State of New Hampshire Judicial Branch
Family Division

Edwin W. Kelly
Administrative Judge
(603) 271-6418

Supervisory Judges:
Susan B. Carbon, Grafton County (603) 536-7609
John A. Korbey, Rockingham County (603) 893-2084
Family Division Administrators:
Gina B. Apicelli, Esq.
(603) 536-2608 (603) 271-6418
Susan W. Ashley, Esq.
(603) 642-6314 ext. 618 (603) 271-6418

THE STATE OF NEW HAMPSHIRE
Family Division

ADMINISTRATIVE ORDER NUMBER 2005-04

ELIGIBILITY GUIDELINES FOR GUARDIAN AD LITEM OR MEDIATION COURT FUND PAYMENT

These guidelines will be used for the purpose of determining the eligibility of a family to have the GAL or Mediator paid by the fund.

In divorce cases of first impression, family income shall include the totality of family income and resources. Resources will include both liquid and non-liquid assets, including 401(k)s or IRAs. There will be circumstances where this approach may not apply and the Court should use discretion in its final determination. These guidelines should be considered in every case so that those who are truly indigent can receive the service and those who can afford to pay, either out of income or assets, will do so.

In unmarried parenting cases, or in brought forward cases, the income and assets of each parent will be considered independently, in the first instance. Income and assets of the new spouse of any party can be imputed to that party where the party is determined to be voluntarily unemployed or under-employed. It is possible that one party will qualify for payment of his or her share of the fees through the GAL or Mediation Fund and the other party will have to pay his or her own fees. This analysis is different from the analysis set forth in paragraph A, below, relative to divorces.

The general purpose of these eligibility guidelines is to guarantee that truly indigent persons receive the benefit of a GAL or Mediator when appropriate, and that those who can afford to contribute to the cost of the GAL or Mediator do so, even if it requires sacrifice. Since the funds are limited, payment from the GAL or Mediator Fund must be reserved for those in actual need. Likewise, it is appropriate that certain non-liquid assets like 401(k) accounts and IRAs be invaded by a party with permission of the Court or agreement of the other party to help pay for a GAL or Mediator before the taxpayers are asked to pay.

In the guidelines, divorcing couples are treated differently from unmarried Couples. It is appropriate when parties are getting a divorce to look at all of their assets and income. However, it is unfair to unmarried litigants or in brought forward cases to allow one party's income or assets to determine whether the other party is entitled to utilize the fund.

A) No persons shall have the cost of the GAL or Mediator paid for by the court fund unless:

1. Divorce Proceedings:

a) The total family equity in liquid assets as listed in sections 7 and 8 on the Financial Affidavit filed in accordance with Family Division Rule 13 (Domestic Relations) is less than $15,000;

AND

b) The adjusted monthly gross income minus eligible expenses (the figure shown on line 7, column 3 of the Child Support Guidelines Worksheet) is less than:

$3000 for 2 parents and 1 child
$3250 for 2 parents and 2 children
$3500 for 2 parents and 3 children
$3750 for 2 parents and 4 or more children

2. Unmarried Parenting Cases or Brought Forward Cases:

a) A party's equity in liquid assets as listed in sections 7 and 8 on the Financial Affidavit filed in accordance with Family Division Rule 13 (Domestic Relations) is less than $10,000;

AND

b) The adjusted monthly gross income minus eligible expenses (the figure shown on line 7 in columns 1 and 2 of the Child Support Guidelines Worksheet) is less than:

$2000 for 1 parent and 1 child
$2150 for 1 parent and 2 children
$2300 for 1 parent and 3 children
$2450 for 1 parent and 4 or more children

B) Each party must complete a Financial Affidavit and the Child Support Guidelines Worksheet in order to be considered for court fund payment of GAL or Mediator.

C) Special attention should be given to those cases where the parties are paying for their own attorneys, where the Financial Affidavits show large discretionary expenses, and where the parties own and maintain luxury items.

D) It is the responsibility of the applicant to bring to the attention of the court additional circumstances relating to assets or income, including whether there are other adults with sources of income who reside with the applicant. The Court may use its discretion in determining how to consider that income.

E) Parties who qualify to have the GAL or Mediator appointed for them paid by the court fund shall reimburse the fund through the Office of Cost Containment in accordance with the allocation percentages in the Order on Appointment. However, the court is always free to revise those allocations at a later time if appropriate.

/s/ Edwin W. Kelly
Edwin W. Kelly
Administrative Judge

December 30, 2005

Amended: September 28, 2010