

**STATE OF MAINE
SUPREME JUDICIAL COURT**

ADMINISTRATIVE ORDER JB-05-5 (A. 7-20)

REVISED FEE SCHEDULE FOR GUARDIANS AD LITEM AND COURT
APPOINTED WORKERS' COMPENSATION ATTORNEYS IN ALL COURTS

Effective: July 30, 2020

This order amends JB-05-5 (A. 9-19), signed July 11, 2019, and effective September 1, 2019.

The following schedules and administrative procedures are adopted in all courts for all court-appointed guardians ad litem (GALs) in District Court and workers' compensation attorneys submitting bills on or after the effective date of this order.¹

I. HOME COURT

Each rostered GAL shall designate a home court or courts by notifying the Administrative Office of the Courts in writing. Absent unusual circumstances, a rostered GAL shall not be appointed to cases in courts other than a GAL's home court(s). A rostered GAL will not be reimbursed for travel time or mileage to or from designated home courts.

II. HOURLY RATE FOR GALS

GALs shall be paid the same hourly rate paid to attorneys appointed to represent parents in child protection proceedings. GALs shall prorate all time among multiple cases when such time involves actions in common with other cases (e.g., travel, waiting, and research time). In all cases involving GALs, the courts will make every effort to reduce costs by adopting scheduling practices that limit the number and length of court appearances.

¹ The determination of indigency, the assignment and compensation of all other counsel, and all like matters shall be governed by the provisions of Rule 88 of the Maine Rules of Civil Procedure, incorporating by reference Maine Rules of Unified Criminal Procedure 44, 44A, 44B, and 44C.

III. ITEMIZED TIME AND EXPENSE REQUIREMENTS FOR GALs

All invoices for time and expenses must be itemized, as follows:

- A. **Itemization of Time.** Time spent shall be outlined in detailed, separately itemized billing statements. Sufficient detail shall be provided to allow the court to gauge the nature of each task and the time spent on that task. GALs will avoid block billing (*i.e.*, the consolidation of more than one task into a time description, with a number of hours billed for the entire block).
- B. **Routine Office Expenses.** Routine office expenses are included in the hourly rate and will not be reimbursed. Routine office expenses include but are not limited to charges for postage, telephone, cell telephone, fax, office overhead, utilities, secretarial services, routine copying, parking, and office supplies.
- C. **Nonroutine Expenses.** Nonroutine expenses such as the actual cost of reasonable long-distance calls (if billed by a telephone carrier), collect telephone calls, tolls, and fees paid to third parties such as witnesses, subpoena and service fees, may be reimbursed. Fees for service of process by persons other than the sheriff shall not exceed those allowed by 30-A M.R.S. § 421.
- D. **Travel Reimbursement.** Mileage will be reimbursed at the applicable State rate. A GAL will not be reimbursed for mileage for travel to or from a GAL's designated home courts. The Chief Judge or designee must approve in writing all out-of-state and overnight travel before the expense is incurred. Use of the telephone, video equipment, and e-mail in lieu of travel is encouraged as appropriate.
- E. **Third Party or Extraordinary Expenses.** Pre-approval by the court is required for nonroutine expenses such as payment to third parties (e.g., investigators, medical and psychological experts, testing, transcripts, depositions) or extraordinary (more than \$100) nonroutine expenses. Funds for third-party services and extraordinary expenses will be approved by the court only upon

(1) written motion; (2) a sufficient demonstration of reasonableness, relevancy, and need; and (3) a demonstration that the third-party or other expense is not one that is usually the responsibility of the State or counsel for one of the parties. A GAL shall not request services from or advance funds for any investigator or other service providers without pre-approval from the court.

1. If the court approves fees for an expert or an investigator the GAL is responsible for the following:
 - (a) Providing the service provider with clear instructions as to his or her responsibilities;
 - (b) Notifying the service provider that there is a limit on the amount of funds approved and that the court will not approve payment of any charges in excess of the approved amount;
 - (c) Notifying the service provider that the arrangement for services is between the GAL and the service provider; the service provider is not authorized to act as an agent of the court; and any agreement with the GAL is not to be construed as an appointment by the court or endorsement of services; and
 - (d) Forwarding any statement for services to the clerk for processing and payment. The GAL must state whether the services were satisfactory and whether all applicable reports and other information have been received.
2. The court may set a maximum fee and an hourly rate for a service provider. Amounts approved by the court are deemed to include reasonable expenses, including but not limited to, office and out-of-pocket expenses, mileage, travel time, preparation of reports, and appearances at court.

IV. MAXIMUM HOURS

Invoices submitted for time greater than the applicable maximum total hours will not be approved for payment except as approved by the Chief Judge of the District Court or designee.

A. All Cases in the District Court.

1. GALs shall only be reimbursed for activities authorized by the GAL's order of appointment, court rule, or subsequent orders of the court.
2. A GAL must obtain prior court approval to be paid for time exceeding the allowable or court ordered maximum hours.

B. Child Protection Cases in the District Court.

1. A GAL will be reimbursed a maximum of 15 hours for each legal stage² of a child protection case, except as provided in subsections 2 through 4. As part of the dismissal legal stage, a GAL may seek reimbursement for up to one hour for attendance at an uncontested adoption hearing, plus travel time and mileage as allowed under section III(D) of this Order.
2. For a summary preliminary hearing, the GAL may be reimbursed up to a maximum of 10 hours;

² The following are "legal stages" of a child protection case:

- (a) after the court appearance for a summary preliminary hearing, jeopardy hearing, judicial review and/or permanency hearing, cease reunification contested hearing, termination of parental rights hearing, contested permanency guardianship, or contested child placement hearing;
- (b) after the entry of an order of dismissal of child protection action when the dismissal does not coincide with a legal stage listed in section a; and
- (c) upon the court's release of a GAL from an order of appointment when the release does not coincide with a legal stage listed in sections a or b.

3. For a jeopardy hearing, the GAL may be reimbursed up to a maximum of 20 hours; and
 4. For a termination of parental rights hearing, the GAL may be reimbursed up to a maximum of 20 hours.
- C. When a court appearance concludes more than one legal stage, the GAL may bill only for the legal stage with the higher hourly cap—not the combined.
- D. A child protection voucher that exceeds the cap by any amount without prior approval from the trial judge will not be paid to the extent that it exceeds the caps set above.
- E. **Guardianship of a Minor Cases in District Court.**

In a proceeding to determine guardianship of a minor under Title 18-C,³ the court may appoint a GAL for the child when the court has reason for special concern as to the welfare of the child, and the parties are indigent. The Order of Appointment shall state the basis for the appointment, and shall cap the maximum number of hours for which a GAL may be reimbursed at 15 hours.

F. **Other Case Types in District Court.**

The maximum number of hours for which a GAL will be reimbursed in cases other than a child protection case or a guardianship of a minor case is at the discretion of the presiding judicial officer handling the case, but, after consultation with the parties, the maximum imposed must be designated in the court's order of appointment.

³ Title 18-A was repealed and replaced with Title 18-C, effective September 1, 2019. See 18-C M.R.S. § 8-301; P.L. 2019, ch. 417, §§ A-103, B-14.

G. Appeals to the Maine Supreme Judicial Court (Law Court).

1. Appeals by Court-Appointed GALs

- (a) The Law Court will not pay fees to a GAL for work performed on an appeal, whether commenced by the GAL or another party, unless, within fourteen days after the Clerk of the Law Court issues the docketing notice, the GAL files with the Law Court a motion for pre-approval of GAL fees. The Court will grant the motion only if the appeal raises a meritorious issue and no other party could adequately present the GAL's position to the Court.
- (b) For an appeal for which the GAL has obtained pre-approval for fees, the Law Court will set a fee consistent with the hourly rate paid to lawyers through MCILS for no more than nine hours of work on the appeal unless the GAL files, within twenty-one days after the date the appellee's brief is filed or due to be filed, an itemized statement of the time the GAL expended on the appeal. If the GAL timely files the itemized statement, the Court will set a fee at a rate consistent with the hourly rate paid to lawyers through MCILS for any time reasonably expended.

2. Appeals by Workers' Compensation Attorneys

- (a) For cases in which the date of injury is prior to June 5, 1985, the Court will award a standard fee of \$750 and reasonable out-of-pocket expenses.
- (b) For cases subject to the "prevail rule" which was in effect from June 5, 1985, through December 31, 1992, counsel must file an itemized statement with the Court within twenty days of the final disposition of the appeal.

- (c) For cases arising pursuant to Title 39-A (which became effective on January 1, 1993), the Court will not award any counsel fees.
- (d) Workers' Compensation Attorney Vouchers must be submitted within thirty days after final disposition. Vouchers submitted after the thirty-day period will not be paid.

V. ADMINISTRATION OF PAYMENT

- A. A GAL must submit all invoices to the court of disposition using the current court-approved voucher form (PC/FM/CV/JV-024) and must comply with all instructions on the form.
- B. The clerk, deputy clerk, or clerk's designee at the direction of the Chief Judge may approve vouchers that do not exceed the maximum hours allowed under sections IV(B) and (IV)(C) or a court order, and that do not exceed \$125 in expenses. All other vouchers must be reviewed for approval by the judicial officer who presided over the case—or over the legal stage identified on the form if the voucher is for a child protection case—and the Chief Judge or designee.
- C. All expenses claimed for reimbursement must be fully itemized and submitted with the required invoice or voucher.
- D. All vouchers must be submitted within 90 days after the completion of each legal stage. Invoices submitted more than 90 days after completion of a legal stage will not be paid.
- E. Requests for fees for appeals to the Law Court shall be submitted to the Clerk of the Law Court.
- F. Copies of receipts for payments to third parties must be fully itemized and submitted with the required invoice or voucher.

The Chief Justice of the Superior Court and the Chief Judge of the District Court are hereby authorized to establish such procedures as are necessary to carry out the provisions of this Order.

For the Court,

_____/s/_____
 Andrew M. Mead, Acting Chief Justice
 Maine Supreme Judicial Court

Promulgation Date: July 30, 2020

 Revised Fee Schedule for Guardians Ad Litem and Court Appointed Workers' Compensation Attorneys in All Courts

AO JB-05-5 (A. 7-20), dated July 30, 2020, effective July 30, 2020

Signed By: Andrew M. Mead, Acting Chief Justice, Maine Supreme Judicial Court

Issued to amend section IV(B) to add, in what is now section b of footnote 2, dismissal of a child protection action as a legal stage for which a GAL may be reimbursed up to a maximum of 15 hours. Unlike the legal stages listed in section a of footnote 2, the dismissal legal stage ends after the issuance of the court's order of dismissal, rather than after the court appearance for the dismissal. This distinction recognizes that the court may not always schedule a hearing before dismissal of a case (for example, when the court dismisses a child protection case after entry of an order of parental rights and responsibilities). This revision is also issued to add, in what is now section c of footnote 2, the court's release of a GAL from an order of appointment as a legal stage for which a GAL may be reimbursed up to a maximum of 15 hours.

This revision also specifies in section IV(B)(1) that a GAL may seek reimbursement for up to one hour for attendance at an uncontested adoption hearing, plus travel time and mileage subject to the limitations in section III(D).

In new section IV(C), this revision specifies that when a court appearance concludes more than one legal stage, a GAL may bill only for the legal stage with the higher hourly cap. For example, if the court appearance involves both a judicial review and a termination of a parental rights hearing, a GAL may bill up to 20 hours for the termination of parental rights legal stage—not 35 hours for both the termination of parental rights and judicial review legal stages.

Finally, section V is amended to remove the requirement that a judge and the Chief Judge review a voucher that does not exceed the maximum hours allowed under sections IV(B) and (IV)(C) or a court order, and that does not exceed \$125 in expenses.

Other revisions include an updated reference in footnote 1 to the Maine Rules of *Unified Criminal Procedure*, the removal of gender binary language, a change of tense in footnote 3, and the renumbering of listed items in connection with the amendments summarized above.

Historical Derivation of JB-05-5

Revised Fee Schedule for Guardians Ad Litem and Court Appointed Workers' Compensation Attorneys in All Courts

AO JB-05-5 (A. 9-19), dated July 11, 2019, effective September 1, 2019

As indicated in footnote 2 to this Administrative Order, child protective cases are divided into seven legal stages for purposes of guardian ad litem payment: (1) summary preliminary hearing, (2) jeopardy hearing, (3) judicial review and/or permanency hearing, (4) cease reunification contested hearing, (5) termination of parental rights hearing, (6) contested permanency guardianship, and (7) contested child placement hearing. Before this amendment, absent approval of the court, guardians ad litem could bill a maximum of 15 hours per legal stage, except for a contested termination of parental rights, which was capped at 21 hours. In response to feedback from guardians ad litem at the annual child protective conference requesting an increase in the maximum hours per legal stage, the Family Division evaluated the hourly caps to determine whether an increase or reallocation was warranted. In state fiscal year 2018, only 12% of the 3,900 vouchers submitted to the Judicial Branch for payment went over the prescribed hourly cap per stage. On average, guardians ad litem billed the most hours for the stages corresponding to jeopardy and termination of parental rights, and the fewest hours for summary preliminary hearings. Because no report is required at this legal stage, guardians often billed fewer than 15 hours. After the summary preliminary hearing, however, guardians ad litem are required to conduct independent investigations and prepare reports to be used at the time of the jeopardy hearing, held approximately 106-113 days after the summary preliminary hearing. Obviously, these investigations and reports generate larger bills.

Because the percentage of vouchers exceeding the maximum total hours is relatively low, the amendment does not call for an across-the-board increase in the maximum hours for each legal stage. Instead, as amended, part IV(B)(1)(a)-(c) of the Administrative Order reallocates 5 hours from the summary preliminary hearing to the jeopardy phase, thereby decreasing the cap to 10 hours for the summary preliminary hearing and increasing it to 20 hours for the jeopardy hearing.

Additionally, part IV(B)(1)(d) of the amended Administrative Order changes the maximum hours to be billed for the termination of parental rights stage. Before the amendment, guardians could bill 21 hours if the termination of parental rights hearing was contested but only 15 if it was uncontested. Guardians ad litem have indicated that this contested/uncontested dichotomy in billing does not reflect actual practice because many

parents decide to consent to the termination of their parental rights the day of the hearing, after the GAL has already prepared for the trial. To address actual practice, the amended Administrative Order changes the maximum hours in termination of parental rights hearings to 20, whether contested or not.

Finally, the reference to repealed Title 18-A was changed to Title 18-C, which takes effect on September 1, 2019. *See* 18-C M.R.S. § 8-301; P.L. 2019, ch. 417, §§ A-103, B-14.

Revised Fee Schedule for Guardians Ad Litem and Court Appointed Workers' Compensation Attorneys in All Courts

AO JB-05-5 (A. 10-17), dated September 7, 2017, effective October 1, 2017

Signed By: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Issued to clarify language throughout and to (1) add a new section III(A) regarding the itemization of time; (2) state in section III(E) that a GAL shall not request services from or advance funds for any investigator or other service provider without pre-approval from the court, omitting former section III(E)(1)(a) as duplicative and making former subdivisions (b) through (e) new subdivisions (a) through (d); (3) amend section IV(B)(2) to provide that a child protection voucher exceeding the cap by more than five hours without approval by the trial judge will not be paid above that cap; (4) amend section IV(E)(1)(b) to change the rate of \$60 per hour to a rate "consistent with the hourly rate paid to lawyers through MCILS"; (5) provide the form number for the court-approved voucher form in section V(A); (5) move the requirement of itemization of expenses claimed for reimbursement from section V(F) to section V(B); (6) omit the requirement in section V of billing in 0.1-hour increments; (7) provide in section V for requests for fees for appeals to the Law Court to be submitted to the Clerk of the Law Court instead of a Justice of the Law Court; (8) convert subdivision V(G) into a freestanding paragraph in section V.

Revised Fee Schedule for Guardians Ad Litem and Court Appointed Workers' Compensation Attorneys in All Courts

AO JB-05-5 (A. 7-16.2), dated January 6, 2017, effective July 29, 2016

Signed By: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Issued to update the schedule in light of the Act to Ensure a Continuing Home Court for Cases Involving Children, P.L. 2015, ch. 460 (effective July 29, 2016). Specifically, issued to add section IV(A)(2) to require a GAL to obtain prior court approval to be paid for time exceeding the allowable or court ordered maximum hours in all cases in the District Court; to add heading IV(B) for child protection cases in the District Court; to add provisions specific to guardianship of a minor cases and other case types in the District Court in section IV(C) and (D); and to improve clarity regarding the increments used for billing in section V(C).

Revised Fee Schedule for Guardians Ad Litem and Court Appointed Workers' Compensation Attorneys in All Courts

AO JB-05-5 (A. 7-16), dated July 1, 2016, effective July 1, 2016

Signed By: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Issued to improve organization throughout; to employ the shorthand "GAL" instead of "guardian" throughout; to identify the Administrative Office of the Courts as the entity to

notify of any home court designation(s); to refer to “rostered” GALs in section I; to change the hourly rate for court appointed GALs to correspond with the hourly rate established for attorneys appointed to represent parents in child protection proceedings; to specify that when a GAL is assigned, the court will make every effort to reduce costs by scheduling cases to limit the number and length of court appearances; to clarify the distinctions between routine, non-routine, and third-party or extraordinary (more than \$100) expenses; to specify that the Chief Judge or designee must approve in writing all out-of-state travel prior to the expense being incurred; to remove references to responsibilities that are now governed by the Maine Rules for Guardians Ad Litem; to specify that for each “legal stage ” of a child protection case, except a contested termination of parental rights hearing, the GAL may be reimbursed up to a maximum of 15 hours, with additional hours requiring prior court approval; to define “legal stage”; to specify that for a contested hearing on a petition for termination of parental rights the GAL may be reimbursed up to a maximum of 21 hours, with additional hours requiring prior court approval; and to provide that a child protection voucher that exceeds the established cap by more than five hours without prior court approval will not, absent extraordinary circumstances, be paid to the extent that it exceeds the cap.

Revised Fee Schedule for Guardians Ad Litem and Court Appointed Workers’ Compensation Attorneys in All Courts

AO JB-05-5 (A. 9-11), dated and effective September 19, 2011

Signed By: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Revised Fee Schedule for Guardians Ad Litem and Court Appointed Workers’ Compensation Attorneys in All Courts

AO JB-05-5 (A. 8-10), dated July 21, 2010, effective August 1, 2010

Signed By: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Revised Fee Schedule for Court-Appointed Counsel and Guardians Ad Litem in All Courts

AO JB-05-5 (A. 7-08), dated June 27, 2008, effective July 1, 2008

Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Revised Fee Schedule for Court-Appointed Counsel and Guardians Ad Litem in All Courts

AO JB-05-5 (A. 1-07), dated January 22, 2007, effective January 1, 2007

Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Fee Schedule for Court-Appointed Counsel and Guardians Ad Litem in All Courts

AO JB-05-5 (A. 4-06), dated April 13, 2006, effective April 14, 2006

Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Fee Schedule for Court-Appointed Counsel and Guardians Ad Litem in All Courts

AO JB-05-5 (A. 1-06), dated December 19, 2005, effective January 1, 2006

Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Fee Schedule for Court-Appointed Counsel and Guardians Ad Litem in All Courts

AO JB-05-5, dated June 29, 2005, effective January 1, 2006

Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

Fee Schedule for Court-Appointed Counsel in All Courts

AO JB-00-01, dated June 5, 2000 (which replaced SJC-226, SJC-318, and SJC-406)

Signed by: Daniel E. Wathen, Chief Justice, Maine Supreme Judicial Court; Andrew M. Mead, Chief Justice, Maine Superior Court; and Michael N. Westcott, Chief Judge, Maine District Court

ADDENDUM TO ADMINISTRATIVE ORDER SJC-226/318/406 Effective: July 1, 2000