

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

2       Intent:

3       To establish the responsibilities of the Guardian ad Litem Oversight Committee  
4 established in Rule 1-205.

5       To establish the policy and procedures for the management of the guardian ad litem  
6 program.

7       To establish responsibility for management of the program.

8       To establish the policy and procedures for the selection of guardians ad litem.

9       To establish the policy and procedures for payment for guardian ad litem services.

10       To establish the policy and procedures for complaints regarding guardians ad litem  
11 and volunteers.

12       Applicability:

13       This rule shall apply to the management of the guardian ad litem program.

14       This rule does not affect the authority of the Utah State Bar to discipline a guardian  
15 ad litem.

16       Statement of the Rule:

17       (1) Guardian ad Litem Oversight Committee. The Committee shall:

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

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

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

22       (1)(B) recommend rules of administration and procedure to the Judicial Council and  
23 Supreme Court;

24       (1)(C) select the Director of the Office of Guardian ad Litem in consultation with the  
25 State Court Administrator;

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

27       (1)(E) monitor the Office's caseload and recommend to the Judicial Council  
28 adequate staffing of guardians ad litem and staff;

29       (1)(F) develop standards and procedures for hearing and deciding complaints and  
30 appeals of complaints; and

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

33 (2) Qualifications of the director. The Director shall have the qualifications provided  
34 by the Utah Code.

35 (3) Responsibilities of the director. In addition to responsibilities under the Utah  
36 Code, the Director shall have the following responsibilities.

37 (3)(A) Manage the Office of Guardian ad Litem to ensure that minors who have been  
38 appointed a guardian ad litem by the court receive qualified guardian ad litem services.

39 (3)(B) Develop the budget appropriation request to the legislature for the guardian  
40 ad litem program.

41 (3)(C) Coordinate the appointments of guardians ad litem among different levels of  
42 courts.

43 (3)(D) Monitor the services of the guardians ad litem, staff and volunteers by  
44 regularly consulting with users and observers of guardian ad litem services, including  
45 judges, court executives and clerks, and by requiring the submission of appropriate  
46 written reports from the guardians ad litem.

47 (3)(E) Determine whether the guardian ad litem caseload in Judicial Districts 1, 5, 6,  
48 7, and 8 is best managed by full or part time employment or by contract.

49 (3)(F) Select guardians ad litem and staff for employment as provided in this rule.  
50 Select volunteers. Coordinate appointment of conflict counsel.

51 (3)(G) Supervise, evaluate, and discipline guardians ad litem and staff employed by  
52 the courts and volunteers. Supervise and evaluate the quality of service provided by  
53 guardians ad litem under contract with the court.

54 (3)(H) Monitor and report to the Committee guardian ad litem, staff and volunteer  
55 compliance with federal and state statutes, rules and case law.

56 (3)(I) Prepare and submit to the Committee in August an annual report regarding the  
57 development, policy, and management of the guardian ad litem program and the  
58 training and evaluation of guardians ad litem, staff and volunteers. The Committee may  
59 amend the report prior to release to the Legislative Interim Human Services Committee.

60 (4) Qualification and responsibilities of guardian ad litem. A guardian ad litem shall  
61 be admitted to the practice of law in Utah and shall demonstrate experience and interest  
62 in the applicable law and procedures. The guardian ad litem shall have the  
63 responsibilities established by the Utah Code.

64 (5) Selection of guardian ad litem for employment.

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

67 (5)(B) A guardian ad litem employed by the Administrative Office of the Courts shall  
68 be selected by the Director. Prior to the Director making a selection, a panel shall  
69 interview applicants and make hiring recommendations to the Director. The interview  
70 panel shall consist of the Director (or Director's designee) and two or more of the  
71 following persons:

72 (5)(B)(i) the managing attorney of the local guardian ad litem office;

73 (5)(B)(ii) the trial court executive of the district court or juvenile court;

74 (5)(B)(iii) a member of the Committee;

75 (5)(B)(iv) a member of the Utah State Bar Association selected by the Director; or

76 (5)(B)(v) a member selected by the Director.

77 (6) Conflicts of interest and disqualification of guardian ad litem.

78 (6)(A) In cases where a guardian ad litem has a conflict of interest, the guardian ad  
79 litem shall declare the conflict and request that the court appoint a conflict guardian ad  
80 litem in the matter. Any party who perceives a conflict of interest may file a motion with  
81 the court setting forth the nature of the conflict and a request that the guardian ad litem  
82 be disqualified from further service in that case. Upon a finding that a conflict of interest  
83 exists, the court shall relieve the guardian ad litem from further duties in that case and  
84 appoint a conflict guardian ad litem.

85 (6)(B) The Administrative Office of the Courts may contract with attorneys to provide  
86 conflict guardian ad litem services.

87 (6)(C) If the conflict guardian ad litem is arranged on a case-by-case basis, the Court  
88 shall use the order form approved by the Council. The Order shall include a list of the  
89 duties of a guardian ad litem. The court shall distribute the Order as follows: original to

90 the case file and one copy each to: the appointed conflict guardian ad litem, the  
91 guardian ad litem, all parties of record, the parents, guardians or custodians of the  
92 child(ren), the court executive and the Director.

93 (6)(D) A conflict guardian ad litem's compensation shall not exceed \$50 per hour or  
94 \$1000 per case in any twelve month period, whichever is less. Under extraordinary  
95 circumstances, the Director may extend the payment limit upon request from the conflict  
96 guardian ad litem. The request shall include justification showing that the case required  
97 work of much greater complexity than, or time far in excess of, that required in most  
98 guardian ad litem assignments. Incidental expenses incurred in the case shall be  
99 included within the limit. If a case is appealed, the limit shall be extended by an  
100 additional \$400.

101 (7) Staff and Volunteers.

102 (7)(A) The Director shall develop a strong volunteer component to the guardian ad  
103 litem program and provide support for volunteer solicitation, screening and training.  
104 Staff and volunteers shall have the responsibilities established by the Utah Code.

105 (7)(B) Training for staff and volunteers shall be conducted under the supervision of  
106 the attorney guardian ad litem with administrative support provided by the Director. Staff  
107 and volunteers shall receive training in the areas of child abuse, child psychology,  
108 juvenile and district court procedures and local child welfare agency procedures. Staff  
109 and volunteers shall be trained in the guidelines established by the National Court  
110 Appointed Special Advocate Association.

111 (8) Private guardians ad litem.

112 (8)(A) The Director shall maintain a list of private attorney guardians ad litem  
113 qualified for appointment. ~~The Director shall provide the list to district court judges upon~~  
114 ~~request.~~

115 (8)(B) To be included on the list a guardian of eligible private attorney guardians ad  
116 litem, the applicant shall:

117 ~~(8)(B)(i)~~ apply for inclusion; eligible private attorney guardian status to the Utah Office  
118 of Guardian ad Litem and provide the following documentation:

119 ~~(8)(B)(ii) be~~(8)(B)(i) that they are a member in good standing with the Utah State  
120 Bar;

121 ~~(8)(B)(iii) file permission and fingerprints for screening by the FBI and BCI;~~(8)(B)(ii) a  
122 BCI criminal history report;

123 ~~(8)(B)(iv) be screened against the~~(8)(B)(iii) a DCFS Child Abuse Data Base report  
124 (and the like data base of information from any state in which the ~~appointee~~ applicant  
125 has resided as an adult);

126 ~~(8)(B)(v) complete~~(8)(B)(vi) a certificate of completion for any initial ~~and continuing or~~  
127 additional necessary training requirements established by the Director;

128 ~~(8)(B)(vi) file a monthly report on assigned cases in a format approved by the~~  
129 Director;(8)(B)(v) agree to perform and conduct themselves in a competent,  
130 professional, proficient, ethical, and appropriate manner and to meet any minimum  
131 qualifications as determined by the Director; and

132 ~~(8)(B)(vii)~~(8)(B)(vi) agree to be evaluated at the discretion of the Director for  
133 competent, professional, proficient, ethical, appropriate conduct, and/or performance,  
134 and minimum qualifications.

135 (8)(C) Upon the appointment by the court of a private guardian ad litem, the court  
136 shall:

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

140 (8)(C)(ii) designate in the order whether the private attorney guardian ad litem shall:  
141 (8)(C)(ii)(a) be paid the set fee, as established by paragraph (8)(F), and an initial  
142 retainer;

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

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

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

147 (8)(D) Upon receipt of the court's order appointing a private guardian ad litem, the  
148 Director shall contact and assign the case to an eligible attorney-, if available.

149 (8)(E) Upon accepting the court's appointment, the assigned attorney shall file a  
150 notice of appearance with the court within five business days of acceptance, and shall  
151 thereafter represent the best interests of the minor(s) until released by the court.

152 (8)(F) The hourly fee to be paid by the parties and to be ordered and apportioned by  
153 the court against the parties shall be \$150.00 per hour or at a higher rate as determined  
154 reasonable by the court. The retainer amount shall be \$1000 or a different amount  
155 determined reasonable by the court. The retainer amount shall be apportioned by the  
156 court among the parties and paid by the parties.

157 (9) Complaints and appeals.

158 (9)(A)(i) Any person may file with the chair of the Committee a complaint regarding  
159 the Director, or regarding an administrative policy or procedure, not including complaints  
160 regarding a particular guardian ad litem, private guardian ad litem, or volunteer. ~~The~~If  
161 deemed necessary, the Committee ~~shall~~may enter a recommendation to the Judicial  
162 Council, which may include discipline of the Director.

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

167 (9)(B) Any person may file with the Director a complaint regarding a guardian ad  
168 litem employed by the Office of Guardian ad Litem, private attorney guardian ad litem,  
169 or volunteer-, as defined by UCA 78A-6-902(4)(a). The decision of the Director  
170 regarding the complaint is final and not subject to appeal.

171 (9)(C) If a guardian ad litem and a volunteer disagree on the major decisions  
172 involved in representation of the client, either may notify the Director that the dispute  
173 cannot be resolved. The decision of the Director regarding the dispute is final and not  
174 subject to appeal.

175 (9)(D) The failure of the Director to satisfactorily resolve a complaint against a  
176 guardian ad litem, private attorney guardian ad litem or volunteer is not grounds for a  
177 complaint against the Director.

178 (9)(E) The Director may remove with or without a complaint a private attorney  
179 guardian ad litem from the list of eligible private guardians ad litem for failure to perform  
180 or conduct themselves in a competent, professional, proficient, ethical and/or  
181 appropriate manner or for failure to meet minimum qualifications. The Within a  
182 reasonable time after the removal, and in the event the private attorney guardian ad  
183 litem ~~may appeal in writing the~~ has not yet been released by the court in a pending  
184 case, the Director shall provide written notice to such court of the Director's ~~decision to~~  
185 ~~the chair of the Committee within 30 days after receiving notice of the decision.~~ action,  
186 and the court may, in its discretion, determine whether the private attorney guardian ad  
187 litem should be released from the case.

188 (9)(F)(i) A complaint shall be in writing, stating the name and contact information of  
189 the complainant, the name of the child or children involved, the nature of the complaint  
190 and the facts upon which the complaint is based.

191 (9)(F)(ii) In resolving a complaint ~~or appeal~~, the Director or the Committee shall  
192 conduct such investigation as the Director or the Committee determines to be  
193 reasonable. The Director or the Committee may meet separately or together with the  
194 complainant and the person against whom the complaint is filed.

195 (9)(F)(iii) The decision of the Director may include discipline of the person against  
196 whom the complaint is filed. If the complaint is against a private guardian ad litem, the  
197 decision may include removal of the private guardian ad litem from the list of private  
198 guardians ad litem and the conditions for reinstatement.

199 (9)(G) This subsection does not apply to conflict guardians ad litem.  
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