

## Guardian ad Litem Report Writing for the Courts

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*"The opinions expressed in this seminar are the exclusive responsibility of the presenter."*

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### What does the New Role Require of You?

**Investigate**

- Research, Generalizability, Bias, Reliability, Validity
- Multi-Source Data Collection, Ethics, Respect for Diversity

**Parenting Plan**

- EIP = Data-Best Practices, Best Interest Standards, Interventions

**Judicial decision making**

- Informed, Fact-Based, Bounded-by-Law

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### Before You Start Writing: Are you an Expert or Investigator?

- When is an investigation fact and recommendations an opinion (or not)?
- Does a GAL need to qualify as an expert under *State v. Williams* or is rostering enough?
- Is the standard for being a GAL and expert different in Title 22 or 19-A or 18-A cases?
- What "ought to be" the **best practices** for offering recommendations by GALs?

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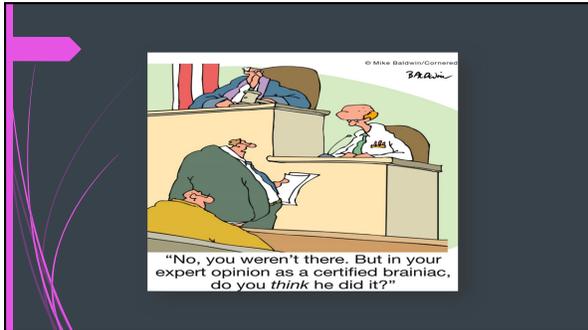
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Values 'r Us

- The various **beliefs and attitudes** that determine how a person or group actually behaves.
- A well-defined value system is a **personal** moral code.
- **What examples of your values do you believe appropriate to impose in your role as a GAL?**

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**Ethics** and then a **Code of Ethics**: The New GAL Rules and You....

- Ethics is an action concept.
- Ethical principles are ground rules for decision making-not just factors to consider as a convenience.
- Ethical **Codes** are thereby principles of conduct that govern a group or an individual so as to provide rules for action or inaction.
- Ethical decision making **under a Code** is a process of standards and frameworks for which a violation may result in sanction through government oversight.

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GAL Report Writing 101



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**4 M.R.S. § 1555(6)**: Appointment of GALs under titles 18-A and 19-A

**Report.** The guardian ad litem shall provide a **copy of each report** ordered by the court to the parties and the court at least **14 days** before each report is due. A guardian ad litem shall provide a copy of the final written report to the parties and the court at least 14 days in advance of the final hearing. Reports are admissible as evidence and subject to cross-examination and rebuttal, whether or not objected to by a party. Any **objections** to a report must be filed at least **7 days** before the applicable hearing.

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4 M.R.S. § 1556(2)(A): Appointment of GAL under title 22 [Different Duties].

The appointment order must be written on a court-approved form and must specify the guardian ad litem's length of appointment and specific duties, including the filing of a written report.

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19-A M.R.S. §1507(3)(A)(3), (7)

The guardian ad litem has both mandatory and optional duties:

A guardian ad litem shall: 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. (§ 1507(3)(A)(3))

Written report. A guardian ad litem shall make a final written report to the parties and the court reasonably in advance of the hearing. The report is admissible as evidence and subject to cross-examination and rebuttal, whether or not objected to by a party. (§1507(5)).

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18-A M.R.S. §1-112(e): Guardian ad litem

If required by the court, the guardian ad litem shall make a final written report to the parties and the court reasonably in advance of a hearing. The report is admissible as evidence and subject to cross-examination and rebuttal, whether or not objected to by a party.

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**22 M.R.S. § 4005(1)(D):** Parties' rights to representation; legal counsel

The guardian ad litem shall make a written report of the investigation, findings and recommendations and shall provide a copy of the report to each of the parties **reasonably in advance of the hearing** and to the court, except that the guardian ad litem need not provide a written report prior to a hearing on a preliminary protection order. The court may admit the written report into evidence.

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**Rules and Reports: Why the Differences?**

- **18-A and 19-A Appointments. M.GAL.R 4(b)(7):** **Written report.** A guardian ad litem shall provide a copy of any required final written report to the parties and the court **at least 14 days in advance of the final hearing.** The report is admissible as evidence and subject to cross-examination and rebuttal, whether or not objected to by a party.
- **Title 22 Appointment Order. M.GAL.R 4(e)(6):** **Recommendations to the Court.** For interim or preliminary protection hearings, the guardian ad litem should, except as otherwise required, appear in court and offer recommendations subject to questions by the court and parties or counsel. **The submission of a report by the guardian ad litem and the admissibility of any such report in evidence shall be as provided by statute.** The guardian ad litem may present evidence at court hearings.

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**The Connective Web in All You Do!**

M.GAL R. 5: STANDARDS OF CONDUCT

(a) Performance of Duties (b) Agent of the Court  
 (c) Develop Understanding of Litigation (d) Explanation of Court Process (e) Advocate for Clear Court Orders (f) Mandated Reporting (g) Confidentiality\* (h) Ex Parte Communications (i) Conflicts of Interest and Mandatory Disclosures (j) Withdrawal.

**\*See below: This really applies to writing reports**




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**\*Confidentiality.**

- A guardian ad litem shall observe all statutes, rules, and regulations concerning confidentiality.
- A guardian ad litem shall not disclose information or participate in the disclosure of information relating to a case to any person who is not a party to the case, except as necessary to perform the guardian ad litem's duties, or as may be specifically provided by law or by these Rules.
- Communications made to a guardian ad litem, including those made to a guardian ad litem by a child, are not privileged.
- The guardian shall exercise reasonable discretion about whether to disclose communications made by the child to the court, or to professionals providing services to the child or the family based on the guardian ad litem's evaluation of the best interest of the child.
- Any decision by the guardian not to disclose such information, however, shall be subject to review by the court following an in camera review.
- A guardian ad litem's notes and work papers are privileged and shall not be disclosed to any person, reserving to the court, however, the authority to order disclosure of such material as part of court proceedings if the court determines that disclosure is warranted under applicable court procedures.
- If the guardian ad litem is an attorney, she or he shall be deemed to act as a guardian ad litem rather than as an attorney, and information he or she receives is not subject to the attorney-client privilege.

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**The Great Debate: Your Report Philosophy**

- Anthropological/Archeological
- Narrative with relevant best interests factors
- Summary of facts and data as findings and suggestions
- Investigative with broad parenting plan recommendations
- Investigative with precise recommendations
- And what does the court on your jurisdiction want or need?
  - Interim reports: ????
  - Trial report?
  - Just your testimony? [The lawyers said that was fine...Really!]

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**Best Practices: The New Rules and the OA**

- provide independent and accurate information about the parents and children
- be professional in appearance, grammar, and writing style
- be written in a way that is concise, yet encompasses the relevant facts and data
- use language that is understandable to the average layperson and avoids jargon
- get a mentor and collaborate.
- do not file a report that is not proofed and read by a colleague
- be dated and signed by the GAL

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## Organization Matters

Headings:

- Summary of Activities: Who, What, When, Where... [Why-maybe not?]
- Summary of Background Information
- Separate Summary of Parents' Positions [not your assessment but what he or she said was the goal]
- Investigation and Relevant Facts and Quotes: Always be Specific about Source Material
- Best Interest Factors Specifically Weighed and Considered as Relevant

Edit and check carefully for typos and other errors of fact. Parents and family are vigilant

If you cite research or testing you should be able to explain the research and results as reliable and valid for a child custody case and, if you cannot, pause before using

Language matters. Cultural insensitivity and labeling of parents should be avoided. Try to write about strengths first-even if you struggle to find them.

Finally, protect the child by writing with good judgment. Your report will be read and shared. I promise.

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## Other Matters for Report Writing

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- In a report, a GAL consolidates the information gathered, includes observations and, if applicable, the results of any evaluations such as psychological testing, and is often accompanied with dispositional recommendations (Boumil, Freitas, & Freitas, 2011).
- Is a recommendation required by the OA? If so, how does the recommendation *connect* to the factual investigation?
- Does the report accurately and responsibly account for IPV or abuse or neglect?
- What other factors, such as chronic interference with parenting or substance abuse, may connect to functional parenting or is "OK" just good enough for that family?

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## And Now the Nevers....

All parents, children, and other professionals are entitled to dignity and respect so:

- **Never** say or write anything to a parent unless you are prepared to have it recorded and replayed to you.
- **Never** use denigrating language like "poor" or "personality disordered."
- **Never** use a diagnosis or label unless you are quoting from an authenticated report that is evidence-based and not notes of a therapist or a family thought experiment.
- **Never** tell one lawyer something "off the record" unless you have that kind of rapport and would say the same thing to the other lawyer.
- **Never** assume that what you are told in a call by a professional or layperson will be testified to in court. The oath and the presence of a judge and clients changes the "how can I help" role. If it is important then **get it in writing** and if not in writing decide if it is worth using.
- **Never** use irrelevant "he/said she said" statements. This is not a sandbox.
- **Remember to "stay in your professional lane."** You are not the judge or a magic wand.




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### Readings



- BARBARA ANN ATWOOD, *Representing Children: The Ongoing Search for Clear and Workable Standards*, 19 J. AM. ACAD. MATR. LAW 183 (2004).
- MARCIA BOUMIL ET AL., *Legal and Ethical Issues Confronting Guardian ad Litem Practice*, 13 J. LAW & FAM. STUDIES 43 (2011).
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- LINDA D. ELROD, *Raising the Bar for Lawyers Who Represent Children: ABA Standards of Practice for Custody Cases*, 37 FAM. L. Q. 105 (2003).
- MARY KAY KISHAHO, *Working in the Best Interests of Children: Facilitating the Collaboration of Lawyers and Social Workers in Abuse and Neglect Cases*, 30 Rutgers L. Rev. 1, 76 (2006).
- RAVEN C. LIDMAN & BETSY R. HOLLINGSWORTH, *The Guardian Ad Litem in Child Custody Cases: The Contours of Our Judicial System Stretched beyond Recognition*, 6 GEO. MASON L. REV. 255 (1997).
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- MARGARET E. SHOSTROM, *What's a GAL to do?: The Proper Role of Guardians Ad Litem in Disputed Custody and Visitation Proceedings*, 24 CHILD LEG. RIGHTS J. 2 (2004).

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