

1 **Rule 4-906. Guardian ad litem program.**

3 **Intent:**

4 To establish:

5 (1) ~~the responsibilities of the Guardian ad Litem Oversight Committee ("Committee")~~
6 ~~established in Rule 1-205.~~

7 (2) ~~To establish~~ the policies~~s~~ and procedures for the management of the guardian ad
8 item ("GAL") program.~~;~~

9 ~~To establish responsibility for management of the program.~~

10 (3) ~~To establish~~ the policies~~s~~ and procedures for the selection of ~~guardians ad~~
11 itemGALs~~s~~;

12 (4) ~~To establish~~ the policies~~s~~ and procedures for payment for ~~guardian ad litem~~GAL
13 services; ~~and~~

14 (5) ~~To establish~~ the policies~~s~~ and procedures for complaints regarding ~~guardians ad~~
15 itemGALs and volunteers.

16 **Applicability:**

17 This rule ~~applies~~shall apply to the management of the ~~guardian ad litem~~GAL program.

18 This rule does not affect the authority of the Utah State Bar to discipline a ~~guardian ad~~
19 itemGAL.

20 **Statement of the Rule:**

21 **(1) Guardian ad Litem Oversight Committee.** The Committee will~~shall~~:

22 (1)(A) develop and monitor policies of the Office of Guardian ad Litem ("Office") to:

23 (1)(A)(i) ensure the independent and professional representation of a child-client
24 and the child's best interest; and

25 (1)(A)(ii) ensure compliance with federal and state statutes, rules~~s~~ and case law;

26 (1)(B) recommend rules of administration and procedure to the ~~Judicial~~ Council and
27 Supreme Court;

28 (1)(C) select the Director of the Office ~~of Guardian ad Litem~~ ("Director") in consultation
29 with the ~~State Court~~ Administrative Office~~or~~;

30 (1)(D) develop a performance plan for the Director;

31 (1)(E) monitor the Office's caseload and recommend to the ~~Judicial~~ Council adequate
32 staffing of ~~guardians ad litem~~ GALs and staff;

33 (1)(F) develop standards and procedures for hearing and deciding complaints and
34 appeals of complaints; and

35 (1)(G) hear and decide complaints and appeals of complaints as provided in this rule.

36 (2) **Qualifications of the Director.** The Director ~~will shall~~ have the qualifications provided in by
37 the Utah Code.

38 (3) **Responsibilities of the Director.** In addition to responsibilities under the Utah Code, the
39 Director ~~will shall~~ have the following responsibilities:-

40 (3)(A) ~~m~~Manage the Office ~~of Guardian ad Litem~~ to ensure that minors who have been
41 appointed a ~~guardian ad litem~~GAL by the court receive qualified ~~guardian ad litem~~GAL
42 services:-

43 (3)(B) ~~d~~Develop the budget appropriation request to the legislature for the ~~guardian ad~~
44 ~~litem~~GAL program:-

45 (3)(C) ~~c~~Coordinate the appointments of ~~guardians ad litem~~GALs among different levels
46 of courts:-

47 (3)(D) ~~m~~Monitor the services of the ~~guardians ad litem~~GALs, staff, and volunteers by
48 regularly consulting with users and observers of ~~guardian ad litem~~GAL services,
49 including judges, court executives and clerks, and by requiring the submission of
50 appropriate written reports from the ~~guardians ad litem~~GAL:-

51 (3)(E) ~~Determine whether the guardian ad litem caseload in Judicial Districts 1, 5, 6, 7,~~
52 ~~and 8 is best managed by full or part time employment or by contract monitor attorney~~
53 ~~GAL caseloads to ensure compliance with national standards;~~

54 (3)(F) ~~s~~Select ~~guardians ad litem~~GALs and staff for employment as provided in this rule:-
55 ~~s~~Select volunteers and ~~c~~Coordinate appointment of conflict counsel:-

56 (3)(G) ~~s~~Supervise, evaluate, and discipline ~~guardians ad litem~~GALs and staff employed
57 by the courts and volunteers:-

58 (3)(H) ~~s~~Supervise and evaluate the quality of service provided by ~~guardians ad~~
59 ~~litem~~GALs under contract with the court:-

60 (3)(I) ~~m~~Monitor and report to the Committee ~~guardian ad litem~~GAL, staff, and volunteer
61 compliance with federal and state statutes, rules, and case law; and

62 (3)(J) ~~p~~Prepare and submit to the Committee in OctoberAugust an annual report
63 regarding the development, policy, and management of the ~~guardian ad litem~~GAL
64 program and the training and evaluation of ~~guardians ad litem~~GALs, staff, and
65 volunteers. The Committee may amend the report prior to release to the Legislative
66 Interim Human Services Committee.

67 (4) **Qualification and responsibilities of ~~guardian ad litem~~GALs.** A ~~guardian ad litem~~GAL ~~will~~
68 ~~shall~~ be admitted to the practice of law in Utah and ~~will shall~~ demonstrate experience and
69 interest in the applicable law and procedures. The ~~guardian ad litem~~GAL ~~will shall~~ have the
70 responsibilities established in by the Utah Code.

71 (5) **Selection of ~~guardian ad litem~~GAL for employment.**

72 (5)(A) A ~~guardian ad litem~~GAL employed by the Administrative Office ~~of the Courts~~ is an
73 at-will employee subject to dismissal by the Director with or without cause.

74 (5)(B) A ~~guardian ad litem~~GAL employed by the Administrative Office ~~of the Courts~~
75 ~~will shall~~ be selected by the Director. Prior to the Director's ~~s~~making a selection, a panel
76 ~~will shall~~ interview applicants and make hiring recommendations to the Director. The

77 interview panel ~~will shall~~ consist of the Director (or Director's designee) and two or more
78 of the following persons:

79 (5)(B)(i) the managing attorney of the local ~~guardian ad litem~~GAL office;
80 (5)(B)(ii) the ~~trial C~~court ~~E~~xecutive of the district court or juvenile court;
81 (5)(B)(iii) a member of the Committee;
82 (5)(B)(iv) a member of the Utah State Bar Association selected by the Director; or
83 (5)(B)(v) a member selected by the Director.

84 (6) **Conflicts of interest and disqualification of ~~guardian ad litem~~GAL.**

85 (6)(A) In cases where a ~~guardian ad litem~~GAL has a conflict of interest, the ~~guardian ad~~
86 ~~litem~~GAL ~~will shall~~ declare the conflict and request that the court appoint a conflict
87 ~~guardian ad litem~~GAL in the matter. Any party who perceives a conflict of interest may
88 file a motion with the court setting forth the nature of the conflict and a request that the
89 ~~guardian ad litem~~GAL be disqualified from further service in that case. Upon a finding
90 that a conflict of interest exists, the court ~~will shall~~ relieve the ~~guardian ad litem~~GAL from
91 further duties in that case and appoint a conflict ~~guardian ad litem~~GAL.

92 (6)(B) The Administrative Office ~~of the Courts~~ may contract with attorneys to provide
93 conflict ~~guardian ad litem~~GAL services.

94 (6)(C) If the conflict ~~guardian ad litem~~GAL is arranged on a case-by-case basis, the
95 ~~C~~court ~~will shall~~ use the order form approved by the Council. The ~~o~~Order ~~will shall~~ include
96 a list of the duties of a ~~guardian ad litem~~GAL. The court ~~will shall distribute file~~ the ~~original~~
97 ~~o~~Order ~~as follows: original into~~ the case ~~file~~ and ~~will distribute~~ one copy each to: the
98 appointed conflict ~~guardian ad litem~~GAL; the ~~guardian ad litem~~GAL; all parties of
99 record; the parents, guardians or custodians of the child(ren); the ~~C~~court ~~E~~xecutive;
100 and the Director.

101 (6)(D) A conflict ~~guardian ad litem's~~GAL's compensation ~~will shall~~ not exceed \$100~~50~~ per
102 hour or \$3,000~~1000~~ per case in any ~~twelve month~~twelve-month period, whichever is
103 less. The per case compensation limit includes incidental expenses incurred in the case.
104 Under extraordinary circumstances, the Director may ~~extend increase~~ the ~~payment~~
105 ~~compensation~~ limit upon request from the conflict ~~guardian ad litem~~GAL. The request
106 ~~will shall~~ include justification showing that the case required work of much greater
107 complexity than, or time far in excess of, that required in most ~~guardian ad litem~~GAL
108 assignments. ~~Incidental expenses incurred in the case will shall be included within the~~
109 ~~limit.~~ If a case is appealed, ~~the limit shall be extended by an additional~~
110 ~~\$400~~compensation will be as set forth above.

111 (7) **Staff and ~~V~~Volunteers.**

112 (7)(A) The Director ~~will shall~~ develop a strong volunteer component to the ~~guardian ad~~
113 ~~litem~~GAL program and provide support for volunteer solicitation, screening, and training.
114 Staff and volunteers ~~will shall~~ have the responsibilities established ~~in~~by the Utah Code.

115 (7)(B) Training for staff and volunteers ~~will shall~~ be conducted under the supervision of
116 the attorney ~~guardian ad litem~~GAL with administrative support provided by the Director.
117 Staff and volunteers ~~will shall~~ receive training in the areas of child abuse, child
118 psychology, juvenile and district court procedures, and local child welfare agency

119 procedures. Staff and volunteers ~~will shall~~ be trained in the guidelines established by the
120 National Court Appointed Special Advocate Association.

121 (8) **Private guardians ad litem (“PGALs”).**

122 (8)(A) **List.** The Director ~~will shall~~ maintain a list of ~~private attorney guardians ad~~
123 ~~litem~~PGALs qualified for appointment.

124 (8)(B) **Application.** To be included on the list of eligible ~~private attorney guardians ad~~
125 ~~litem~~PGALs, ~~an~~ applicants ~~shall~~ ~~must~~ ~~apply for eligible private attorney guardian~~
126 ~~status~~submit a written application to the ~~Utah~~ Office ~~of Guardian ad Litem~~ and:

127 (8)(B)(i) ~~show membership~~be a member in good standing in the Utah State Bar;

128 (8)(B)(ii) provide a Bureau of Criminal Identification criminal history report;

129 (8)(B)(iii) provide a Utah Division of Child and Family Services ~~c~~Child ~~a~~Abuse
130 ~~d~~Database report (~~and~~ ~~like similar~~ information from any state in which the
131 applicant has resided as an adult);

132 (8)(B)(iv) provide a certificate of completion for any initial or additional necessary
133 training requirements established by the Director;

134 (8)(B)(v) agree to perform in a competent, professional, proficient, ethical, and
135 appropriate manner;

136 (8)(B)(vi) ~~and to~~ meet any minimum qualifications as determined by the Director;
137 and

138 (8)(B)(vii) agree to be evaluated at the discretion of the Director for competent,
139 professional, proficient, ethical, appropriate conduct, and/or performance, and
140 minimum qualifications.

141 (8)(C) **Appointment.** Upon the appointment by the court of a ~~private guardian ad~~
142 ~~litem~~PGAL, the court ~~will shall~~:

143 (8)(C)(i) use the following language in its order: "The Court appoints a private
144 attorney guardian ad litem to be assigned by the Office of Guardian ad Litem, to
145 represent the best interests of the minor child(ren) in this matter.";

146 (8)(C)(ii) designate in the order whether the ~~private attorney~~PGAL guardian ad
147 ~~litem~~will shall:

148 (8)(C)(ii)(a) be paid the set fee, as established by paragraph (8)(F), and
149 an initial retainer;

150 (8)(C)(ii)(b) not be paid and serve pro bono; or

151 (8)(C)(ii)(c) be paid at a rate less than the set fee in paragraph (8)(F); and

152 (8)(C)(iii) send the order to the Director c/o the Private Attorney Guardian ad
153 Litem Program.

154 (8)(D) **Assignment.** Upon receipt of the court's order appointing a ~~private guardian ad~~
155 ~~litem~~PGAL, the Director ~~will shall~~ contact and assign the case to an eligible attorney, if
156 available.

157 (8)(E) **Notice of appearance and representation.** Upon accepting the court's
158 appointment, the assigned attorney will~~shall~~ file a notice of appearance with the court
159 within five business days of acceptance, and will~~shall~~ thereafter represent the best
160 interests of the minor(s) until released by the court.

161 (8)(F) **Fees.** The hourly fee to be paid by the parties and to be ordered and apportioned
162 by the court against the parties will~~shall~~ be \$150.00 per hour or ~~at~~ a higher rate ~~as~~
163 determined reasonable by the court. The retainer amount will~~shall~~ be \$1,000 or a
164 different amount determined reasonable by the court. The retainer amount will~~shall~~ be
165 apportioned by the court among the parties and paid by the parties.

166 (8)(G) **Education.** Each year, ~~private attorney guardian ad litem~~PGALs ~~must~~shall
167 complete three hours of continuing legal education (CLE) ~~credits that are~~ relevant to the
168 role and duties of a ~~private attorney guardian ad litem~~PGAL. To meet this requirement,
169 the Office ~~of Guardian ad Litem~~will~~shall~~ provide training opportunities that are
170 accredited by the Utah State Bar Board of Mandatory Continuing Legal Education. In
171 order to provide access to all ~~private attorney guardians ad litem~~PGALs, the Office ~~of~~
172 ~~Guardian ad Litem~~ ~~sh~~will~~ll~~ provide multiple trainings at locations throughout the State or
173 online.

174 **(8)(H) Removal.**

175 (8)(H)(i) A ~~private attorney guardian ad litem~~PGAL who fails to complete the
176 required number of CLE hours will~~shall~~ be notified that unless all requirements
177 are completed and reported within 30 days, the Director may remove the ~~private~~
178 ~~attorney guardian ad litem~~PGAL from the list of eligible ~~private attorney~~
179 ~~guardians ad litem~~PGALs.

180 (8)(H)(ii) The Director may remove with or without a complaint a PGAL from the
181 list of eligible PGALs for failure to perform or conduct themselves in a competent,
182 professional, proficient, ethical, or appropriate manner, or for failure to meet
183 minimum qualifications, including the annual CLE requirement. Within a
184 reasonable time after the removal, and in the event the PGAL has not yet been
185 released by the court in a pending case, the Director will provide written notice to
186 the court of the Director's action, and the court may, in its discretion, determine
187 whether the PGAL should be released from the case.

188 **(9) Complaints and appeals.**

189 (9)(A) **Complaints against Director or administrative policies.** (9)(A)(i) Any person
190 ~~may file~~ Complaints against the Director or an administrative policy or procedure must
191 be submitted to ~~with~~ the chair of the Committee. Complaints submitted to the Director's
192 office must be sent to the Committee chair within a reasonable period of time, but not
193 more than 14 days after receipt. ~~a complaint regarding the Director, or regarding an~~
194 ~~administrative policy or procedure, not including complaints regarding a particular~~
195 ~~guardian ad litem, private guardian ad litem, or volunteer.~~ If deemed necessary, the
196 Committee may ~~enter a recommendation~~ to the Judicial Council, which may include
197 ~~discipline of that~~ the Director ~~be disciplined~~.

198 (9)(A)(ii) If a complaint regarding the Director or an administrative policy or
199 procedure is received in the Director's office, the Director shall forward the
200 complaint to the chair of the Committee within a reasonable time, but not more
201 than 14 days after receipt.

202 (9)(B) **Complaints against GALs or volunteers.**

203 (9)(B)(i) Any person may file with the Director a ~~complaints against~~ regarding a
204 guardian ad litem GAL employed by the Office ~~of~~ of ~~Guardian ad Litem~~, a ~~private~~
205 ~~attorney~~ guardian ad litem PGAL, or a ~~volunteer~~, as defined in ~~by~~ Utah Code ~~A~~
206 section ~~78A-6-902(4)(a)~~ 207, must be submitted to the Director. The decision of
207 the Director regarding the complaint is final and not subject to appeal.

208 (9)(B)(ii) If a ~~guardian ad litem~~ GAL and a volunteer disagree on the major
209 decisions involved in representation of the client, either may notify the Director
210 that the dispute cannot be resolved. The decision of the Director regarding the
211 dispute is final and not subject to appeal.

212 (9)(B)(iii) The failure of the Director to satisfactorily resolve a complaint against
213 a ~~guardian ad litem~~ GAL, ~~private attorney~~ guardian ad litem PGAL, or volunteer is
214 not grounds for a complaint against the Director.

215 (9)(E) ~~The Director may remove with or without a complaint a private attorney guardian~~
216 ~~ad litem from the list of eligible private guardians ad litem for failure to perform or~~
217 ~~conduct themselves in a competent, professional, proficient, ethical and/or appropriate~~
218 ~~manner or for failure to meet minimum qualifications, including the annual continuing~~
219 ~~legal education requirement. Within a reasonable time after the removal, and in the~~
220 ~~event the private attorney guardian ad litem has not yet been released by the court in a~~
221 ~~pending case, the Director shall provide written notice to such court of the Director's~~
222 ~~action, and the court may, in its discretion, determine whether the private attorney~~
223 ~~guardian ad litem should be released from the case.~~

224 (9)(F)(i) **Complaint submission.** A complaint ~~shall~~ must be in writing, ~~and include:~~

225 (9)(C)(i) ~~stating~~ the name and contact information of the complainant;

226 (9)(C)(ii) the name of the child ~~(ren)~~ or children involved; ~~and~~

227 (9)(C)(iii) ~~the facts upon which the complaint is based in sufficient detail to inform~~
228 ~~the Committee or the Director of the nature and date of the alleged misconduct.~~
229 ~~the nature of the complaint and the facts upon which the complaint is based.~~

231 (9)(D)(ii) **Investigation.** In resolving a complaint, the Director or ~~the~~ Committee will ~~shall~~
232 conduct ~~such an~~ investigation as determined by the Director or ~~the~~ Committee
233 ~~determines~~ to be reasonable. The Director or ~~the~~ Committee may meet separately or
234 together with the complainant and the person against whom the complaint is filed.

235 (9)(E)(iii) **Decision.** The decision of the Director may include discipline of the person
236 against whom the complaint is filed. If the complaint is against a ~~private~~ guardian ad
237 litem PGAL, the decision may include removal of the ~~private~~ guardian ad litem PGAL from
238 the list of ~~private~~ guardians ad litem PGALs and the conditions for reinstatement.

239 (9)(F) **Applicability.** ~~This subsection~~ Paragraph (9) does not apply to conflict ~~guardians~~
240 ~~ad litem~~ GALs.