

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Ensure Accountability of Guardians Ad Litem**

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

**Sec. 1. 4 MRSA §1554, sub-§3**, as enacted by PL 2013, c. 406, §1, is amended to read:

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

- A. Represent consistently the best interests of the child and provide information to the court that assists the court in determining the best interests of the child;
- B. Understand and uphold the law and court orders related to the guardian ad litem's appointment;
- C. Maintain the highest standards of professionalism, cultural sensitivity and ethics;
- D. Recognize that timely resolution of each matter serves the best interests of the child and the child's need for stability;
- E. Within the scope of authority defined by statute or court order, plan, carry out, document and complete thorough, appropriate and fair investigations in a timely fashion;
- F. Communicate in a developmentally appropriate way with the child;
- G. Make well-reasoned and factually based written recommendations regarding the best interests of the child as directed by the order of appointment;
- H. Pursuant to the order of appointment, include parties in the investigation, use effective communication techniques, recognize limitations that may be imposed by the financial resources of the parties as applicable and be aware of the cultural and socioeconomic status of the parties; and
- I. Complete assignments and written reports in a timely manner and communicate effectively with the court in motions, reports, recommendations and testimony.

**Sec. 2. 4 MRSA §1554, sub-§4** is enacted to read:

**4. Cause of action.** A party who is injured by a guardian ad litem's false accusations of abuse or neglect or intentionally excluding relevant information in required reports has a civil cause of action against the guardian ad litem for damages, including punitive damages.

**Sec. 3. 18-A MRSA §1-112, sub-§§(a) and (b)**, as enacted by PL 2005, c. 360, §1, are amended to read:

(a). In any proceeding under this Title for which the court may appoint a guardian ad litem for a child involved in the proceeding, at the time of the appointment, the court shall specify in writing the guardian ad litem's length of appointment, duties and fee arrangements.

(b). A guardian ad litem appointed on or after October 1, 2005 must meet the qualifications established by the Supreme Judicial Court. The qualifications must include at least a minimum amount of completed course work in social work.

**Sec. 4. 18-A MRSA §1-112, sub-§(f)**, as enacted by PL 2005, c. 360, §1, is amended to read:

(f). A person appointed by the court as a guardian ad litem acts as the court's agent ~~and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem.~~

**Sec. 5. 18-A MRSA §1-112, sub-§(h)** is enacted to read:

(h). A party who is injured by a guardian ad litem's false accusations of abuse or neglect or intentionally excluding relevant information in required reports has a civil cause of action against the guardian ad litem for damages, including punitive damages.

**Sec. 6. 19-A MRSA §1507, sub-§1**, as amended by PL 2005, c. 360, §2, is further amended to read:

**1. Guardian ad litem; appointment.** In contested proceedings under sections 904, 1653 and 1803 in which a minor child is involved, the court may appoint a guardian ad litem for the child. The appointment may be made at any time, but the court shall make every effort to make the appointment as soon as possible after the commencement of the proceeding. The court may appoint a guardian ad litem when the court has reason for special concern as to the welfare of a minor child. 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. Abuse of the child by one of the parties; and
- H. Other factors the court determines relevant.

At the time of the appointment, the court shall specify in writing the guardian ad litem's length of appointment, duties and fee arrangements as described in subsection 7.

**Sec. 7. 19-A MRSA §1507, sub-§2**, as amended by PL 1999, c. 251, §1, is further amended to read:

**2. Qualifications.** A guardian ad litem appointed on or after March 1, 2000 must meet the qualifications established by the Supreme Judicial Court. The qualifications must include at least a minimum amount of completed course work in social work.

**Sec. 8. 19-A MRSA §1507, sub-§3**, as amended by PL 2005, c. 683, Pt. B, §9, is further amended to read:

**3. Duties; investigation limits.** The court shall describe in writing the specific duties of the guardian ad litem has both mandatory and optional duties and establish the limits of investigations to be undertaken.

A. The court shall direct the guardian ad litem shall to:

(1) Interview the child face-to-face with or without another person present; and

(3) Make a written report of investigations, findings and recommendations as ordered by the court, with copies of the report to each party and the court.

B. The court shall specify the optional duties of the guardian ad litem. The optional duties of the guardian ad litem may include:

(1) Interviewing the parents, 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) Having qualified people perform medical and mental evaluations of the child;

(5) Having qualified people perform medical and mental evaluations of the parents;

(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.

If, in order to perform the 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 guardian ad litem must be allowed access to the child by caretakers of the child, whether the caretakers are individuals, authorized agencies or child care providers.

**Sec. 9. 19-A MRSA §1507, sub-§§6 and 7,** as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to read:

**6. Court's agent.** A person serving as a guardian ad litem under this section acts as the court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem.

**7. Payment for services.** Payment for the services of the guardian ad litem is the responsibility of the parties, as ordered by the court. The court shall establish expenditure limits on the fees and any other costs that may be incurred in an investigation conducted pursuant to subsection 3. In determining the responsibility for payment, the court shall consider:

- A. The income of the parties;
- B. The marital and nonmarital assets of the parties;
- C. The division of property made as part of the final divorce;
- D. Which party requested appointment of a guardian ad litem; and
- E. Other relevant factors.

**Sec. 10. 19-A MRSA §1507, sub-§9** is enacted to read:

**9. Cause of action.** A party who is injured by a guardian ad litem's false accusations of abuse or neglect or intentionally excluding relevant information in required reports has a civil cause of action against the guardian ad litem for damages, including punitive damages.

**Sec. 11. 22 MRSA §4005, sub-§1, ¶G,** as enacted by PL 2001, c. 253, §4, is amended to read:

G. A person serving as a guardian ad litem under this section acts as the court's agent ~~and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem.~~

**Sec. 12. 22 MRSA §4005, sub-§1, ¶H** is enacted to read:

H. A party who is injured by a guardian ad litem's false accusations of abuse or neglect or intentionally excluding relevant information in required reports has a civil cause of action against the guardian ad litem for damages, including punitive damages.

## SUMMARY

This bill:

1. Removes the quasi-judicial immunity provided to guardians ad litem by statute;
2. Allows a cause of action and the award of punitive damages against guardians ad litem who falsely accuse parties of abuse or neglect or who intentionally exclude relevant information from reports to the parties or the court;
3. Requires the court to impose limits on the extent of investigations to be undertaken by a guardian ad litem;
4. Requires all guardians ad litem to have a minimum amount of completed course work in social work; and
5. Requires the court to set expenditure limits on guardian ad litem fees and any other costs incurred in investigations or the completion of the duties of the appointment.