

MAINE FAMILY LAW ADVISORY COMMISSION

Report to Maine Legislature Joint Standing Committee on Judiciary On LD 113 “An Act to Provide Funding for Guardians Ad Litem”

Introduction

The Maine Family Law Advisory Commission hereby reports to the Maine Legislature, Joint Standing Committee on Judiciary, on LD 113 “An Act to Provide Funding for Guardians Ad Litem.” For the reasons set out below, FLAC supports LD 113.

Discussion

LD 113 provides a Judicial Department appropriation for ongoing funding for guardian *ad litem*¹ services in family matters cases in the annual amount of \$1,000,000. LD 113 will significantly make access to guardians *ad litem* more equitable for all litigants in the family court system with the ultimate beneficiaries being the children of Maine.

Pursuant to 4 M.R.S. § 1554, the court may appoint a guardian *ad litem* to provide information to assist the it in evaluating the best interests of a child in the determination of parental rights and responsibilities. Under the current statutory scheme, the cost of this vital service to the court and children in family matter cases is (1) paid by the litigants on terms ordered by the court pursuant to 4 MRS §1555(3) or (2) is waived or reduced if the court can secure a *pro bono* or low-fee guardian. Under the Rules governing guardians *ad litem*, Rule No. 2(b)(5) provides that any rostered GAL is expected to accept at least one Title 19-A *pro bono* or reduced-fee referral from the Judicial Branch per calendar year. While the rostered GAL’s fulfil this obligation, and in some cases go well beyond what is required, the need for GAL’s in family matters is greater than the capacity of the roster to meet it. This is particularly true in areas of the state where the roster of qualified GALs is thin.

¹ A guardian *ad litem* (or “GAL”) is a person appointed by the court during family matter litigation to protect the interests of a child. These cases include, but are not limited to, divorce complaints, parental rights and responsibility petitions, grandparent rights petitions, and guardianship petitions. The court maintains a roster of persons qualified to perform the duties of a GAL. Guardians *ad litem* are regulated by statute, court rule, and orders issued in individual cases. The duties of a guardian *ad litem* in a family matters case are spelled out in the court’s order appointing the GAL. Common duties include interviewing the parties, the children, teachers, and therapists to make recommendations about parent-child contact and the child’s primary residence. Under current practice, the guardian *ad litem* is paid by one or both of the parties as specified in the appointment order. If the parties cannot afford to pay for a GAL, the court may secure a *pro bono*/reduced fee GAL or proceed with the case without an appointment.

Too often, a GAL is not appointed regardless of the needs of the children or the case. While the court recognizes the need, it also must work within the with the economic circumstances of the parties. This results in a system whereby one of the primary determinative factors on whether a guardian *ad litem* is appointed is the economic status of the litigants and not what is necessarily in the best interest of the children or the efficient prosecution of the case. LD 113 provides the funding necessary for a third option: a publicly funded option that elevates the needs of children over their parents' economic circumstances.

If a GAL is appointed in a case in which the parties do not have the resources to pay for a GAL, it is because of a very small cadre of volunteer guardians around the state who disproportionately and generously donate their time and expertise to the court without compensation. Furthermore, judicial officers are expending valuable time in identifying and securing *pro bono*/low fee GALs at the expense of other judicial duties.

Whether warranted or not, the perception is unavoidable that the statutory GAL role designed to directly protect the interests of children in family matters is only available to those with means.

The role of the GAL is to assist the court in gathering reliable information to make best interest determinations. Among negative consequences to not having a GAL report and recommendations are: (1) the increased likelihood of children being required to testify; (2) the increased need to subpoena and require in-court testimony from ancillary professionals such as doctors, teachers, and therapists; and (3) the significant increase in expenditure of judicial resources necessary to process a case through trial, stretching an already thin allocation of time available to family matters. Furthermore, in the growing number of cases in which neither party is represented by an attorney and who also face challenges of presenting proof as required by the Rules of Civil Procedure and the Rules of Evidence, teachers, doctors, therapists and even the children themselves are not being called as witnesses to inform the court about the lives of the children.

LD 113 will help ensure that family law decisions are made with the best possible information. An increase in better informed initial family law determinations may also serve to decrease the incidence of post-judgment litigation.

FLAC also believes that LD 113 will address the geographic inequities inherent in the current system. In more rural areas of the state, there are very few rostered GAL's, and the limited numbers cannot possibly cover the need, whether paid or *pro bono*. The availability of public funding will allow GALs to cover all areas of the state more fully without the court having to rely upon the generous donation of time by a small number of individuals to meet the need.

Finally, there is a publicly funded GAL option in other areas of the law in Maine. In guardianship and non-child protective termination matters, county Probate Courts (and when applicable, the District Court) routinely pay for GAL services when the litigants cannot afford to contribute to the cost. Members of FLAC have found this absence of a barrier to GAL participation in a case to be a tremendous aid to the administration of these cases and to the children involved. LD 113 allows the funding necessary to replicate these experiences in family court.

A cursory look reveals that other jurisdictions support a publicly funded GAL in family matter cases, including Massachusetts, Connecticut, and the District of Columbia.

FLAC strongly supports the ongoing funding for guardian *ad litem* services in family matter cases.

Conclusion

For all these reasons, FLAC supports LD 113 as a necessary improvement to the equitable administration of justice for children and families in family matters.

Dated: January 25, 2023

Respectfully submitted:
Maine Family Law Advisory Commission

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