

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

2016 Me. Rules 07

Effective: October 1, 2016

All or a majority of the Justices concurring therein as to each amendment, 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 understanding of the amendments, an Advisory Note appears after the text of each amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 2(b)(2)(A) of the Maine Rules for Guardians ad Litem is amended to read as follows:

RULE 2. GUARDIANS AD LITEM

....

(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:

(A) *Credentials.* The applicant must ~~possess~~

(i) Possess a A current valid license to practice law in the State of Maine;

(ii) Possess a A current valid license to practice as a Licensed Clinical Social Worker (LCSW), Licensed Professional Counselor

(LPC), Licensed Clinical Professional Counselor (LCPC), Licensed Master Social Worker (LMSW), Licensed Marriage Family Therapist (LMFT), Licensed Pastoral Counselor (LPaC), psychologist, or psychiatrist in the State of Maine; or

(iii) Possess a A Certification of Qualification by the Director of the CASA program, provided that a CASA Certification qualified individual may be appointed a guardian ad litem only pursuant to 22 M.R.S. § 4005; or

(iv) Have been on the GAL roster on the effective date of the implementation of these Rules (September 2015), have completed the core training required by these Rules, and if the applicant holds professional licenses, be in good standing.

Advisory Note – September 2016

Rule 2(b)(2)(A) is amended to add as a qualifying credential that the applicant was on the GAL roster on the effective date of the implementation of these Rules (September 2015), completed the core training required by the Rules, and is in good standing with respect to any professional licenses the applicant holds.

2. Rule 6(b) and (g) of the Maine Rules for Guardians ad Litem is amended to read as follows:

RULE 6. INVOLUNTARY REMOVAL FROM A PARTICULAR CASE

....

(b) Motion. A party who wishes to seek the removal of a guardian ad litem from a particular case shall proceed by written motion, which shall be served upon the parties and the guardian ad litem. Any such motion shall state whether a complaint has been filed with the Review Board pursuant to Rule 9. Any opposition and reply to the motion shall be governed by the applicable rules of court, and the guardian ad litem shall be treated as the opposing party for purposes of the motion. The judicial officer shall hold a hearing on the motion at the request of the party filing the motion. The

motion may be advanced on the docket and receive priority over other cases when the judicial officer determines that the interests of justice so require.

....

(g) Interrelationship with Rule 9. The provisions of this Rule do not limit a party's right to submit a complaint proceed under Rule 9. A complaint submitted to the Review Board by a party in an open proceeding shall not proceed 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. A party's submission of a complaint to the ~~Guardian ad Litem~~ Review Board under Rule 9 shall not by itself require the removal of the guardian ad litem in the subject proceeding.

Advisory Note – September 2016

Rule 6(b) is amended to require that a motion to seek removal of a guardian "shall state whether a complaint has been filed with the Review Board pursuant to Rule 9."

Rule 6(g) is amended to clarify that the provisions of Rule 6 do not limit a party's right to submit a complaint under Rule 9 and to specify, "A complaint submitted to the Review Board by a party in an open proceeding shall not proceed 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."

3. Rule 7(a)(8) of the Maine Rules for Guardians ad Litem is amended to read as follows:

RULE 7. GUARDIAN AD LITEM REVIEW BOARD

(a) Guardian ad Litem Review Board.

....

(8) *Guardians ad Litem on the Roster.* The Review Board shall maintain ~~as confidential~~ current information relating to all guardians ad litem appointed to the Roster including, but not limited to, the following:

- (A) Date of birth;
- (B) Current office address, telephone number, and email address;
- (C) Current residence address, telephone number, and email address;
- (D) Date of appointment to the Roster;
- (E) Appointment status and the date of any transfer to or from a status;
- (F) Social security or federal identification number;
- (G) Other jurisdictions in which the guardian ad litem is appointed guardian ad litem and dates of appointment; and
- (H) Nature, date, and place of any discipline imposed in Maine and in any other jurisdiction.

The information submitted pursuant to this rule shall be made available to the public with the exception of information continued in (A) (C) and (F) which shall be confidential.

Advisory Note – September 2016

Rule 7(a)(8) is amended to provide that the Review Board shall maintain the enumerated information for all rostered guardians ad litem and to provide, “The information submitted pursuant to this rule shall be made available to the public with the exception of information continued in (A) (C) and (F) which shall be confidential.”

4. Rule 9(d) of the Maine Rules for Guardians ad Litem is amended to read as follows:

RULE 9. GUARDIAN AD LITEM REVIEW BOARD COMPLAINT SYSTEM

....

(d) Disciplinary Procedure.

(1) *Complaint in Open or Closed Proceedings.* Any party to an open or closed proceeding under Title 18-A, 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. Complaints may also be submitted by a judicial officer or Board Counsel.

(2) *Complaint by nonparty.* A judicial officer or Board Counsel may submit a complaint to the Review Board regarding guardian ad litem misconduct or incapacity at any time.

(23) *Board Counsel Investigation.* Board Counsel shall conduct all investigations, except as otherwise required by these Rules.

(A) Board Counsel shall evaluate all relevant information and complaints including a court's decision on whether to remove the guardian ad litem, to determine whether the information or complaint concerns a guardian ad litem subject to jurisdiction under these Rules and whether the alleged facts, if true, would constitute misconduct or incapacity. Board Counsel shall dismiss a complaint if jurisdiction does not exist or if the facts would not constitute misconduct or incapacity.

....

(34) *Pre-Hearing Procedures.* If Board Counsel refers a matter to the Review Board Panel, Board Counsel shall prepare formal charges in writing that give fair and adequate notice of the nature of the alleged misconduct.

....

(45) *Hearing.*

....

(E) *Related Pending Proceedings.* Upon a showing of good cause, the Review Board Panel may stay a disciplinary matter because of substantial similarity to the material allegations of pending criminal or civil litigation or professional disciplinary action, ~~or a pending motion under Rule 6 to remove the respondent from a Title 18-A, Title 19-A, or Title 22 proceeding.~~

....

(56) *Review Board Panel Decision.* The deliberations of the Review Board Panel following the hearing shall not be open to the public or the parties. The Review Board Panel shall issue a written decision containing its findings of fact, conclusions of law, and decision on dismissal or sanction to the Board Clerk within 30 days after the hearing, unless the time for decision is otherwise extended by the Chair of the Review Board. If a sanction is imposed, the decision must state the basis for imposing the sanction. The Board Clerk shall serve the decision on respondent and Board Counsel, who shall mail a copy to the complainant. The Review Board Panel may render one of the following:

....

(67) *Appeal of Review Board Panel Decision.* A decision of the Review Board Panel shall constitute final agency action and is reviewable as provided in Maine Rule of Civil Procedure 80C and the Maine Administrative Procedure Act, 5 M.R.S. § 11001 *et seq.*, except that the requirement of service set out in 5 M.R.S. § 11003(1)(C) shall not apply.

Advisory Note – September 2016

Rule 9(d)(1) is amended to provide for the filing of a complaint in open or closed proceedings. The following language is added: “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.” The provision that a complaint may also be submitted by a judicial officer or Board Counsel is moved to new Rule 9(d)(2).

Rule 9(d)(2) is added to apply to complaints by nonparties. It provides, “A judicial officer or Board Counsel may submit a complaint to the Review Board regarding guardian ad litem misconduct or incapacity at any time.”

All subsequent paragraphs are renumbered.

Additionally, Rule 9(d)(3)(A), as renumbered, is amended to require that Board Counsel evaluate all relevant information, “including a court’s decision on whether to remove the guardian ad litem,” when determining whether the information or complaint concerns a guardian ad litem subject to jurisdiction under the Rules and whether the alleged facts, if true, would constitute misconduct or incapacity.

Rule 9(d)(5)(E), as renumbered, deletes the authorization for the Review Board Panel to stay a disciplinary matter because of a substantial similarity to a pending motion under Rule 6 to remove the respondent from a Title 18-A, Title 19-A, or Title 22 proceeding.

5. Rule 10(a) and (c) 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.

....

(3) The requirement of Rule 10(a)(1) may be met only by teaching (as provided in Rule 10(a)(5)), attending courses, or completing any continuing professional education activity entitled to credit as provided in Rules 10(c) and 10(d), ~~provided that no more than one half of the credit hours required in any reporting period may be earned through in-house courses, self-study, or a combination thereof.~~

....

(c) Courses and Other Activities Entitled to Credit.

(1) The Review Board shall maintain a list of approved sponsors of professional education programs. ~~All publicly available courses or other publicly available continuing professional education activities offered by approved sponsors are deemed automatically approved and entitled to credit upon payment of the requisite fees in accordance with Rule 10(d).~~

(2) Upon payment of the requisite fees in accordance with Rule 10(d), ~~All publicly available~~ courses or other continuing professional education activities ~~sponsored or presented by any other individual or organization are~~ entitled to credit for purposes of Rule 10(a), must be reviewed and only if the sponsor or the individual course or activity has been approved by the Review Board in accordance with Rule 10(d).

(3) ~~The Review Board shall delegate all approval and other functions under this Rule to a designated staff person of the Board of Overseers of the Bar. Upon request, the Review Board shall review any decisions denying approval of any sponsor, individual course, or other continuing professional education activity. The Review Board's determination of any such issue shall be final.~~

Advisory Note - September 2016

Rule 10(a)(3) is amended to eliminate the provision that no more than one half of the credit hours required in any reporting period may be earned through in-house courses, self-study, or a combination thereof.

Rule 10(c)(1) is amended to eliminate the following language: "All publicly available courses or other publicly available continuing professional education activities offered by approved sponsors are deemed automatically approved and entitled to credit upon payment of the requisite fees in accordance with Rule 10(d)."

Rule 10(c)(2) is amended to provide that, upon payment of the requisite fees in accordance with Rule 10(d), all publicly available courses or other

continuing professional education activities are entitled to credit, without regard to whether they were “sponsored or presented by any other individual or organization,” and to require that the activity be reviewed and approved by the Review Board.

Rule 10(c)(3) is amended to eliminate the following language: “The Review Board shall delegate all approval and other functions under this Rule to a designated staff person of the Board of Overseers of the Bar. Upon request, the Review Board shall review any decisions denying approval of any sponsor, individual course, or other continuing professional education activity.” Rule 10(c)(3) is further amended to eliminate reference to “any such issue” and simply provide that the Review Board’s determination shall be final.

Dated: September 29, 2016

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 except that Associate Justice Alexander does not concur in the amendment to Rule 2(b)(2)(A).