

MAINE JUDICIAL BRANCH

_____ Plaintiff DISTRICT COURT
 Location (Town): _____
 Docket No.: _____

V.

_____ Defendant
 _____ Other party

OR

IN RE: _____

ORDER APPOINTING GUARDIAN AD LITEM UNDER M.R. CIV. P. 17(b)
(Initial Appointments ONLY)

1. Pursuant to Rule 17(b) of the Maine Rules of Civil Procedure and subject to the conditions set forth below, the court appoints a guardian ad litem (GAL) for _____ (name), whose date of birth is (mm/dd/yyyy) _____.

2. The court finds that _____ is:
- not capable of meaningfully participating in the proceeding that has been commenced and does not have a duly appointed representative;
 - is a minor who does not have a duly appointed representative; or
 - is a defendant who has been served only by publication and has not appeared.

3. In making this appointment, the court has relied on the following information:

4. The Court appoints the following GAL:
 The GAL's name is: _____
 The GAL's mailing address is: _____
 The GAL's telephone number is: _____
 The GAL's email address is: _____

5. No party objects to the GAL appointment; OR
 Plaintiff Defendant Other (_____) objects to appointment of a GAL but, after careful consideration, the court concludes the following factors support the appointment:

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6. Plaintiff/Petitioner Defendant/Respondent Other (_____) objects to the fee arrangement below but, after careful consideration, the court concludes the following factors in M.R.G.A.L. 4(b)(4)(C) support the fee arrangement:
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GAL'S INVESTIGATIVE DUTIES AND RESPONSIBILITY FOR WRITTEN REPORT

7. DUTIES

- A. If this appointment is made due to a finding of incompetence, and the GAL believes the finding should be reconsidered, the GAL shall file a motion to that effect with the Court.
- B. The GAL shall be provided access to all pleadings, reports, and records relevant to the case to which the party for whom this GAL is appointed has access.
- C. The GAL shall be relieved of: (i) any duty or obligation to conduct an independent investigation of any facts related to this proceeding; (ii) any duty or obligation to have face-to-face contact with the party for whom a GAL is appointed on a set scheduled basis; and (iii) any duty or obligation to report to the parties and the court in writing.
- D. The GAL shall have face-to-face contact with the party for whom a GAL is appointed pursuant to this Order as often as events and developments in this case warrant. The GAL shall conduct such investigation of the facts related to this proceeding that, in his/her independent judgment, is reasonably necessary to serve her interests.
- E. The GAL shall attend and observe all court proceedings in this case. The GAL shall have the right to be heard in any court proceeding in this case. The GAL is further authorized to appear on the same basis as the party for whom this GAL is appointed in the present action, to present and defend any claims or causes of action on behalf of the party, including the presentation and submission of testimony and evidence at trial, and to make binding decisions on behalf of the party in this matter, including the compromise of any of the party's claims.
- F. The GAL may file such motions, and take such other steps as are necessary to obtain legal counsel for the party for whom this GAL is appointed.
- G. The GAL shall be relieved of the rights, duties, and responsibilities provided by the Maine Rules of Guardian ad Litem, and more particularly, the Standards of Practice for Guardians ad Litem in Maine Courts because they are inconsistent with the provisions of this Order. The obligations of a Rule 17(b) Guardian are more closely aligned with those of a fiduciary, such as a GAL appointed for an incapacitated person by the Probate Court. However, a Rule 17(b) GAL's authority and obligations concern only the present litigation and no other aspects of the life of the party for whom this GAL is appointed.
- H. The Order shall serve as authorization for the GAL to communicate with the medical treatment providers of the party for whom this GAL is appointed as necessary to understand the nature and extent of that party's illness, the impact of that illness on the party's ability to act on the party's own behalf, and the impact of the party's illness on the relief that the party may seek in the proceeding.

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I. Other duties:

8. LENGTH OF APPOINTMENT

This appointment shall remain in effect until the earlier of: (i) dismissal of the case or entry of final order, or (ii) further order of the Court relieving the GAL from further participation in this case. At that time the GAL shall turn over and provide to the party for whom the GAL is appointed a copy of all final orders and documentation of any decisions made by the GAL on behalf of the party in the course of the appointment, along with a copy of this order.

9. FEE ARRANGEMENT

A. The GAL shall use the standardized billing, itemization requirements and time reporting processes established by the Maine Rules for Guardians ad Litem, and when applicable, *Revised Fee Schedule for Guardians Ad Litem and Court Appointed Workers' Compensation Attorneys in All Courts, Me. Admin. Order JB-05-5*, as amended.

B. The total fee the GAL may receive is as follows (*choose one option*):

Flat Fee. The GAL will complete all duties required in this order through the completion of mediation for a fee of \$_____. If a written report is required thereafter the fee for the report preparation will be \$_____. If the GAL is required to participate in hearing the fee for hearing will be \$_____.

Hourly rate: The GAL will complete all duties required in this order by spending no more than _____ hours at an hourly rate of \$_____, **OR**

Pro Bono or minimal fee. The GAL will complete all duties required in this order without charging a fee or for the minimal fee of \$_____.

Payment by the Court. The GAL's fees shall be paid by the court, pursuant to the guidelines contained in AO-JB-05-05. The GAL shall devote no more than **20 hours** to this action absent prior approval by the Court.

C. The GAL's fee, if not a pro bono case, shall be paid as follows (*choose one option*):

On or before (*mm/dd/yyyy*) _____, plaintiff/petitioner shall pay \$_____, defendant/respondent shall pay \$_____, other (_____) shall pay \$_____. The responsibility for payment may be reallocated at the final hearing.

Plaintiff/Petitioner shall pay _____% of each bill, defendant/respondent shall pay _____% of each bill, other (_____) shall pay _____% of each bill subject to re-allocation at the final hearing. Each party shall pay the GAL within 14 days week month after receiving each bill; **or**

Plaintiff/Petitioner shall pay \$_____ per week month toward the GAL fees and expenses, defendant/respondent shall pay \$_____ per week month toward the GAL fees and expenses, and other (_____) shall pay \$_____ per week month. The responsibility for payment may be changed at the final hearing.

In addition, the GAL shall submit an itemized bill to the parties on a monthly bi-weekly basis. The final fee payments shall be made within 14 days after the filing of the written report or, if no written report is required because the case has settled, within 14 days after the Court has adopted the settlement. If the fee is not paid in

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accordance with this order, the GAL shall notify the Court and the parties, and the Court may vacate the appointment and take such other action it deems appropriate under the circumstances.

- D. **No additional hours or fees will be authorized or approved for any type of appointment without prior court approval through an amended or new order of appointment.**

10. GENERAL PROVISIONS APPLICABLE TO ALL GAL APPOINTMENTS

- A. The GAL shall not perform and is not expected to perform any duties beyond those specified in this Order (including responding to telephone calls, emails, and other communications from the parties) unless or until an amended or new order is entered.
- B. The GAL has quasi-judicial immunity from liability resulting from actions undertaken pursuant to the GAL's appointment.
- C. The GAL shall make the wishes of the party for whom this GAL is appointed known to the court if the party has expressed them, regardless of the recommendation of the GAL.
- D. Given the confidential nature of the material that may be reviewed by the GAL, all of the GAL's reports shall be confidential and sealed after the report is submitted to the court and to the parties. The reports shall not be disclosed by the parties or the GAL or further released by the Court, except as otherwise ordered by the Court.
- E. Parties shall also send a copy of any document filed with the court to the GAL. Any legal correspondence to the party for whom this GAL is appointed has access shall include the GAL.
- F. The GAL may advocate for special procedures to protect the person for whom this GAL is appointed from unnecessary psychological harm resulting from that party's testimony.

The Clerk is directed to incorporate this Order by reference into the docket for this case, pursuant to M.R. Civ. P. 79(a).

Date (mm/dd/yyyy): _____



 Justice, Maine Superior Court
 Judge Magistrate, Maine District Court

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