

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENT TO
MAINE RULES FOR GUARDIANS AD LITEM

2019 Me. Rules 08

Effective: September 1, 2019

All of the Justices concurring therein, the following amendments to the Maine Rules for Guardians ad Litem are adopted to be effective on the date indicated above. The specific amendments are stated below. To aid in the understanding of the amendments, an Advisory Committee Note appears after the text of each amendment. The Advisory Committee Note states the reason for recommending the amendment, but the Advisory Committee Note is not part of the amendment adopted by the Court.

1. Rule 1 of the Maine Rules for Guardians ad Litem is amended to read as follows:

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 18-C~~ M.R.S. § ~~1-112~~ 1-111, 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.

....

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

....

(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~~ 18-C M.R.S. § ~~1-112~~ 1-111, 19-A M.R.S. § 1507, or 22 M.R.S. § 4005.

....

(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~~ 18-C proceedings, Title 19-A proceedings, and/or Title 22 proceedings.

....

Advisory Note – September 2019

Rule 1 has been amended so that any reference to the Probate Code reflects the Legislature’s enactment of a new Code, effective September 1, 2019. See P.L. 2019, ch. 417 § B-14; P.L. 2017, ch. 402 §§ A-1, A-2, F-1.

2. Rule 2 of the Maine Rules for Guardians ad Litem is amended to read as follows:

RULE 2. GUARDIANS AD LITEM

(a) Appointment.

(1) *Title ~~18-A~~ 18-C and 19-A Proceedings*. In Title ~~18-A~~ 18-C 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.

....

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

....

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

....

(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~~ 18-C 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~~ 18-C, 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.

....

Advisory Note – September 2019

Rule 2 has been amended so that any reference to the Probate Code reflects the Legislature's enactment of a new Code, effective September 1, 2019. See P.L. 2019, ch. 417 § B-14; P.L. 2017, ch. 402 §§ A-1, A-2, F-1.

3. Rule 3 of the Maine Rules for Guardians ad Litem is amended to read as follows:

RULE 3. IMMUNITY

Pursuant to ~~18-A~~ 18-C M.R.S. § ~~1-112(f)~~ 1-111(6), 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.

Advisory Note – September 2019

Rule 3 has been amended so that any reference to the Probate Code reflects the Legislature's enactment of a new Code, effective September 1, 2019. *See* P.L. 2019, ch. 417 § B-14; P.L. 2017, ch. 402 §§ A-1, A-2, F-1.

4. Rule 4 of the Maine Rules for Guardians ad Litem is amended to read as follows:

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~~ 18-C M.R.S. § ~~1-112~~ 1-111;

(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~~ 18-C M.R.S. § ~~1-112~~ 1-111;

(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~~ 18-C M.R.S. § ~~1-112~~ 1-111; 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~~ 18-C 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~~ 18-C 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~~ 18-C M.R.S. § ~~1-112~~ 1-111 or 19-A M.R.S. § 1507.

....

(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~~ 18-C M.R.S. § ~~1-112(e)~~ 1-111(5); and fee arrangements, including hourly rates, timing of payments to be made by the parties, and the maximum amount of fees that may be charged for the case without further order of the court. 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.

....

(C) In Title ~~18-A~~ 18-C 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.

....

(5) *Best Interest of the child.* In performance of duties in Title ~~18-A~~ 18-C 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).

....

(8) *Agent of the Court.* A person serving as a guardian ad litem pursuant to 4 M.R.S. § 1555 and either ~~18-A~~ 18-C M.R.S. § ~~1-112~~ 1-111 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.

....

Advisory Note – September 2019

Rule 4 has been amended so that any reference to the Probate Code reflects the Legislature’s enactment of a new Code, effective September 1, 2019. See P.L. 2019, ch. 417 § B-14; P.L. 2017, ch. 402 §§ A-1, A-2, F-1.

5. Rule 5 of the Maine Rules for Guardians ad Litem is amended to read as follows:

RULE 5. STANDARDS OF CONDUCT

....

(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~~ 18-C 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;

....

(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, interested party, or intervenor 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, interested party, or intervenor 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.

....

(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~~ 18-C, 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.

....

(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~~ 18-C, 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.

....

Advisory Note – September 2019

Rule 5 has been amended so that any reference to the Probate Code reflects the Legislature’s enactment of a new Code, effective September 1, 2019. *See* P.L. 2019, ch. 417 § B-14; P.L. 2017, ch. 402 §§ A-1, A-2, F-1. In addition, the conflict rule has been expanded in subdivision (i) to ensure that the GAL will not have a conflict with any party, interested part, or intervenor.

6. Rule 6 of the Maine Rules for Guardians ad Litem is amended to read as follows:

RULE 6. INVOLUNTARY REMOVAL FROM A PARTICULAR CASE

....

(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~~ 18-C and Title 19-A cases, the court may order that the case proceed without a guardian ad litem.

....

Advisory Note – September 2019

Rule 6 has been amended so that any reference to the Probate Code reflects the Legislature’s enactment of a new Code, effective September 1, 2019. See P.L. 2019, ch. 417 § B-14; P.L. 2017, ch. 402 §§ A-1, A-2, F-1.

7. Rule 9 of the Maine Rules for Guardians ad Litem is amended to read as follows:

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~~ 18-C, 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;

....

(d) Disciplinary Procedure.

(1) *Complaint in Open or Closed Proceedings.* Any party to an open or closed proceeding under Title ~~18-A~~ 18-C, 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. A complainant must inform the Review Board whether the case is pending and whether a complaint has been filed with the judicial officer who is conducting hearings on the case. The Review Board may open a file on a complaint but shall not take any action with respect to, or initiate a review with respect to, a pending case until the court issues a final judgment in that case, the court enters an order allowing the Board to proceed, or the guardian ad litem is removed or discharged.

....

(k) Access to Disciplinary Information.

....

(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~~ 18-C, 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.

....

(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~~ 18-C, Title 19-A, and Title 22 proceedings in which the guardian ad litem is currently appointed;

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

....

(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~~ 18-C, 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.

....

Advisory Note – September 2019

Rule 9 has been amended so that any reference to the Probate Code reflects the Legislature’s enactment of a new Code, effective September 1, 2019. *See* P.L. 2019, ch. 417 § B-14; P.L. 2017, ch. 402 §§ A-1, A-2, F-1.

8. Rule 10 of the Maine Rules for Guardians ad Litem is amended to read as follows:

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~~ 18-C, Title 19-A, and/or Title 22 cases; communication with parents involved in Title ~~18-A~~ 18-C, 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.

....

Advisory Note – September 2019

Rule 10 has been amended so that any reference to the Probate Code reflects the Legislature’s enactment of a new Code, effective September 1, 2019. *See* P.L. 2019, ch. 417 § B-14; P.L. 2017, ch. 402 §§ A-1, A-2, F-1.

Dated: August 28, 2019

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

* This Rule Amendment Order was approved after conference of the Court, all Justices concurring therein.