

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

2       Intent:

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

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

7       To establish responsibility for management of the program.

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

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

12       To establish the policy and procedures for complaints regarding guardians  
13       ad litem and volunteers.

14       Applicability:

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

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

18       Statement of the Rule:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

80 (5)(B)(ii) the trial court executive 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  
83 Director; or

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

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

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

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

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

103 (6)(D) A conflict guardian ad litem's compensation shall not exceed \$50 per  
104 hour or \$1000 per case in any twelve month period, whichever is less. Under  
105 extraordinary circumstances, the Director may extend the payment limit upon  
106 request from the conflict guardian ad litem. The request shall include  
107 justification showing that the case required work of much greater complexity

108 than, or time far in excess of, that required in most guardian ad litem  
109 assignments. Incidental expenses incurred in the case shall be included within  
110 the limit. If a case is appealed, the limit shall be extended by an additional  
111 \$400.

112 (7) Staff and Volunteers.

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

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

124 (8) Private guardians ad litem.

125 (8)(A) The Director shall maintain a list of private attorney guardians ad  
126 litem qualified for appointment.

127 (8)(B) To be included on the list of eligible private attorney guardians ad  
128 litem, an applicant shall apply for eligible private attorney guardian status to  
129 the Utah Office of Guardian ad Litem and:

130 (8)(B)(i) show membership in good standing in the Utah State Bar;

131 (8)(B)(ii) provide a BCI criminal history report;

132 (8)(B)(iii) provide a DCFS Child Abuse Data Base report (and like  
133 information from any state in which the applicant has resided as an adult);

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

136 (8)(B)(v) agree to perform in a competent, professional, proficient, ethical,  
137 and appropriate manner and to meet any minimum qualifications as  
138 determined by the Director; and

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

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

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

147 (8)(C)(ii) designate in the order whether the private attorney guardian ad  
148 litem shall:

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

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

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

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

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

158 (8)(E) Upon accepting the court's appointment, the assigned attorney shall  
159 file a notice of appearance with the court within five business days of

160 acceptance, and shall thereafter represent the best interests of the minor(s)  
161 until released by the court.

162 (8)(F) The hourly fee to be paid by the parties and to be ordered and  
163 apportioned by the court against the parties shall be \$150.00 per hour or at a  
164 higher rate as determined reasonable by the court. The retainer amount shall  
165 be \$1000 or a different amount determined reasonable by the court. The  
166 retainer amount shall be apportioned by the court among the parties and paid  
167 by the parties.

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

176 A private attorney guardian ad litem who fails to complete the required  
177 number of hours shall be notified that unless all requirements are completed  
178 and reported within 30 days, the Director may remove the private attorney  
179 guardian ad litem from the list of eligible private attorney guardians ad litem.

180 (9) Complaints and appeals.

181 (9)(A)(i) Any person may file with the chair of the Committee a complaint  
182 regarding the Director, or regarding an administrative policy or procedure, not  
183 including complaints regarding a particular guardian ad litem, private guardian  
184 ad litem, or volunteer. If deemed necessary, the Committee may enter a  
185 recommendation to the Judicial Council, which may include discipline of the  
186 Director.

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

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

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

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

203 (9)(E) The Director may remove with or without a complaint a private  
204 attorney guardian ad litem from the list of eligible private guardians ad litem  
205 for failure to perform or conduct themselves in a competent, professional,  
206 proficient, ethical and/or appropriate manner or for failure to meet minimum  
207 qualifications, including the annual continuing legal education requirement.  
208 Within a reasonable time after the removal, and in the event the private  
209 attorney guardian ad litem has not yet been released by the court in a pending  
210 case, the Director shall provide written notice to such court of the Director's  
211 action, and the court may, in its discretion, determine whether the private  
212 attorney guardian ad litem should be released from the case.

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

216 (9)(F)(ii) In resolving a complaint, the Director or the Committee shall  
217 conduct such investigation as the Director or the Committee determines to be  
218 reasonable. The Director or the Committee may meet separately or together  
219 with the complainant and the person against whom the complaint is filed.

220 (9)(F)(iii) The decision of the Director may include discipline of the person  
221 against whom the complaint is filed. If the complaint is against a private  
222 guardian ad litem, the decision may include removal of the private guardian ad  
223 litem from the list of private guardians ad litem and the conditions for  
224 reinstatement.

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