

TO: Chief Justice Saufley and Chief Judge Laverdiere  
FROM: Toby Hollander o/b/o Maine Guardian ad Litem Institute  
SUBJ: Comment on Guardian ad Litem Oversight  
DATE: July 1, 2012.

This submission is made on behalf of the Maine Guardian ad Litem Institute, a statewide organization of Maine Guardians ad Litem, whose mission is:

The Mission of the Maine Guardian Ad Litem Institute is to improve the welfare of Maine's children through strengthening the institution of the Guardian ad Litem by advocating for improved standards of practice, education, and compensation for those individuals serving as Guardian ad Litem and providing mutual support and assistance on issues relating to the work of Guardians ad Litem.

1. We appreciate the effort of the Judicial Branch to broaden the participation in the ongoing debate about the GAL system in Maine, while recognizing that narrowing the discussion to what system of oversight, without significant public funds, would be practical, is narrower than we would like. We also appreciate that we are able to participate in this discussion. Pursuant to Chief Justice Saufley's instructions, we will limit our comments to the complaint process leaving for another time, our concerns about qualifications, support and ongoing supervision that several commenters have raised.
2. We also want to acknowledge that the present system of oversight, as designed, could work well with a few small changes that would not cost significant public funds. At present, complaints are handled in the following manner:
  - a. During the pendency of a case (i.e., prior to a final judgment): The matter is referred to the judge presiding over the case. (This can change from time to time, as Maine does not have a "single judge assignment" allocation of judicial resources.). That judge can choose to hold a hearing to decide whether or not a GAL should be removed from that particular case. Although complaints at this stage of a case usually take the form of a motion to remove the guardian ad litem, a complaint in any form ordinarily is construed to be a request to remove the GAL.
  - b. After a case has been completed: The complaint must be lodged with the Chief Judge of the District Court who has the responsibility, first of overseeing the Roster of Guardians, and second, of reviewing complaints from the public. This review has been delegated, currently, to the Deputy Chief Judge of the District Court. The chief judge, in his or her discretion, may find sufficient credible evidence of a deviation from the GAL Standards of Practice to warrant a hearing, and may then impanel a panel of three to consider, by majority vote, a particular case of GAL misconduct and to make recommendations. The chief judge may

consider those recommendations in deciding what action on the complaint is appropriate.

- c. There is little historical data regarding the number of complaints against GALs since rostering began in 1999. In the past two years, there have been 27 complaints lodged with the Chief Judge regarding GAL performance. The Chief Judge has referred two cases for hearing. There has been one case which resulted in a written reprimand and another with a verbal reprimand. Anecdotally, over time other cases have been resolved by the GAL voluntarily removing him or herself from the Roster.
  - d. There is no data regarding how many “pendency” complaints are filed, or what the results of those complaints are, even whether successful or not. A common critique of this process however is that complainants, usually litigants, are fearful of filing a complaint because they fear that either the GAL or the appointing judge will retaliate against them in their roles regarding the substance of the case, i.e., will act unfavorably towards them on the basis of their complaint. We believe this fear can be alleviated by an easy change in procedure.
3. There is widespread agreement that some oversight is necessary. There is little agreement about what, if anything, might be wrong with the present system. There is an assumption that there is a “problem” regarding GAL oversight and that the unhappiness with the present oversight is not reflected by the small number of complaints in proportion to the much larger number of cases handled by GALs. Due to the nature of GAL work, i.e., making recommendations on competing claims and emotions over the parties’ most important possession, their children, it could easily be contemplated that half of all cases would likely result in at least one litigant being unhappy with the GAL’s recommendations, whether adopted by the Court or not. We believe that the unhappiness with GAL oversight stems from a perception that the complaint process is not easily accessible and that this perception can be easily changed with little effort.
4. Our proposal:
- a. Retain the present system, with some modifications to enhance the perception of fairness and the accessibility to the procedures for redress:
    - i. Pending cases: Require that any complaint (or motion to remove) be heard by a judge (or magistrate) other than the judge who is assigned to the case for trial and disposition. This is done routinely now for settlement conferences and would require no additional resources. Require that this matter be expedited above other pending motions in the case and allow Magistrates to hear the motion, so that the Guardian’s role in the case can be resolved at the earliest possible time. Require that the complaint and its

resolution by the court be forwarded to the Chief Judge for inclusion in the individual file for the Guardian ad Litem for a period of one year. This would require some additional training for docketing clerks . We estimate the cost would be minimal.

- ii. Closed cases: Increase the accessibility of making complaints by detailing the process on the JB website, including a downloadable form together with directions on how and where to file a complaint and including those directions in the Court Order appointing a Guardian ad Litem. And further, we recommend requiring counsel, or the Court for pro se litigants, when applying for the appointment of a GAL, to certify that they have advised their client/party of the role the Guardian ad Litem and have provided their client/party with a copy of the Best Interests Standards and the Rules and Standards of Practice for Guardians ad Litem, including the complaint process. We suggest that the Court require that a guardian be notified of any complaint and provided with a copy thereof, and that a complainant and the guardian be notified of the disposition of a complaint and the general reasons therefor. The cost of these recommendations is the drafting and implementation of an Administrative Rule.

If the Chief Judge requests a panel to consider a complaint, that the panel consist of one attorney-GAL, one Mental Health GAL, and one lay person. Decisions of the panels should be in writing, and the panels should be provided with directions to guide their deliberations. Their decisions should be limited to the options of dismissal, oral reprimand, written reprimand, suspension from the roster with remedial steps to be taken in order to be restored, or removal from the roster. The Chief Judge should be responsible for reviewing and approving, or not, the recommended actions of a panel. Appeals are adequately covered in GAL Rule II.4.B.

- iii. The Court should publish the results of decisions by hearing panels that result in an adverse action involving a GAL using the model that the Board of Bar Overseers employs. This will have the benefit of notifying both the public and other GALs of the interpretations of our Standards of Practice and the expectations of the Court in the performance of our duties.
5. Reasoning. In a system that is encouraging complaints against professionals who are charged with making difficult, heart-rending judgments, an adequate screening mechanism to sort out potentially valid complaints, as opposed to “sour grapes” complaints from those who are unhappy with the recommendations, is indispensable. At present the Chief Judge or his Deputy performs this task, at no extra cost to taxpayers or anyone else. Despite an impression created to the contrary, court data suggest that complaints against Guardians ad

Litem are actually rare. At 13 or 14 complaints per year, or roughly one a month, it does not appear that this is a significant burden on the duties of the Chief Judge, or his deputy, such that independent staff would be necessary. It goes without saying that the existence of judicial experience resulting in appointment to the position provides the Chief Judge with the necessary expertise to make those determinations regarding the potential validity of complaints. It is possible that an increase in complaints as a result of greater publicity and accessibility might necessitate consideration of adding staff, but we recommend that a “wait and see” approach be taken before committing to additional staff.

6. The Chief Judge is presently empowered to create review panels to hear complaints against GALs and has used that authority in the past, when he or she deemed it appropriate. No one has suggested that this procedure is not working.
7. One line of suggestions for oversight is to simply require the professional boards of oversight for mental health providers and attorneys to simply accept oversight of their GAL functions as well. The oversight boards for mental health professionals and for attorneys have declined to accept GAL oversight, for very good reasons. They have recognized that the role of the GAL is significantly different from the role of the underlying profession. The role is sometimes called a “hybrid” of the two. Necessary knowledge about child development and the ability to interview and establish a relationship with children of different ages, not to mention an understanding the impact of personality and other mental health disorders, call upon skill sets most often associated with mental health practitioners; whereas, the arena of work is the deliberate climate of conflict known as the American courtroom, the bailiwick of lawyers. In our view, an effective oversight body must understand and be experienced in both. Another line of suggestions is to abandon the “best interests of the child” framework under which Maine has been operating for many decades, as though that phrase is completely independent of and undefined by the factors described within the statute which the Court (and GALs) must consider. That is an extreme remedy and would have no impact upon GAL oversight whatsoever. It “throws the baby out with the bath.” Another alternative could be to create a Board under Title 5, within the Department of Professional Regulation, but that would involve hiring and training staff and potentially paying per diem and costs to Board members, i.e., it could be costly.