

# Guardian ad Litem Rules

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PAUL W. CHAIKEN, SPECIAL COUNSEL  
BOARD OF OVERSEERS OF THE BAR  
GUARDIAN AD LITEM REVIEW BOARD

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## Rule 1(b). Goals:

“govern and define the services provided...”

“to promote the best interests of the children **whose interests they are appointed to represent...**”

Rules “construed to secure the just, speedy, and inexpensive determination...”

Quasi judicial officer, “subject to and governed by the court ... and by GAL oversight process more generally.”

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## Rule 1(b). Goals

1. Represent **consistently** the **best interest of the child** (“BIC”); provide information to the court for determining the BIC
2. Understand, uphold **law, court orders** related to appointment
3. Maintain the **highest** standards of **professionalism, cultural sensitivity and ethics**
4. Recognize timely resolution serves BIC
5. **Within statutes and court order**, plan, conduct, document and complete thorough, appropriate, timely and fair investigations

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### Rule 1(b). Goals

- 6. Communicate **with the child** in a developmentally appropriate way
- 7. "Make well-reasoned and factually based recommendations regarding the BIC as directed by the order of appointment"
- 8. Per the court order, **include parties in the investigation**, use effective communication techniques, recognize limits due to financial constraints, "and be aware of the cultural and socioeconomic status of the parties"
- 9. Complete work in a timely manner, communicate effectively

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### GAL Rule 1(c)(1) Definitions.

*Best interest of the child.* 'Best interests of the child' means an outcome that serves or otherwise advances the health, safety, well-being, education and growth of the child.

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### Rule 5. Standards of Conduct

- Maintain "independent representation" of the BIC
- Perform GAL duties faithfully
- Act as a quasi judicial officer, "respecting" Judicial Canon 2.2, "perform all judicial and administrative duties promptly, fairly and competently"
- Canon 2.2: "A Judge shall uphold and apply the law, and shall perform all judicial and administrative duties **promptly, fairly and competently.**" An error of law is not a violation of the Canons, unless willful or repeated disregard of "explicit requirements of the law."

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### Quasi Judicial Officer Immunity

GAL Rule 3: Pursuant to Title 22, GALs “are entitled to quasi-judicial immunity from liability for **actions undertaken pursuant to their appointments and these rules.**”

22 MRS §4005(1)(G): an appointed GAL acts as the Court’s agent ... is entitled to quasi judicial immunity **“for acts performed within the scope of the duties of the GAL”**

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### Rule 5. Standards of Conduct

(c) Develop Understanding of Litigation.

- (1) obtain pleadings
- (2) Determine level of expected participation in scheduled proceedings
- (3) Confirm appointment with COC, inclusion on notice/mailling lists
- (4) Not cause delays
- (5) "Include parties in the investigation,"
  - Employ effective communication techniques
  - Be sensitive to the culture and socio-economic status of the parties.

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### Rule 5. Standards of Conduct

(d) Explanation of Court Process.

- **“when appropriate:”**
  - Explain court process,
  - Explain role of GAL
- **“when necessary:”**
  - Assure the child is informed of the purpose of the court proceeding

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**Rule 5. Standards of Conduct**

- (e) Advocate for clear court orders
- (f) Mandated Reporter (22 MRS §4011-A)
  - (GAL knows or 'has reasonable cause to suspect...")

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**Rule 5. Standards of Conduct**

**(g) Confidentiality.**

- Observe **all statutes, rules and regulations**
- **No disclosure** by the GAL, or participation in disclosure to "any person who is not a party to the case,
  - "**except** as necessary to perform the GAL's duties..."
  - "**except** as specifically provided by law or 'these Rules'."

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**Rule 5. Standards of Conduct**

**CONFIDENTIALITY, continued:**

Communications to GAL are not privileged.  
**Child's** communications to GAL are not privileged  
GAL "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 to the family," based on Best Interest of the Child.

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**Rule 5. Standards of Conduct**

**Confidentiality, Con't:**

**Decisions not to disclose are subject to an *in camera* review**

**GAL's notes, work papers are [conditionally] privileged – Court can order disclosure if "warranted under applicable court procedures."**

**Attorney GALs have no attorney/client privilege.**

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**Rule 5. Standards of Conduct**

**Conflicts and disclosures:**

5(i)(1) Mandatory Disqualification if "present or prior personal, professional, business, or legal relationship with any party," that would interfere with GAL performance.

5(i)(2) Disclosure of prior acquaintances if GAL had a relationship "of any type" including personal, professional or financial, with any party.

5(i)(3) If a party alleges a GAL failed to disclose a relationship affecting GAL's objectivity, the GAL must act: advise court and parties, describing the "nature of the ... acquaintance, if any."

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**Rule 5. Standards of Conduct**

**Mandatory Report (to Board Counsel, courts, parties):**  
(Briefly - includes but not limited to:)

- Any criminal charges, convictions
- Any disciplinary hearing before a professional licensing agency
- Any court finding of abuse or neglect, or substantiation of abuse or neglect by DHHS or equivalent
- Includes any safety assessment by DHHS involving anyone residing in the GAL's household, other conduct of those close to GAL,
- Includes any "serious crime" (defined term – Rule 1(c)(19))

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**Rule 9. GAL Review Board Complaint System**

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**(a) Grounds for Discipline:**

- 1) Violate or attempt to violate GAL rules or enabling statutes, an Appointment Order, or knowingly assist or induce another to do so, or to do so through the acts of another;
- 2) Violate applicable rules of conduct for GALs in another jurisdiction;
- 3) Commit any criminal or unlawful act which reflects adversely on the GAL's honesty trustworthiness or fitness as a GAL;
- 4) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

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**Rule 9. GAL Review Board Complaint System**

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**Grounds for Discipline, Con't:**

- 5) Have allegations of abuse or neglect substantiated by Maine DHHS;
- 6) Fail to maintain compliance with the requirements of Rule 2 for rostering;
- 7) In the performance of GAL duties, by words or conduct, manifest bias or prejudice based on race, color, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status
- 8) Willfully violate a disciplinary order under GAL Rules; willfully fail to comply with a subpoena validly issued under the GAL Rules; knowingly fail to respond to a lawful demand from a disciplinary authority; EXCEPT – this Rule does not require disclosure of protected, confidential information.
- 9) Fail to comply with duty to report under Rule 5(j)(4) ...

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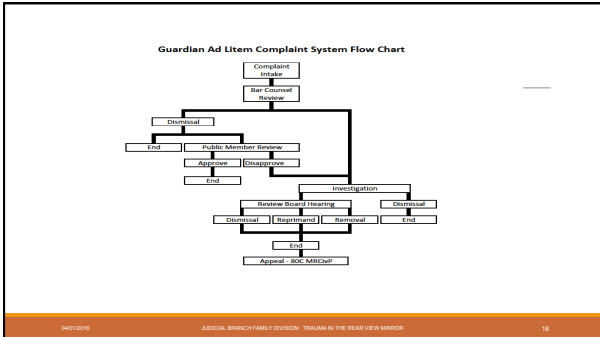
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### Rule 9. GAL Review Board Complaint System

9(d) Disciplinary Procedure

(1) "Any party ... who wishes to complain ... of misconduct by or incapacity of a GAL ... Judicial Officers and Board Counsel can also submit complaints.

Central Intake Office receives complaint, assists complainant. (Rule 5(d)(2))

(2) Board Counsel investigation:

- Evaluate all information to determine whether
  - The information or complaint concerns a GAL subject to jurisdiction of these Rules;
  - Whether the alleged facts, if true, would constitute misconduct or incapacity.

BC shall dismiss the complaint if jurisdiction does not exist or if facts would not constitute misconduct or incapacity.

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### Rule 9. -- Complaint process

If dismissed, BC notifies complainant and respondent

Informs complainant of review process by Public Member

- Time limit: 21 days
- Outcome:
  - Approve dismissal
  - Disapprove with direction to investigate further and/or file formal charges

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### Rule 9. Complaint Process

Upon disapproval of dismissal Bar Counsel serves GAL/ respondent with complaint, requests response

- GAL's response is shared with complainant – perhaps redacted
  - "information that is subject to the privilege held by a person other than the complainant shall be redacted."

Complaint is referred to Review Board Panel

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### Rule 7 (b) – Review Board Panels

- 3 members – 2 who are Rostered, one public member
- "An effort shall be made to include mental health professionals as well as attorneys on each Review Board Panel."
- Rostered lawyer member of each panel serves as chair of that panel
  - resolves discovery disputes (Rule 9(d)(3)(F))
  - decides prehearing motions (Rule 9(d)(4)(A))
- Selected on rotating basis
- Recusal process – Rule 5(b)(4) –
  - As judge would have to self-recuse
  - By motion of the parties

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### Rule 9. Formal Charges process:

- GAL/Respondent has 21 days to submit a response to the complaint.
- Copy is sent to the complainant.
  - Redaction possible

**Warning:**  
**If the respondent fails to answer within the prescribed time, the factual allegations and the alleged misconduct shall be deemed admitted.**

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### Rule 9. Formal Charges process

- Discovery:
  - Within 21 days of GAL/Respondent's answer, BC and respondent must:
    - Exchange names and addresses of "all persons who have knowledge of relevant facts"
    - Identity of those "reasonably anticipated" to be called as witnesses
    - Exchange all documents which "reasonably anticipate" will be introduced at the hearing

Discovery orders are interlocutory – no appeal before Panel Board decision.

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**Rule 9(d)(4). Hearing**

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Panel Chair  
 Decides pretrial motions  
 Presides at hearing  
 Is empowered to control the course of the hearing, regulate conduct, rule on evidence

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**Rule 9(d)(4). Hearing**

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**“Nature of the Proceeding”**

**Neither civil nor criminal**  
 Rules of Civil Procedure do **not** apply to the hearing;  
 Rules of Evidence do **not** apply  
 “Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.”  
 Irrelevant and “unduly repetitious” evidence can be excluded by the Chair.

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**Rule 9(d)(4). Hearing miscellany:**

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GAL Review Board proceedings are public, with “good cause” required for a protective order [9(d)(4)(B)]  
 • Are subject to the standing Administrative Order from the SJC [9(d)(4)(F)]  
 BC has burden of proof – preponderance of the evidence [9(d)(4)(C)]  
 Certified copy of criminal conviction “constitutes conclusive evidence that he GAL committed the underlying crime [9(d)(4)(C)]  
 Hearings recorded [9(d)(4)(C)]

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### Rule 9 Hearing

**Failure to appear without good cause constitutes admission that the facts are as alleged, and waiver of objection to any motion or recommendations which were scheduled to be addressed at the hearing. [9(d)(4)(G)]**

**No delay or continuance absent good cause. [9(d)(4)(G)]**

**If you assert inability to properly defend due to some incapacity, you face immediate suspension as a GAL. [9(d)(4)(H)]**

**BC has subpoena power (for investigations and for hearing) [9(g)]**

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### Rule 9 Other hearing points:

Parties can waive the hearing process by stipulation, but requires approval of Panel Chair [9(d)(4)(I)]

Disciplinary History Report – timing (provided to GAL and BC 14 days before hearing) [9(d)(4)(E)] –

Disciplinary History used only upon a finding of misconduct [(9)(d)(4)(J)]

Stay of disciplinary proceeding because of related, pending proceedings requires showing of good cause [(9)(d)(4)(E)]

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