

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 litem.

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

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

13      Applicability:

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

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

17      Statement of the Rule:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

83 (6)(A) In cases where a guardian ad litem has a conflict of interest, the  
84 guardian ad litem shall declare the conflict and request that the court appoint a

85 conflict guardian ad litem in the matter. Any party who perceives a conflict of  
86 interest may file a motion with the court setting forth the nature of the conflict and  
87 a request that the guardian ad litem be disqualified from further service in that  
88 case. Upon a finding that a conflict of interest exists, the court shall relieve the  
89 guardian ad litem from further duties in that case and appoint a conflict guardian  
90 ad litem.

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

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

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

107 (7) Staff and Volunteers.

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

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

119 (8) Private guardians ad litem.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

156 (8)(F) The hourly fee to be paid by the parties and to be ordered and  
157 apportioned by the court against the parties shall be \$150.00 per hour or at a  
158 higher rate as determined reasonable by the court. The retainer amount shall be  
159 \$1000 or a different amount determined reasonable by the court. The retainer  
160 amount shall be apportioned by the court among the parties and paid by the  
161 parties.

162 (8)(G) Each year, private attorneys guardian ad litem shall complete three  
163 hours of continuing legal education credits that are relevant to the role and duties  
164 of a private attorney guardian ad litem. To meet this requirement, the Office of  
165 Guardian ad Litem shall provide training opportunities that are accredited by the  
166 Utah State Bar Board of Mandatory Continuing Legal Education. In order to

167 provide access to all private attorney guardians ad litem, the Office of Guardian  
168 ad Litem shall provide multiple trainings at locations throughout the State or  
169 online.

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

174 (9) Complaints and appeals.

175 (9)(A)(i) Any person may file with the chair of the Committee a complaint  
176 regarding the Director, or regarding an administrative policy or procedure, not  
177 including complaints regarding a particular guardian ad litem, private guardian ad  
178 litem, or volunteer. If deemed necessary, the Committee may enter a  
179 recommendation to the Judicial Council, which may include discipline of the  
180 Director.

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

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

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

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

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

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

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

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

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