

SUPERIOR COURT OF NEW HAMPSHIRE ADMINISTRATIVE ORDER NUMBER 17

The appointment and payment of Guardians *ad Litem* (hereafter to be referred to as GAL) shall be in accordance with the following policy adopted by the Court.

1. The GAL shall be compensated at the rate of \$60.00 per hour. The maximum fee (including costs) shall not exceed \$1,000.00 for any case.
2. The fund shall not pay for GAL services on behalf of a party unless the party has been found to qualify for court fund payment after completion of the appropriate financial affidavit and worksheet, unless otherwise ordered by the Court.
3. The maximum fee of \$1,000.00 presumes a maximum billing period of sixteen (16) hours, during which time it is expected that the GAL will meet with the parties, the children and a reasonable number of witnesses and conduct any investigation necessary for the preparation of a report and recommendation for filing with the Court. Of that time, two (2) hours for attendance at hearings should be expected. The scope of investigation in each case shall be governed by the Order on Appointment of Guardian *ad Litem*.

Parties' counsel and the GAL shall be aware of the GAL fees and costs and shall take reasonable action to contain those fees and costs. Maximum limits will be strictly enforced.

4. The maximum fee of \$1,000.00 shall apply to all cases whether paid by the parties or by the fund and shall include attendance at hearings.

The maximum fee shall not be exceeded without prior approval of the Court, after hearing with the parties and the GAL present. Any request to exceed the maximum shall be filed with the Clerk of Court in writing and shall set forth in detail the reasons for the request and the amount by which the maximum is to be exceeded.

When the parties are paying the cost of the GAL, the \$60.00 per hour rate and the \$1,000.00 maximum fee may be waived upon written agreement of the parties and counsel which shall be filed with the Court and subject to Court approval. The agreement shall set forth the hourly rate and the maximum fee agreed to by the parties. The fund will not pay for private fee agreements.

5. Fees for evaluations **will not be paid from the fund. If counseling, therapy or evaluations are recommended by the GAL, no expenses for same may be incurred without the prior approval of the Court after hearing. No fees will be approved for any counseling or therapy undertaken by the GAL. Notwithstanding the above, the Court may enter such orders upon motion of either party or sua sponte, to authorize specific additional services with appropriate limits on payment.**

6. Orders for payment of GAL fees and expenses are made without prejudice and may be amended to provide for reimbursement or reallocation of liability at subsequent hearings.

7. After eligibility is determined, an individual may be
A) eligible for full payment of all GAL fees, or
B) required to pay privately at the same ratio shown on line 9 of the Child Support Guideline Worksheet.

8. GALs are required to send copies of their bills to the parties irrespective of whether their services are being paid for privately or by the GAL Fund.

9. **ELIGIBILITY GUIDELINES FOR GUARDIAN AD LITEM COURT FUND PAYMENT**

These guidelines will be used for the purpose of determining the eligibility of a family to have the GAL 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 custody 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 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 when appropriate,

and that those who can afford to contribute to the cost of the GAL do so, even if it requires sacrifice. Since the funds are limited, payment from the GAL 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 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 paid for by the court fund unless:

1. IN 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 Superior Court Rule 197 is less than \$15,000;

AND

b) The adjusted monthly gross income minus eligible expenses (the figure shown on line 8, 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 CUSTODY 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 Superior Court Rule 197 is less than \$10,000;

AND

b) The adjusted monthly gross income minus eligible expenses (the figure shown on line 8 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.

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 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.

Effective Date

Robert J. Lynn
Chief Justice