judicial officer may take any other action deemed appropriate.

(b) **Motion.** A party who wishes to seek the removal of a guardian ad litem from a particular case shall proceed by written motion, which shall be served upon the parties and the guardian ad litem. Any opposition and reply to the motion shall be governed by the applicable rules of court, and the guardian ad litem shall be treated as the opposing party for purposes of the motion. The judicial officer 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 judicial officer determines that the interests of justice so require.

(c) **Mandatory Removal.** A judicial officer shall remove a guardian ad litem from a particular case if the guardian ad litem has been suspended or removed from the Roster.

(d) Discretionary Removal. In all cases other than those specified in Rule 6(c), the decision whether to remove a guardian ad litem from a particular case is subject to the discretion of a judicial officer.

(e) No Right to Interlocutory Appeal. The decision whether to remove a guardian ad litem from a particular case is not subject to interlocutory review.

(f) Replacement. Following removal of the guardian ad litem, the judicial officer shall appoint a successor guardian ad litem pursuant to Rule 2, except that, in Title 18-A and Title 19-A cases, the court may order that the case proceed without a guardian ad litem.

(g) Interrelationship with Rule 9. The provisions of this Rule do not limit a party's right to proceed under Rule 9. A party's submission of a complaint to the Guardian ad Litem Review Board under Rule 9 shall not by itself require the removal of the guardian ad litem in the subject proceeding.

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Rule 6 establishes the procedures for removal of a guardian ad litem from a particular case. As set forth in 4 M.R.S. § 1557(4), the complaint process adopted in Rule 9 is in addition to the right of a party to file a motion to remove the guardian ad litem while a case is pending.

Rule 6(a) also recognizes a judicial officer's inherent authority to remove a guardian ad litem on his or her own initiation. No hearing is necessary if the judicial officer initiates the removal.

The second sentence of Rule 6(a) permits a judicial officer to "take any other action he or she deems appropriate" when removing a guardian ad litem from a particular case. Possible additional actions include, but are not limited to, filing a complaint pursuant to Rule 9; ordering the guardian ad litem to reimburse the parties or the Judicial Branch for fees, including those fees previously "earned" but no longer of use in the case; or ordering the guardian ad litem to transfer files or other information to the replacement guardian ad litem.

RULE 7. GUARDIAN AD LITEM REVIEW BOARD

(a) Guardian ad Litem Review Board.

(1) *Review Board.* The Guardian ad Litem Review Board is established as an independent unit within the Board of Overseers to administer the regulation of guardians ad litem as defined in these Rules.

(2) *Appointment.* The Maine Supreme Judicial Court shall appoint twelve people to serve on the Review Board. Eight members shall be drawn from the Roster or from the Family Law Section of the Maine State Bar Association. Four members shall be public members, selected as follows. The Governor, the President of the Senate, and the Speaker of the House shall each be invited to submit recommendations for the public members, and the Judicial Branch shall solicit public members through notice on the Judicial Branch website. When sufficient recommendations are received from executive and legislative leadership, three of the four public members will be drawn from that list. The Maine Supreme Judicial Court shall periodically designate one member of the Board as Chair and another as Vice Chair.

(3) *Terms of Office.* Review Board members shall be appointed for a term of four years, except that, for the purpose of achieving staggered terms, the initial appointments of four of the members who are on the Roster and two of the public members shall be for two years. No member shall serve more than two consecutive four-year terms. A member whose term has expired may continue to serve on any case that was commenced before the expiration of the member's term. A member who has served two consecutive four-year terms may not be reappointed before the expiration of at least one year.

(4) *Compensation.* Review Board members shall receive no compensation for their services but may be reimbursed by the Board of Overseers of the Bar for travel and other expenses incidental to the performance of their duties.

(5) *Review Board Quorum.* Seven members of the Review Board shall constitute a quorum for any meeting. The Review Board may act through the concurrence or vote of a majority of the members present at a duly constituted meeting. After reasonable notice to all members and with the consent of all participating members, a meeting may be duly constituted and action taken by means of a telephone or video conference or other communications equipment

enabling all participants and attendees to hear one another. Meetings of the Review Board shall be open to the public, except those portions of the meetings wherein the Review Board (A) consults with counsel pertaining to contemplated or pending litigation, or proceedings pending before a Review Board Panel and/or a Single Jurist; or (B) considers other matters made confidential or private by these Rules, court order, or law.

(6) *Representation Prohibition.* No member may be legal counsel for a party in any proceeding under Rules 6 through 9. When a Review Board member is employed by a law firm and a member of that firm serves as legal counsel for a party in any proceeding under Rules 6 through 9, the Review Board member shall be ineligible to perform Review Board responsibilities relating to that proceeding. The Review Board member shall remain eligible to perform Review Board responsibilities unrelated to that proceeding, provided that the Review Board member is timely screened from any participation in or relating to that proceeding, at both the Review Board member's firm and the Review Board.

(7) Review Board members may not testify voluntarily in any proceeding under these Rules or as an expert witness in any court proceeding in the field of guardian ad litem responsibilities.

(8) *Guardians ad Litem on the Roster.* The Review Board shall maintain as confidential current information relating to all guardians ad litem appointed to the Roster including, but not limited to, the following:

- (A) Date of birth;
- (B) Current office address, telephone number, and email address;
- (C) Current residence address, telephone number, and email address;
- (D) Date of appointment to the Roster;
- (E) Appointment status and the date of any transfer to or from a status;
- (F) Social security or federal identification number;
- (G) Other jurisdictions in which the guardian ad litem is appointed guardian ad litem and dates of appointment; and

(H) Nature, date, and place of any discipline imposed in Maine and in any other jurisdiction.

(9) *Review Board Powers and Duties.* The Review Board shall have the following powers and duties:

(A) To propose rules of procedure for the Guardian ad Litem Review Board Complaint System for promulgation by the Maine Supreme Judicial Court, and to comment on the enforceability of existing and proposed Maine Rules for Guardians ad Litem. In furtherance thereof, the Review Board may establish or designate such voluntary commissions, agencies, or persons to assist its study as it shall deem advisable;

(B) To review periodically with the Maine Supreme Judicial Court the operation of the system;

(C) To enforce guardian ad litem compliance with these Rules and the procedures and regulations adopted thereunder;

(D) To delegate, in its discretion, to the Chair or Vice Chair the power to act for the Review Board on administrative and procedural matters;

(E) To prepare and file with the Board of Overseers each April a proposed Review Board budget for consideration by the Board of Overseers;

(F) To prepare, approve, and file an Annual Report with the Court;

(G) To establish financial policies and procedures, subject to approval by the Board of Overseers, to effect its responsibilities under these Rules;

(H) To maintain the confidentiality of matters coming before the Review Board; and

(I) To carry out the other powers and duties assigned to the Review Board under these Rules.

(10) *Destruction of Confidential Documents.* Upon conclusion of service, members shall take reasonable steps to destroy all documents, in paper or electronic format, relating to the proceedings of the Review Board and subject to the confidentiality provisions of these Rules.

(b) Review Board Panels.

(1) *Panels.* The Review Board shall sit in Panels of three members to perform the duties assigned to Panels under these Rules. The Board Clerk shall select the Panels on a rotating basis depending on the availability of the members. Each Panel shall consist of two members on the Roster and one public member. An effort shall be made to include mental health professionals as well as attorneys on each Review Board Panel. The Chair or the Vice Chair of the Review Board shall appoint a rostered lawyer member of each Panel to serve as chair of that Panel.

(2) *Quorum.* Three members shall constitute a quorum of a Review Board Panel. However, one Roster member and one public member of a Review Board Panel shall constitute a quorum at a hearing with consent of all parties. In the event that a two-member Panel is deadlocked, a new three-member Panel shall be appointed.

(3) *Powers and Duties.* Review Board Panels and the Chairs of each Review Board Panel shall have the powers and duties assigned to Panels and Panel Chairs in Rule 9 with respect to hearings on guardian ad litem misconduct and incapacity.

(4) *Recusal and Disqualification of Panel Members.*

(A) Panel members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to recuse. If a member is disqualified or recused, another member shall be appointed by the Board Clerk. No peremptory challenges to a panel member are allowed.

(B) A motion to recuse a panel member shall be filed with the Board Clerk within 10 days after service of the first hearing notice containing the names of the panel members assigned to the matter. The Review Board Chair shall rule on the motion, unless the request is for the recusal of the Review Board Chair, in which case the Chief Judge shall act on the motion. Failure to timely file a motion to recuse shall be treated as a factor in deciding whether the motion should be granted.

(C) If the ground for disqualification or recusal is not reasonably discoverable within the deadline established in Rule 7(b)(4)(B), a motion to

recuse a panel member shall be filed with the Board Clerk within 10 days after the ground was discovered or in the exercise of reasonable diligence should have been discovered.

(D) A licensed Maine attorney who was previously a member of a Review Board Panel shall comply with the provisions of Rule 1.12 of the Maine Rules of Professional Conduct with respect to participating in any proceeding under these Rules.

(E) In the event that Board Counsel files formal charges and the respondent is a member of the Review Board, such member shall be recused from all Review Board responsibilities until such time as the matter is concluded.

(5) *Improper Communication.* Except as otherwise explicitly permitted under these Rules, members of a Review Board Panel shall not meet or communicate concerning matters affecting a particular case or pending proceeding, except with other assigned panel members.

(c) Board Counsel.

(1) *Powers and Duties.* Board Counsel shall perform all prosecutorial functions on behalf of the Review Board as described in Rule 9 of these Rules. In addition, Board Counsel shall

(A) Supervise staff needed for the performance of prosecutorial functions;

(B) Issue written guidelines for determining which matters shall be dismissed for failure to allege facts that, if true, would constitute grounds for disciplinary action; and

(C) Encourage and promote competent and ethical practice by members of the Roster by organizing, participating in, and presenting continuing education programs.

(2) *Ex Parte Communication.*

(A) Members of a Review Board Panel shall not communicate ex parte with Board Counsel regarding a pending or impending investigation or disciplinary matter except as provided in Rule 9 or by law, except for

scheduling or administrative purposes, or emergencies that do not encompass substantive matters or issues on the merits. When such ex parte communication is contemplated, the Panel members must ensure that

- (i) It is reasonable to believe that no party will gain a procedural or tactical advantage as a result of the ex parte communication; and
- (ii) All other parties are notified of the substance of the ex parte communication and are given an opportunity to respond.

(B) A violation of this Rule shall be a ground for Review Board member discipline, as appropriate, and cause for removal from the Review Board.

(3) *Recusal.* Board Counsel shall be subject to Maine Bar Rule 2(f) regarding recusals.

(d) Central Intake Office. The Central Intake Office established by Maine Bar Rule 3 shall

(1) Receive complaints regarding the conduct of guardians ad litem who are or were on the Roster, provided that this Rule shall not be construed to limit the authority of any authorized agency to institute proceedings;

(2) Assist complainants in completing and filing complaints and, where appropriate, recommend that the complainant file a complaint with another agency that has jurisdiction over the matter; and

(3) Forward complaints to Board Counsel.

(e) Board Clerk. The Board Clerk shall have the powers and duties assigned to the Board Clerk in Rule 9 of these Rules. In addition, the Board Clerk has the power and duty

(1) To promptly notify the complainant and the respondent of the status and the disposition of each matter;

(2) To record the disposition of all complaints;

(3) To maintain disciplinary records, subject to the file retention requirements of Rule 9(k)(5), including, but not limited to, a single log of all

complaints received, investigative files, and other records as the Maine Supreme Judicial Court may require to be maintained;

(4) To compile statistics to aid in the administration of the Guardian ad Litem Review Board Complaint System, including, but not limited to, statistical summaries of docket processing and case dispositions, and other data as the Maine Supreme Judicial Court may require to be maintained. Statistical summaries shall contain, at a minimum:

- (A) The number of pending cases at each stage in the disciplinary process;
- (B) The number of new cases docketed each year;
- (C) The number of cases carried over from the prior year;
- (D) The number of cases closed each year;
- (E) The number of guardians ad litem removed from the roster in the previous year.

(5) To provide legal and administrative support to the Review Board and Review Board Panels; and

(6) To provide written and electronic information about the complaint process to the public and to all parties.

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Rule 7 establishes generally the powers and duties of the Guardian ad Litem Review Board (“Review Board”), Review Board Panels, Board Counsel, the Central Intake Office, and the Board Clerk. The proposed rule is based on and largely consistent with Maine Bar Rules 1 through 3 and portions of Maine Bar Rule 9 addressing Grievance Commission panels.

Rule 7 contemplates that the Review Board will be administered as an independent 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 involving attorneys. At least one staff attorney within the Board of Overseers will be assigned to serve as Board Counsel. The Board of

Overseers Central Intake Office and Board Clerk will support the Review Board and Review Board Panels.

Rule 7(a) establishes the structure of the Review Board, and addresses generally its powers and duties. Similar to the Board of Overseers under Maine Bar Rule 1(a), Rule 7(a)(1) charges the Review Board with the responsibility for administering the regulation of guardians ad litem on the Roster pursuant to the Guardian ad Litem Review Board Complaint System. To implement this responsibility, Rule 7(a)(9) anticipates that the Review Board will monitor the efficacy of the Complaint System and propose changes to the Maine Supreme Judicial Court when necessary. Similar to the Grievance Commission under Maine Bar Rule 9, Rule 7(b) provides that the Review Board will sit in panels of three members to perform the assigned duties with respect to complaints involving guardians ad litem.

Rule 7(a)(8) requires the Review Board to maintain current information relating to guardians ad litem on the Roster. Because some of this information will be confidential by statute, it is anticipated that the Review Board will adopt policies limiting public disclosure of certain information.

Rule 7(c) sets forth generally the role of Board Counsel, which is similar to that of Bar Counsel under Maine Bar Rule 2. The functions and powers and duties of Central Intake in Rule 7(d) are similar to those in Maine Bar Rule 3, with the exception that Central Intake may not dismiss complaints against guardians ad litem.

The functions of the Board of Overseers of the Bar, Bar Counsel, and Central Intake that are not transferable to the regulation of guardians ad litem have not been included in Rule 7, including Maine Bar Rule 1(f), (h)(4) to (8), (10) to (12), and (14) to (16); Maine Bar Rule 2(e) and (g); and Maine Bar Rule 3(b)(2) and (5) to (7).

Rule 7(a)(2) provides that twelve members of the Review Board shall be appointed, four of whom shall be public members. The Guardians Ad Litem Oversight Task Force (“Task Force”) recommended that two Review Board members be members of the public, but the number has been increased to four to ensure a public member is available for each three-person Review Board Panel pursuant to Rule 7(b)(1).

Rule 7(b)(1) gives the Board Clerk the authority to select the Review Board Panels on a rotating basis, and the Chair or Vice Chair of the Review Board appoints each panel chair. This process is different from the selection of members of Grievance Commission panels under Maine Bar Rule 9(a) in which panels are preselected by the Board of Overseers and alternate members are appointed by the Board of Overseers. The process in Rule 7(b)(1) has been chosen because there are fewer Review Board members than Grievance Commission members and no alternates.

Rule 7(b)(1) also provides that each panel shall consist of two members on the Roster and one public member. It states that an effort will be made to include mental health professionals as well as attorneys on each Review Board Panel. The Task Force recommended that each panel have one member with the same professional background as the subject of the complaint. Although it would be impracticable to guarantee that each panel will include a member with the same professional license as the subject of the complaint, an effort will be made to include a mental health professional if the subject of the complaint is an LCSW, LPC, LCPC, LMSW, LMFT, LPaC, psychologist, or psychiatrist. *See* Rule 2(b)(2)(A)(ii).

RULE 8. GUARDIAN AD LITEM REGISTRATION

(a) Registration Fee. Every guardian ad litem appearing on the Roster shall pay to the Review Board an annual registration fee each fiscal year in which the guardian ad litem appears on the Roster.

(b) Registration Documents. Commencing July 1st each year, every guardian ad litem is required to complete, certify, and file registration documents, which shall be on forms prescribed by the Review Board, for each year the guardian appears on the Roster. Registration documents and payments received after August 31st will be assessed a late fee that shall not be waived. Registered guardians ad litem shall file with the Review Board a supplemental statement of any change in the information previously submitted within 30 days after the change.

All persons who initially become subject to this Rule by appointment to the Roster after April 1st shall file the registration documents required by this Rule at the time of appointment, but no annual registration fee shall be payable until the next annual registration collection. Failure to register shall result in the issuance of a notice of administrative suspension pursuant Rule 8(e).

Unless otherwise exempted, each guardian ad litem appointed to the Roster shall annually file with the Review Board:

(1) *Registration Statement.* A registration statement setting forth the information stated in Rule 7(a)(8) and such other information as the Maine Supreme Judicial Court or the Review Board may direct.

(2) *Continuing Professional Education Report.* A report of continuing professional education credit pursuant to Rule 10(b).

(c) Receipt Demonstrating Compliance with Registration Filing. Within 30 days after the receipt of a guardian ad litem's completed registration documents and payment of all fees, the Review Board shall acknowledge compliance with the annual registration requirements.

(d) Administrative Suspension.

(1) An administrative suspension shall not by itself subject a guardian ad litem to discipline. Board Counsel may, however, institute separate proceedings to determine whether discipline is appropriate.

(2) *Failure to File Registration Documents.* Unless excused on grounds of financial hardship or for other good cause, a guardian ad litem who fails to submit the required completed registration documents under the provisions of Rule 8(b) or pay the required annual registration fee by August 31st shall be suspended from the Roster, if the Board provides notice of the suspension as required by Rule 8(e). The suspended guardian shall comply with the provisions of Rule 8(h).

(e) Notice of Administrative Suspension. The Review Board shall serve the suspended guardian ad litem with notice of the administrative suspension. This notice shall not be effective until 30 days after the date on which it is mailed. A guardian ad litem who files the required registration documents and fee with the Review Board before the effective date of the suspension shall be deemed to be in compliance with this Rule and shall not be suspended for failure to comply with the obligations that led to the notice of suspension.

(f) Reappointment Following Administrative Suspension. Any guardian ad litem suspended from the Roster under Rule 8(d)(2) may be reappointed if, within five years of the effective date of the suspension for

nonpayment, the guardian ad litem remits to the Review Board a reappointment fee that shall not be waived, submits all required registration documents, and makes payment of all arrears.

A guardian ad litem who has been administratively suspended must complete the continuing education requirements of Rule 10(a) for each year the guardian has been suspended, but need not complete more than 12 credit hours for that entire period of suspension, provided that at least two (2) credit hours are primarily concerned with ethics and professionalism education. Additionally, a guardian ad litem who has been suspended from the Roster within the previous five (5) years for non-compliance with the continuing professional education requirements of Rule 10(a) shall be assessed an additional reinstatement fee, as may be set by the Review Board.

Any guardian ad litem who fails to seek reappointment within five years of the effective date of an administrative suspension shall be required to comply with the application procedure in Rule 2(b).

(g) Reappointment Following a Leave of Absence. Any guardian ad litem on leave of absence from the Roster under Rule 2(b)(6) may be reappointed by the Chief Judge if the guardian ad litem demonstrates, to the satisfaction of the Chief Judge, adherence to the Chief Judge's terms for the leave of absence. Otherwise, the guardian ad litem seeking reappointment to the Roster shall comply with the application procedure in Rule 2(b). In addition to all other requirements, a guardian ad litem seeking reappointment following a leave of absence shall remit to the Review Board a non-waivable reappointment fee and an arrearage registration payment equal to the total registration fees, not to exceed \$500, that the guardian ad litem would have been obligated to pay to the Review Board had the guardian ad litem remained active on the Roster during the period of the leave of absence.

(h) Required Actions of Guardians ad Litem Who Are Administratively Suspended or on Leave of Absence. A guardian ad litem who has been administratively suspended or who has taken a leave of absence shall comply with the requirements of Rule 9(m).

Reporter's Notes – July 2015

Rule 8 establishes and describes guardian ad litem registration requirements. It is based on and largely consistent with the requirements for lawyer registration with the Board of Overseers with the Bar in Maine Bar Rule 4.

The registration requirements in Maine Bar Rule 4 that are not transferable to guardians ad litem have not been included in Rule 8. These include Maine Bar Rule 4(a), (b)(3) to (4), (c), (e), (f), (l), and (m).

RULE 9. GUARDIAN AD LITEM REVIEW BOARD COMPLAINT SYSTEM

(a) Grounds for Discipline. It shall be misconduct and a ground for discipline for a guardian ad litem to

(1) Violate or attempt to violate these Rules, chapter 32 of Title 4, Title 18-A, Title 19-A, Title 22, or an appointment order issued pursuant to them; knowingly assist or induce another to do so; or do so through the acts of another;

(2) Engage in conduct that violates the applicable rules of conduct for guardians ad litem in another jurisdiction;

(3) Commit any criminal or unlawful act that reflects adversely on the guardian ad litem's honesty, trustworthiness, or fitness as a guardian ad litem;

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(5) Have allegations of abuse or neglect against him or her substantiated by the Maine Department of Health and Human Services;

(6) Fail to maintain compliance with the requirements in Rule 2 for placement on the Roster;

(7) In the performance of guardian ad litem duties, by words or conduct, manifest bias or prejudice based upon race, color, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status;

(8) Willfully violate an order imposing discipline under these Rules; willfully fail to comply with a subpoena validly issued under these Rules; or knowingly fail to respond to a lawful demand from a disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by applicable rules relating to confidentiality; or

(9) Fail to comply with the duty to report set forth in Rule 5(i)(4).

(b) Jurisdiction.

(1) *Guardians ad Litem.* Any person on the Roster, or formerly on the Roster with respect to acts committed while on the Roster, is subject to the jurisdiction of the Review Board.

(2) *Powers Not Assumed.* This Rule shall not be construed to deny to any court the powers necessary to maintain control over its proceedings.

(c) Period of Limitations. No disciplinary proceeding may be commenced based on conduct alleged to have occurred more than six years prior to the date a complaint is filed.

(d) Disciplinary Procedure.

(1) *Complaint.* Any party to an open or closed proceeding under Title 18-A, Title 19-A, or Title 22, who wishes to complain to the Review Board of misconduct by or incapacity of a guardian ad litem appointed from the Roster in that proceeding, may submit to Central Intake a written complaint on a form approved by the Review Board. Complaints may also be submitted by a judicial officer or Board Counsel.

(2) *Board Counsel Investigation.* Board Counsel shall conduct all investigations, except as otherwise required by these Rules.

(A) Board Counsel shall evaluate all information and complaints to determine whether the information or complaint concerns a guardian ad litem subject to jurisdiction under these Rules and whether the alleged facts, if true, would constitute misconduct or incapacity. Board Counsel shall dismiss a complaint if jurisdiction does not exist or if the facts would not constitute misconduct or incapacity.

(B) If a complaint is dismissed, Board Counsel shall notify the complainant and the respondent in writing that the complaint was dismissed and the reason for the dismissal. This written notification shall inform the complainant of his or her right to seek review of the dismissal by a public member of the Review Board by submitting a written request for review within 21 days after the date of the dismissal notice. Upon receipt of a request for review, a public member shall be assigned by the Board Clerk to review the complaint and Board Counsel's investigation materials, and the assigned public member shall either

(i) Approve the dismissal by Board Counsel, and direct the Board Clerk to notify the complainant and the respondent that the matter shall remain closed; or

(ii) Disapprove the dismissal by Board Counsel, and direct that the matter be investigated further and/or that formal charges be filed. The Board Clerk shall notify the complainant and the respondent of the public member's action in writing.

(C) If the matter is not dismissed, Board Counsel shall serve the respondent in writing with notice of the substance of the matter and afford him or her the opportunity to respond. Board counsel shall provide the complainant a copy of any written communication from the respondent relating to the matter, except that information that is subject to the privilege held by a person other than the complainant shall be redacted. Board Counsel shall refer the matter to the Board Clerk for a hearing before a Review Board Panel.

(3) *Pre-Hearing Procedures.* If Board Counsel refers a matter to the Review Board Panel, Board Counsel shall prepare formal charges in writing that give fair and adequate notice of the nature of the alleged misconduct.

(A) Board Counsel shall file the formal charges with the Board Clerk. Board Counsel shall serve a copy of the formal charges on the respondent and shall mail a copy of the formal charges to the complainant.

(B) The Board Clerk shall assign the complaint to a three-member Review Board Panel for hearing.

(C) The respondent shall file a written answer with the Board Clerk and serve a copy on Board Counsel within 21 days after service of the formal charges, unless the Chair of the Review Board Panel to which the matter is assigned for review extends the time for good cause shown. If the respondent fails to answer within the prescribed time, the factual allegations and the alleged misconduct shall be deemed admitted. Board Counsel shall provide a copy of respondent's answer to the complainant, or if necessary to protect a person other than the complainant or respondent, Board Counsel shall provide a redacted version of the answer to the complainant.

(D) No later than 21 days in advance of the hearing, the Board Clerk shall serve a notice of hearing on Board Counsel and the respondent, stating the date and place of hearing. The Board Clerk shall mail a copy of the notice of hearing to the complainant. The notice of hearing shall advise the respondent of the right to be represented by a lawyer, to cross-examine witnesses, and to present evidence, and shall advise the complainant, if any, of the complainant's right to make a statement to the Review Board Panel concerning the respondent's alleged misconduct and the effect of the alleged misconduct on the complainant.

(E) At least 14 days before the hearing, the Board Clerk shall prepare and deliver to Board Counsel a statement as to the existence or absence of any disciplinary sanction record, reinstatement to the Roster, or surrender of Roster membership involving the respondent. Board Counsel shall then mail the statement to the respondent. The statement and any reply from the respondent shall be provided to the panel only in accordance with Rule 9(d)(4)(J).

(F) *Discovery.* Within 21 days after the respondent's answer to the formal charges is filed, Board Counsel and the respondent shall

(i) Exchange the names and addresses of all persons having knowledge of relevant facts;

(ii) Identify which persons are reasonably anticipated to be called as witnesses; and

(iii) Exchange all documents Board Counsel or the respondent reasonably anticipate will be introduced at the hearing.

Upon good cause shown, the Chair of the Review Board Panel may order additional discovery. The Chair of the Review Board Panel shall resolve by order all disputes concerning discovery. All discovery orders are interlocutory and may not be appealed prior to issuance of the Review Board Panel decision.

(4) *Hearing.*

(A) *Nature of the Proceeding.* The Chair of the Review Board Panel shall decide pre-hearing motions, shall preside at the hearing, and shall have the power to control the course of proceedings and regulate the conduct of those individuals appearing as counsel, parties, or witnesses. Disciplinary hearings before the Review Board Panel are neither civil nor criminal in nature, and neither the Rules of Civil Procedure nor the Rules of Evidence apply. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Chair of the Review Board Panel may exclude irrelevant or unduly repetitious evidence.

(B) *Proceedings Public.* The hearing shall be open to the public, except that to protect the interests of a complainant, witness, child, third party, or the respondent, the Chair of the Review Board Panel may, upon motion filed with the Board Clerk and for good cause shown, issue a protective order prohibiting the disclosure of privileged or confidential information and direct that the proceedings be conducted so as to implement that order.

(C) *Burden and Standard of Proof.* At the hearing, Board Counsel and the respondent shall have the right to present evidence and cross-examine witnesses. The testimony of witnesses shall be by oath or affirmation administered by the Panel Chair. Board Counsel shall have the burden of establishing the basis for discipline by a preponderance of the evidence. A certified copy of a criminal conviction constitutes conclusive evidence that the respondent has committed the underlying crime.

(D) *Hearings Recorded.* The Board Clerk shall cause all proceedings before the panel to be recorded in a form that will permit transcription. A hearing transcript or partial transcript may be ordered at any time by the Review Board Panel, the respondent, or Board Counsel. When ordering a transcript, the respondent or Board Counsel must provide a copy of the requested transcript to the opposing party.

(E) *Related Pending Proceedings.* Upon a showing of good cause, the Review Board Panel may stay a disciplinary matter because of substantial similarity to the material allegations of pending criminal or civil litigation or professional disciplinary action, or a pending motion under Rule 6 to remove the respondent from a Title 18-A, Title 19-A, or Title 22 proceeding.

(F) *Cameras and Audio Recordings.* Any person or organization requesting permission to record or photograph disciplinary hearings shall file a notice with the Board Clerk in advance of the hearing. Use of cameras and audio recording or electronic devices at disciplinary hearings is governed by the Administrative Order issued by the Supreme Judicial Court governing the use of cameras and audio recording devices in the courts.

(G) *Failure to Appear.* If the respondent fails to appear at the hearing without good cause, he or she shall be deemed to have admitted the factual allegations of misconduct that were to be the subject of the hearing and/or to have waived objection to any motion or recommendations scheduled to be addressed at the hearing. The Review Board Panel may not, absent good cause, continue or delay proceedings due to the respondent's failure to appear.

(H) *Inability to Properly Defend.* If during a disciplinary proceeding the respondent claims to be incapacitated and that the incapacity makes it impossible to present an adequate defense, Board Counsel may recommend that the Chief Judge immediately suspend the guardian ad litem from the Roster pending a determination of the incapacity. The disciplinary proceeding shall be stayed under this subsection only if the Chief Judge determines that the guardian is unable to present an adequate defense due to incapacity. The incapacitated respondent shall remain on interim suspension until the Chief Judge determines that capacity has been restored and orders that the disciplinary proceedings be resumed.

(I) *Waiver.* Subject to approval by the Panel Chair, the requirements governing the hearing process as established in these Rules may be waived by a stipulated agreement of the parties.

(J) *Disciplinary History.* Board Counsel shall not divulge the statement as to the existence or absence of any sanction record to the Review Board Panel until after the Panel has made a finding of misconduct, unless the

statement is admissible as probative evidence on issues pending in the matter before the Panel.

(5) *Review Board Panel Decision.* The deliberations of the Review Board Panel following the hearing shall not be open to the public or the parties. The Review Board Panel shall issue a written decision containing its findings of fact, conclusions of law, and decision on dismissal or sanction to the Board Clerk within 30 days after the hearing, unless the time for decision is otherwise extended by the Chair of the Review Board. If a sanction is imposed, the decision must state the basis for imposing the sanction. The Board Clerk shall serve the decision on respondent and Board Counsel, who shall mail a copy to the complainant. The Review Board Panel may render one of the following:

(A) *Dismissal.* If the Review Board Panel finds that Board Counsel has not proven misconduct subject to sanction under these Rules, it shall dismiss the matter;

(B) *Reprimand.* If the Review Board Panel finds that misconduct subject to sanction under these Rules has occurred, it may issue a reprimand if the misconduct is minor; there was no injury to a child, the public, or the court; the respondent did not act intentionally; and there is not a likelihood of recurrence; or

(C) *Removal.* If the Review Board Panel finds that misconduct subject to sanction under these Rules has occurred but does not find that reprimand is appropriate, the Panel shall order the removal of the respondent from the Roster.

(6) *Appeal of Review Board Panel Decision.* A decision of the Review Board Panel shall constitute final agency action and is reviewable as provided in Maine Rule of Civil Procedure 80C and the Maine Administrative Procedure Act, 5 M.R.S. § 11001 *et seq.*, except that the requirement of service set out in 5 M.R.S. § 11003(1)(C) shall not apply.

(e) Complaints Against the Review Board and Board of Overseers Members. If a complaint is filed against a guardian ad litem who is a member of the Review Board or Board of Overseers, the matter shall proceed in accordance with these Rules, except that the Chief Justice of the Maine Supreme Judicial Court shall appoint Special Counsel who shall exercise independent authority to investigate the complaint and, if the Chief Justice deems it necessary, assign an *ad*

hoc Review Board Panel to the case. Special Counsel shall not receive compensation for his or her services but may seek reimbursement from the Review Board for the payment of reasonable expenses and for investigative, administrative, and legal support.

(f) Service and Notice. Service of formal charges or of any other papers or notices required by these Rules shall be sufficient if made by first class mail addressed to the guardian ad litem's office and/or residence address as provided by the guardian ad litem in the registration materials required by Rule 8(b). Service is complete upon mailing. The Board Clerk or Board Counsel may, at their discretion, use additional methods of service and notice (*e.g.*, e-mail or telephone communication) if previous attempts at providing service or notice in the manner required by this Rule have failed.

(g) Subpoena Power.

(1) *Investigatory Subpoenas.* Before formal charges have been filed, Board Counsel may compel by subpoena the attendance of witnesses or the respondent and the production of pertinent books, papers, and documents in accordance with Rule 45 of the Maine Rules of Civil Procedure.

(2) *Subpoenas For Hearing.* After formal charges are filed, Board Counsel or the respondent may compel by subpoena the attendance of witnesses, including the respondent, and the production of pertinent books, papers, and documents at a hearing under these Rules in accordance with Rule 45 of the Maine Rules of Civil Procedure.

(3) *Enforcement of Subpoenas.* The Chief Judge may, upon proper application, enforce the attendance and testimony of any witnesses or the respondent and the production of any documents subpoenaed under these Rules.

(4) *Quashing Subpoena.* Any person to whom a subpoena has been issued under this Rule may object to the subpoena, may move to quash or modify the subpoena as set forth in Rule 45 of the Maine Rules of Civil Procedure, and may appear through legal counsel for that purpose. Any objection to a subpoena so issued, or any motion to quash or modify such a subpoena, shall be heard and determined by the chair of the Review Board Panel before which the matter is pending or by the Chief Judge when enforcement of the subpoena is being sought.

(5) *Witnesses And Fees.* Subpoena and witness fees and mileage shall be as provided for proceedings in the Maine District Court.

(6) *Subpoena Pursuant to Law of Another Jurisdiction.* Whenever a subpoena is sought in Maine pursuant to the law of another jurisdiction for use in guardian ad litem discipline proceedings, and where the issuance of the subpoena has been duly approved under the law of the other jurisdiction, the Chair of the Review Board, upon good cause shown, may issue a subpoena in accordance with Rule 45 of the Maine Rules of Civil Procedure.

(h) Immediate Interim Suspension from the Roster. Board Counsel shall file a petition with the Chief Judge upon receipt of evidence, either from the guardian through report pursuant to Rule 5(i)(4) or from another reliable source, suggesting the existence of a ground for immediately suspending a guardian ad litem from the Roster.

(1) *Petition.* A petition for immediate interim suspension shall include the following:

(A) The information demonstrating a ground for the immediate suspension of a guardian from the Roster;

(B) Except in cases of alleged incapacity, a certification that Board Counsel has filed formal charges against the guardian ad litem in accordance with Rule 9(d)(3); and

(C) A certification that Board Counsel has served or made a reasonable attempt to serve the guardian ad litem or the guardian ad litem's personal representative, if any, with notice of the information filed with the Chief Judge.

(2) *Mandatory Grounds for Immediate Interim Suspension.* The Chief Judge shall immediately suspend a guardian ad litem from the Roster if:

(A) The Chief Judge finds probable cause to believe that the guardian ad litem has violated these Rules and that the violation threatens immediate and irreparable injury to a child, the public, or the court;

(B) The guardian ad litem is incapacitated, and the incapacity threatens immediate and irreparable injury to a child, the public, or the court. For the

purposes of this Rule, evidence that the guardian ad litem is “incapacitated” includes evidence that the guardian ad litem: (i) has been judicially declared incompetent; (ii) has been acquitted of a crime by reason of mental illness; (iii) has been committed to a mental health hospital after a judicial hearing; (iv) has been voluntarily admitted to a mental health hospital for acute care; (v) has been voluntarily admitted to a substance abuse facility for extended treatment; or (vi) has been placed by a court under guardianship or conservatorship or the equivalent in another jurisdiction; or

(C) The guardian ad litem has been formally charged with a “serious crime” as defined in Rule 1(c)(19).

(3) *Discretionary Grounds for Immediate Interim Suspension.* The Chief Judge may immediately suspend a guardian ad litem from the Roster if the Chief Judge concludes that the immediate suspension of the guardian ad litem is necessary to protect a child, the public, or the court.

(4) *Immediate Interim Suspension Order.* Upon examination of the evidence transmitted and of any rebuttal evidence that the guardian ad litem has submitted, the Chief Judge may order the immediate suspension of the guardian ad litem from the Roster, pending final disposition of a Review Board Panel hearing predicated on the same grounds. Alternatively, the Chief Judge may order such other action as the Chief Judge deems appropriate. A copy of the Chief Judge’s order shall be served on Board Counsel and the guardian ad litem.

(5) *Notice of Suspension.* A guardian ad litem subject to an interim suspension shall comply with the requirements of Rule 9(m).

(6) *Rescission of Interim Suspension.* The Chief Judge may, in his or her discretion, vacate the interim suspension if the guardian ad litem shows by clear and convincing evidence that the grounds for the interim suspension no longer exist. The Chief Judge’s decision to vacate the interim suspension shall not automatically terminate any formal disciplinary proceeding pending against the guardian ad litem, the disposition of which shall be determined by the Review Board.

(7) *No appeal.* Neither party shall have the right to appeal the decision of the Chief Judge on immediate interim suspension or rescission of interim suspension.

(8) *Further Proceedings When Guardian ad Litem is Alleged to be Incapacitated.* If a guardian ad litem is subject to an interim suspension based on alleged incapacity, Board Counsel shall notify the Board Clerk, who shall assign the matter to a Review Board Panel. If Board Counsel proves the respondent's incapacity by a preponderance of the evidence at a hearing before the Review Board Panel, the Panel shall issue a decision removing the respondent from the Roster for incapacity.

(i) Discipline by Consent and Surrender of Appointment on Roster.

(1) *Discipline by Consent.* A guardian ad litem against whom a complaint or formal charges have been filed may tender to Board Counsel a conditional admission in exchange for a stated form of discipline. The Review Board Panel may approve or reject the tendered conditional admission and discipline order. There is no right to appeal from an order of discipline by consent.

(2) *Surrender of Appointment.* A guardian ad litem who is the subject of an investigation under these Rules may submit to the Board Clerk a signed, notarized letter of surrender of appointment to the Roster and shall send a copy of the letter to Board Counsel. Upon receipt of such surrender, the Board Clerk shall file it with the Chief Judge. The Chief Judge may accept the surrender or may enter such order that the Chief Judge deems appropriate. Any order accepting a surrender of appointment shall be a matter of public record unless otherwise ordered in whole or in part by the Chief Judge for good cause shown.

(j) Reciprocal Discipline.

(1) *Notification.* Within 30 days after being disciplined or the equivalent in another jurisdiction, a guardian ad litem on the Roster shall promptly inform Board Counsel.

(2) After receiving notification from any source that a guardian ad litem on the Roster has been disciplined or was the subject of administrative action in another jurisdiction, Board Counsel shall

(A) Obtain a certified copy of the disciplinary order or equivalent; and

(B) File formal charges against the guardian ad litem with the Board Clerk and serve the respondent with notice of those charges.

(3) *Discipline To Be Imposed.* The Review Board Panel shall conduct a hearing on the formal charges pursuant to Rule 9(d)(4) and impose an appropriate sanction authorized by Rule 9(d)(5), unless the respondent demonstrates by clear and convincing evidence that reciprocal discipline should not be imposed.

(k) Access to Disciplinary Information.

(1) *Confidentiality.* Prior to service of Board Counsel's formal charges, the proceeding is confidential, except that the pendency, subject matter, and status of an investigation by Board Counsel may be disclosed by Board Counsel if there is a need to notify another person or entity in order to protect a child, the public, or the court.

(2) *Release of Confidential Information To Authorized Entities.* In order to protect a child, the public, or the court, Board Counsel may provide access to relevant to authorized entities including courts in Title 18-A, Title 19-A, and Title 22 proceedings; members of the Review Board; the Chief Judge; jurisdictions investigating qualifications for appointment of guardians ad litem or considering reciprocal disciplinary action; relevant professional licensing agencies; and law enforcement agencies.

(3) *Public Information.* All filings with the Board Clerk or the Office of the Chief Judge related to proceedings under this Rule shall be available to the public after the filing and service of formal charges, unless the complainant, the respondent, or Board Counsel obtains a protective order for specific testimony, documents, or records.

(4) *Public Proceedings.* Upon service of formal charges upon the respondent, all proceedings shall be public except for the deliberations of both the Review Board Panel and the Single Jurist and except for information with respect to which the Review Board Panel, Single Jurist, or Chief Judge has issued a protective order.

(5) *File Retention and Copying.* The Review Board shall retain all files. Files may be retained in a digital format. Copying and attestation fees shall be the same as those for proceedings in the Maine Supreme Judicial Court.

(l) Dissemination of Disciplinary Information.

(1) *Public Notice.*

(A) The Board Clerk shall issue, electronically or otherwise, a news release to general media outlets throughout Maine regarding the suspension, surrender, or removal of a guardian ad litem from the Roster.

(B) The Board Clerk shall publish on the Review Board's website public hearing decisions issued by Review Board Panels and decisions from appeals pursuant to Rule 9(d)(6).

(2) *Additional Notice.* The Board Clerk shall transmit, electronically or otherwise, notice of all public disciplinary sanctions, surrenders, suspensions, and reappointments of Roster membership to members of the Review Board and to the following:

(A) The Chief Judge;

(B) The Director of the Court Appointed Special Advocates Program;

(C) The guardian ad litem disciplinary authority in any other jurisdiction known to the Review Board in which the guardian ad litem has been appointed;

(D) All State, Federal, and Tribal Courts in Maine;

(E) The regulatory body for the guardian ad litem's underlying profession; and

(F) Any other such organization as determined by the Review Board.

(m) Guardian ad Litem Duties Following Discipline.

(1) *Recipients of Notice; Contents.* Unless otherwise ordered, within 30 days after a surrender or the date of a decision or order imposing suspension or removal from the Roster, respondent shall notify the following in writing of the nature of the discipline, and of the respondent's disqualification to act as guardian after the effective date of the order:

(A) The courts in all Title 18-A, Title 19-A, and Title 22 proceedings in which the guardian ad litem is currently appointed;

(B) Any parents in all Title 18-A, Title 19-A, and Title 22 proceedings in which the guardian ad litem is currently appointed; and

(C) Any counsel in all Title 18-A, Title 19-A, and Title 22 proceedings in which the guardian ad litem is currently appointed.

(2) *Duty to Maintain Records.* The guardian ad litem shall keep and maintain records of the steps taken to accomplish the requirements of this subsection and shall make those records available to Board Counsel on request.

(3) *Refund of Fees.* Within 10 days after entry of the order imposing suspension or removal, the guardian ad litem shall refund any unearned portion of fees paid in advance.

(4) *New Appointments Prohibited.* Upon the effective date of an order suspending or removing guardian ad litem from the Roster, the affected individual shall not accept any new appointments as a guardian ad litem under Title 18-A, Title 19-A, or Title 22. The affected individual shall not advertise that he or she is a guardian ad litem and shall discontinue any advertisements indicating that he or she is a guardian ad litem.

(5) *Affidavit Filed.* Within 10 days after the effective date of the suspension or removal, the guardian ad litem shall file with Board Counsel an affidavit

(A) Showing compliance with the provisions of the decision or order and with this Rule;

(B) Identifying all other jurisdictions in which the guardian ad litem is currently qualified to act as a guardian ad litem; and

(C) Identifying the residence or other addresses where communications may thereafter be directed.

(n) Application for Return to Roster. A guardian ad litem who has been removed from the Roster or who has surrendered his or her appointment from

the Roster may be reappointed to the Roster only by order of the Chief Judge after submitting an application pursuant to Rule 2 of these Rules.

(1) A guardian ad litem who has been removed from or who has surrendered from the Roster for incapacity may apply one year after the removal or surrender and, if the application is denied, may reapply no more than once a year thereafter.

(2) A guardian ad litem who has been removed from the Roster for misconduct or who has surrendered from the Roster after a complaint is filed may apply five years after the removal or surrender and, if the application is denied, may reapply after the time specified by the Chief Judge in the decision denying the application.

(o) Immunity. Members of the Review Board, Board Counsel, Special Counsel, *ad hoc* Review Board Panel members appointed by the Chief Justice of the Maine Supreme Judicial Court, and the Board of Overseers and its staff or any person acting on their behalf, shall be immune from suit to the extent permitted by statute and other provisions of law.

Reporter's Notes – July 2015

Rule 9 establishes the Guardian ad Litem Review Board Complaint System, as contemplated by 4 M.R.S. § 1557(1). It is loosely based on the disciplinary rules for attorneys established by Maine Bar Rules 10 to 31.

Rule 9(a) is based on Maine Bar Rule 21, but additional grounds for discipline are included. Rules 9(a)(3) and (4) are substantively equivalent to Maine Rules of Professional Conduct 8.4(b) and (c). Rules 9(a)(6), (7), and (8) are new. Rule 9(a)(7) is based on and substantively equivalent to Maine Code of Judicial Conduct Canon 2.3(B).

Rule 9(c) establishes a limitations period for filing complaints of six years after the act complained of occurred. The Guardian ad Litem Oversight Task Force (“Task Force”) reached a consensus that there be no limitations period for filing complaints. Members noted, however, that older complaints would be difficult to investigate. An additional concern of delaying filing and investigation of complaints was that a problematic guardian might continue poor practice over a lengthy period of time. There was also a concern that records would be unavailable in light of the operation of applicable record-retention schedules. *See,*

e.g., M.R. Prof. Conduct 1.15(b)(2)(iii) (requiring records be kept for eight years after the termination of representation); 13 C.M.R. 10-144-112-7 § 3.5.5 (2009) (requiring hospitals to preserve medical records on paper or by other electronic/optical means for a period of seven years or, if the patient is a minor, for at least six years past the age of majority). Notwithstanding the Task Force recommendation, these considerations weigh in favor of having a limitations period.

Rule 9(d)(1) defines the persons who have standing to file a complaint and the persons subject to a complaint. Only judges, parties to open or closed proceeding under Title 18-A, Title 19-A, or Title 22, and Board Counsel may file a complaint. Only guardians ad litem appointed from the Roster in the proceeding involving the complaining party may be the subject of a complaint.

Rule 9(l)(2) is modeled after Maine Bar Rule 19(b). The entities to whom the Board Clerk shall transmit notice of public disciplinary sanctions or reappointment are those relevant to guardians ad litem listed on the Roster. By notifying the Chief Judge of disciplinary sanctions, it is anticipated that the Chief Judge will share this information with the judicial officers in proceedings in which the guardians ad litem subject to discipline have been appointed. Those judicial officers would then consider the information in deciding under Rule 6 whether a guardian should be removed from a particular case.

Rule 9(m) is based on Maine Bar Rule 31. Among other requirements, a guardian ad litem who is suspended or removed from the Roster must notify the courts, parents, and counsel in proceedings in which he or she is currently appointed, as provided in Rule 9(m)(1); and the guardian ad litem may not accept new appointments, as provided in Rule 9(m)(4).

Maine Bar Rule 32, addressing appointment of counsel to protect clients' interests when an attorney is suspended, disbarred, disappears, or dies, is not transferable to guardians ad litem and has not been included in Rule 9.

RULE 10. GUARDIAN AD LITEM CONTINUING EDUCATION

(a) Continuing Professional Education Credit.

(1) Unless these requirements are waived by the Chief Judge, a guardian ad litem shall attend and complete any continuing professional education events or seminars designated as mandatory by the Chief Judge. In addition, in each

calendar year, a guardian ad litem must participate in a total of at least 6 credit hours of approved continuing professional education programs applicable to one or more of the issues identified as core training issues in Rule 2(b)(2)(B). At least one credit hour shall be primarily concerned with ethics and professionalism education. Qualifying professionalism education topics include professional responsibility as a guardian ad litem; legal ethics related to guardian ad litem work; conflicts of interest; diversity awareness in the legal profession; confidentiality of guardian ad litem records in Title 18-A, Title 19-A, and/or Title 22 cases; communication with parents involved in Title 18-A, Title 19-A, and/or Title 22 cases and their children; and complaint avoidance topics such as file management and billing practices. If a guardian ad litem is subject to this rule for more than 3 months of a calendar year but for less than the entire year, the number of credits required for that year shall be prorated according to the number of full months of the year in which the guardian ad litem is subject to this rule.

(2) A guardian ad litem who completes more than 6 credit hours in a calendar year may carry forward up to 5 credit hours to satisfy the requirement of the following year, provided that the professional responsibility requirement is satisfied for each calendar year.

(3) The requirement of Rule 10(a)(1) may be met only by teaching (as provided in Rule 10(a)(5)), attending courses, or completing any continuing professional education activity entitled to credit as provided in Rules 10(c) and 10(d), provided that no more than one half of the credit hours required in any reporting period may be earned through in-house courses, self-study, or a combination thereof.

(4) Except as provided in Rule 10(a)(5), credit is earned for the time of actual participation in an approved course or activity.

(5) A guardian ad litem subject to this Rule who makes a presentation in an approved course or activity not offered for academic credit by the sponsoring institution will earn two hours of continuing professional education credit for every 30 minutes of actual presentation at the approved course or activity if the guardian ad litem has prepared substantial written materials as defined by the Review Board to accompany the presentation. If substantial written materials have not been prepared, the guardian ad litem will earn one hour of continuing professional education credit for every 30 minutes of actual presentation. A guardian ad litem who teaches a regularly scheduled guardian-ad-litem-related course offered for academic credit at an accredited post secondary educational institution will earn six

hours of continuing professional education credit under this Rule for every hour of academic credit awarded by the institution for the course. A guardian ad litem who assists or participates in such a regularly scheduled course will earn one hour of continuing professional education credit for every hour of actual participation, up to a maximum of six hours.

(b) Reporting Continuing Professional Education Credit.

(1) Included with the registration documents required by Rule 8, a guardian ad litem subject to this Rule shall annually submit a report to the Review Board providing the course title, date, location, sponsor, and number of credit hours of all courses or other activities taken for credit pursuant to Rule 10(a) during the preceding calendar year, or carried over from a prior year. If a reported course or other activity has not previously been approved in accordance with Rule 10(c), the guardian ad litem shall also submit the information required by Rule 10(d) to support a request for such approval.

(2) At any time, the Review Board may require a guardian ad litem to provide documentation supporting any information reported in accordance with Rule 10(b)(1).

(c) Courses and Other Activities Entitled to Credit.

(1) The Review Board shall maintain a list of approved sponsors of professional education programs. All publicly available courses or other publicly available continuing professional education activities offered by approved sponsors are deemed automatically approved and entitled to credit upon payment of the requisite fees in accordance with Rule 10(d).

(2) All courses or other continuing professional education activities sponsored or presented by any other individual or organization are entitled to credit for purposes of Rule 10(a) only if the sponsor or the individual course or activity has been approved by the Review Board in accordance with Rule 10(d).

(3) The Review Board shall delegate all approval and other functions under this Rule to a designated staff person of the Board of Overseers of the Bar. Upon request, the Review Board shall review any decisions denying approval of any sponsor, individual course, or other continuing professional education activity. The Review Board's determination of any such issue shall be final.

(d) Approval Procedure.

(1) *Sponsor Approval.* A sponsor may be approved by the Review Board upon payment of the requisite fees and submission of evidence establishing to the satisfaction of the Review Board

(A) That the sponsor has been approved or accredited by a guardian ad litem continuing professional education accrediting authority established by court rule or statute in another state; or

(B) That, during the immediately preceding three years, the sponsor has sponsored at least six separate courses that comply with the requirements for individual course approval under Rule 10(d)(2).

The Review Board may at any time review the status of a sponsor or specific courses offered by a sponsor and may revoke approval if the status has changed or the courses offered by the sponsor do not comply with the requirements of Rule 10(c) and 10(d). Requests for approval shall be submitted on a form prescribed by the Review Board, supplemented by such supporting documentation as would assist the Review Board in determining whether the sponsor meets the requirements of this Rule.

(2) *Individual Course Approval.* The Review Board may approve individual courses for credit under this rule upon written application from a non-approved sponsor or the submission of supporting documentation from an approved sponsor, together with the requisite fee.

An attendee may file such a request together with the requisite fee at any time up to and including the filing of the annual report under Rule 10(b) for the year for which credit is sought for the course. The Review Board shall grant the request if the Review Board is satisfied that the course meets the following criteria:

(A) The course or activity must contribute directly to the professional competence or skills of guardians ad litem, or to their education with respect to their professional or ethical obligations and, where possible, should include a professionalism education component.

(B) Course leaders or lecturers and the authors of written materials must be persons sufficiently competent to accomplish the educational goals of the course.

The Review Board may, prior to granting approval, request any approved sponsor, non-approved sponsor, or attendee to submit further information concerning a course, including the brochure describing the course, a description of the method or manner of presentation of course materials, a statement as to the actual date and place of presentation and the number of persons in attendance, and a copy of the course materials.

(3) *In-house and self-study continuing legal education.* Courses offered by entities employing guardians ad litem, if such courses are provided primarily for the education of the sponsor's members or employees, and group or individual self-study courses involving the use of written materials; audio or video tapes; online teaching; or other teaching methods and materials, may be approved for credit under Rule 10(d)(2) upon submission of evidence establishing to the satisfaction of the Review Board that

- (A) the course complies with the standards set forth in Rule 10(d)(2);
- (B) experienced guardians ad litem will contribute to the development or teaching of the course; and
- (C) the course or self-study will be scheduled at a time and location that will be free of interruption.

The offering entity, an individual attendee, or any other individual seeking approval shall file information describing the course, activity, or program, and a request for approval. Requests for approval shall be submitted using an application form approved by the Review Board, supplemented by such supporting information as would assist the Review Board in determining whether the course, activity, or program meets the requirements of this Rule. If a course or a program of self-study consists of listening to or watching the video replay of a previously presented continuing professional education program, the Review Board shall allocate credit hours to the course in the same manner as for a live program. For other courses or self-study activities, the Review Board shall determine the amount of credit hours on the basis of program content and the duration of the activity.

Reporter's Notes – July 2015

Rule 10 establishes and describes guardian ad litem continuing professional education requirements. It is based on and largely consistent with procedural requirements in Maine Bar Rule 5.

RULE 11. EFFECTIVE DATE

These Rules shall be effective September 1, 2015, and shall govern all proceedings subject to these Rules that are commenced on or after that date. These Rules shall also govern all proceedings pending as of September 1, 2015, that have not yet resulted in a written decision pursuant to former Rule II(4)(B) of the Maine Rules for Guardians ad Litem that are superseded by these Rules.

Dated: July 8, 2015

FOR THE COURT*

/s/

LEIGH I. SAUFLEY

Chief Justice

DONALD G. ALEXANDER

ANDREW M. MEAD

ELLEN A. GORMAN

JOSEPH M. JABAR

JEFFREY L. HJELM

THOMAS E. HUMPHREY

Associate Justices

* The repeal of the former Maine Rules for Guardians ad Litem and adoption of the new Maine Rules for Guardians ad Litem was approved after conference of the Court, all Justices concurring therein.