

AMENDMENTS TO UNIFORM SUPERIOR COURT RULES

The Court having considered the motion to amend the Uniform Superior Court Rules, it is ordered that effective April 23, 2009, Rule 4.4 (Admission Pro Hac Vice) and Rule 24.9 (Appointment, Qualification and Role of a Guardian Ad Litem) be revised as follows:

Rule 4.4. Admission Pro Hac Vice

A. Definitions

1. A “Domestic Lawyer” is a person not admitted to practice law in this state but who is admitted in another state or territory of the United States or of the District of Columbia and not disbarred or suspended from practice in any jurisdiction.

2. A Domestic Lawyer is “eligible” for admission pro hac vice if that lawyer:

a. lawfully practices solely on behalf of the lawyer’s employer and its commonly owned organizational affiliates, regardless of where such lawyer may reside or work; or

b. neither resides nor is regularly employed at an office in this state; or

c. resides in this state but (i) lawfully practices from offices in one or more other states and (ii) practices no more than temporarily in this state, whether pursuant to admission pro hac vice or in other lawful ways.

3. A “client” is a person or entity for whom the Domestic Lawyer has rendered services or by whom the lawyer has been retained prior to the lawyer’s performance of services in this state.

4. “This state” refers to Georgia. This Rule does not govern proceedings before a federal court or federal agency located in this state unless that body adopts or incorporates this Rule.

B. Authority of Court To Permit Appearance By Domestic Lawyer in Court Proceeding. A court of this state may, in its discretion, admit an eligible Domestic Lawyer retained to appear in a particular proceeding pending before such court to appear pro hac vice as counsel in that proceeding.

C. In-State Lawyer’s Duties. When a Domestic Lawyer appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the in-state lawyer, or in an advisory or consultative role, the in-state lawyer who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the in-state lawyer to advise the client of the in-state lawyer’s independent judgment on contemplated actions in the proceeding if that judgment differs from that of the Domestic Lawyer.

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D. Application Procedure

1. Verified Application. An eligible Domestic Lawyer seeking to appear in a proceeding pending in this state as counsel pro hac vice shall file a verified application with the court where the litigation is filed. The application shall be served on all parties who have appeared in the case and the Office of General Counsel of the State Bar of Georgia. The application shall include proof of service. The court has the discretion to grant or deny the application summarily if there is no opposition.

2. Objection to Application. The Office of General Counsel of the State Bar of Georgia or a party to the proceeding may file an objection to the application or seek the court's imposition of conditions to its being granted. The Office of General Counsel or objecting party must file with its objection information establishing a factual basis for the objection. The Office of General Counsel or objecting party may seek denial of the application or modification of it. If the application has already been granted, the Office of General Counsel or objecting party may move that the pro hac vice admission be withdrawn.

3. Standard for Admission and Revocation of Admission. The court has discretion as to whether to grant applications for admission pro hac vice and to set the terms and conditions of such admission. An application ordinarily should be granted unless the court or agency finds reason to believe that such admission:

a. may be detrimental to the prompt, fair and efficient administration of justice,

b. may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent,

c. one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk,

d. the applicant has engaged in such frequent appearances as to constitute regular practice in this state, or

e. should be denied, if that applicant had, prior to the application, filed or appeared in an action in the courts of this State without having secured approval pursuant to the Uniform Superior Court Rules.

4. Revocation of Admission. Admission to appear as counsel pro hac vice in a proceeding may be revoked for any of the reasons listed in Section D.3 above.

E. Application

1. Required Information. An application shall state the information listed in Appendix A to this rule. The applicant may also include any other matters supporting admission pro hac vice.

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2. Application Fee. An applicant for permission to appear as counsel pro hac vice under this Rule shall pay a nonrefundable fee as set by the Investigative Panel of the State Bar of Georgia at the time of filing the application.

3. Exemption for Pro Bono Representation. An applicant shall not be required to pay the fee established by E.2 above if the applicant will not charge an attorney fee to the client(s) and is:

a. employed or associated with a pro bono project or nonprofit legal services organization in a civil case involving the client(s) of such programs; or

b. involved in a criminal case or a habeas proceeding for an indigent defendant.

F. Authority of the Office of General Counsel of the State Bar of Georgia and Court: Application of Ethical Rules, Discipline, Contempt, and Sanctions

1. Authority over Domestic Lawyer and Applicant.

a. During pendency of an application for admission pro hac vice and upon the granting of such application, a Domestic Lawyer submits to the authority of the courts and the Office of General Counsel of the State Bar of Georgia of this state for all conduct relating in any way to the proceeding in which the Domestic Lawyer seeks to appear. The applicant or Domestic Lawyer who has obtained pro hac vice admission in a proceeding submits to this authority for all that lawyer's conduct (i) within the state while the proceeding is pending or (ii) arising out of or relating to the application or the proceeding. An applicant or Domestic Lawyer who has pro hac vice authority for a proceeding may be disciplined in the same manner as an in-state lawyer.

b. The court's and Office of General Counsel's authority includes, without limitation, the court's and State Bar of Georgia's rules of professional conduct, contempt and sanctions orders, local court rules, and court policies and procedures.

2. Familiarity With Rules. An applicant shall become familiar with the Georgia Rules of Professional Conduct, local court rules, and policies and procedures of the court before which the applicant seeks to practice.

G. Temporary Practice. An out-of-state lawyer will only be eligible for admission pro hac vice, or to practice in another lawful way only on a temporary basis.

H. Conflicts. The conflicts of the domestic lawyer shall not delay any deadlines, depositions, mediation, hearings, or trials in connection with the case for which admission has been granted.

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APPENDIX A

The Domestic Lawyer's application shall include:

1. the applicant's residence and business address;
2. the name, address and phone number of each client sought to be represented;
3. the courts before which applicant has been admitted to practice and the respective period(s) of admission;
4. whether the applicant
 - (a) has been denied admission pro hac vice in this state,
 - (b) had admission pro hac vice revoked in this state, or
 - (c) has otherwise formally been disciplined or sanctioned by any court in this state. If so, specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings; the date filed; and what findings were made and what action was taken in connection with those proceedings;
5. whether any formal, written disciplinary proceeding has ever been brought against the applicant by a disciplinary authority in any other jurisdiction and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;
6. whether the applicant has been held formally in contempt or otherwise sanctioned by any court in a written order for disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings (a copy of the written order or transcript of the oral rulings shall be attached to the application);
7. the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear pro hac vice in this state within the preceding two years; the date of each application; and the outcome of the application;
8. an averment as to the applicant's familiarity with the Georgia Rules of Professional Conduct, local rules and court procedures of the court before which the applicant seeks to practice; and
9. the name, address, telephone number and bar number of an active member in good standing of the bar of this state who will sponsor the applicant's pro hac vice request. The bar member shall appear of record together with the Domestic Lawyer.

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The Domestic Lawyer's application may provide the following optional information:

10. the applicant's prior or continuing representation in other matters of one or more of the clients the applicant proposes to represent and any relationship between such other matter(s) and the proceeding for which applicant seeks admission.

11. any special experience, expertise, or other factor deemed to make it particularly desirable that the applicant be permitted to represent the client(s) the applicant proposes to represent in the particular cause.

Rule 24.9. Appointment, Qualification and Role of a Guardian Ad Litem

1. Appointment. The Guardian Ad Litem ("GAL") is appointed to assist in a domestic relations case by the superior court judge assigned to hear that particular case, or otherwise having the responsibility to hear such case. The appointing judge has the discretion to appoint any person as a GAL so long as the person so selected has been trained as a GAL or is otherwise familiar with the role, duties, and responsibilities as determined by the judge. The GAL may be selected through an intermediary.

2. Qualifications. A GAL shall receive such training as provided by or approved by the Circuit in which the GAL serves. This training should include, but not be limited to, instruction in the following subjects: domestic relations law and procedure, including the appropriate standard to be applied in the case; domestic relations courtroom procedure; role, duties, and responsibilities of a GAL; recognition and assessment of a child's best interests; methods of performing a child custody/visitation investigation; methods of obtaining relevant information concerning a child's best interest; the ethical obligations of a GAL, including the relationship between the GAL and counsel, the GAL and the child, and the GAL and the court; recognition of cultural and economic diversity in families and communities; base child development, needs, and abilities at different ages; interviewing techniques; communicating with children; family dynamics and dysfunction, domestic violence and substance abuse; recognition of issues of child abuse; and available services for child welfare, family preservation, medical, mental health, educational, and special needs, including placement/evaluation/diagnostic treatment services.

3. Role and Responsibilities. The GAL shall represent the best interests of the child. The GAL is an officer of the court and shall assist the court and the parties in reaching a decision regarding child custody, visitation and child-related issues. Should the issue of child custody and/or visitation be tried, the GAL shall be available to offer

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testimony in accordance with provisions 6 and 7 herein.

The GAL holds a position of trust with respect to the minor child at issue, and must exercise due diligence in the performance of his/her duties. A GAL should be respectful of, and should become educated concerning, cultural and economic diversity as may be relevant to assessing a child's best interests. A GAL's appointment, unless ordered otherwise by the Court for a specific designated period, terminates upon final disposition of all matters pertaining to child custody, visitation and child-related issues. The GAL shall have the authority to bring a contempt action, or other appropriate remedy, to recover court-ordered fees for the GAL's services.

4. Duties. By virtue of the order appointing a GAL, a GAL shall have the right to request all records relating to the minor child maintained by the Clerk of the Court in this and any other jurisdiction, other social and human service agencies, the Department of Family and Children Services, and the Juvenile Court. Upon written release and/or waiver by a party or appropriate court order, the GAL shall have the right to examine all records maintained by any school, financial institution, hospital, doctor or other mental health provider, any other social or human services agency or financial institution pertaining to the child which are deemed confidential by the service provider. The GAL shall have the right to examine any residence wherein any person seeking custody or visitation rights proposes to house the minor child. The GAL may request the court to order examination of the child, parents or anyone seeking custody of the child, by a medical or mental health professional, if appropriate. The GAL shall be entitled to notice of, and shall be entitled to participate in all hearings, trials, investigations, depositions, settlement negotiations, or other proceedings concerning the child.

5. Release to GAL of a Party's Confidential Information from Nonparties. A GAL's right to request and receive documents and information from mental health professionals, counselors, and others with knowledge of a confidential nature concerning a party is conditional upon the party agreeing to sign a release allowing the GAL access to such records and information.

6. Written Report. Unless otherwise directed by the appointing judge, the GAL shall submit to the parties or counsel and to the Court a written report detailing the GAL's findings and recommendations at such time as may be directed by the assigned judge. At trial, the report shall be admitted into evidence for direct evidence and impeachment purposes, or for any other purposes allowed by the laws of this state. The court will consider the report, including the recommendations, in making its decision. However, the recommendations of the GAL are not a substitute for the court's independent discretion and judgment, nor is the report a substitute for the GAL's

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attendance and testimony at the final hearing, unless all parties otherwise agree.

a. Contents of Report. The report shall summarize the GAL's investigation, including identifying all sources the GAL contacted or relied upon in preparing the report. The GAL shall offer recommendations concerning child custody, visitation, and child-related issues and the reasons supporting those recommendations.

b. Release of Report to Counsel and Parties. The Report shall be released to counsel (including counsel's staff and experts) and parties only, and shall not be further disseminated unless otherwise ordered by the Court.

c. Release of GAL's File to Counsel. If ordered by the Court, the parties and their counsel shall be allowed to review and/or copy (and shall pay the cost of same) the contents of the GAL's file.

d. Unauthorized Dissemination of GAL's Report and Contents of File. Any unauthorized dissemination of the GAL's Report, its contents or the contents of the GAL's file by a party or counsel to any person, shall be subject to sanctions, including a finding of contempt by the Court.

e. Sealing of Written Report. If filed, the Report shall be filed under seal by the Clerk of Superior Court in order to preserve the security, privacy, and best interests of the children at issue.

7. Role at Hearing and Trial. It is expected that the GAL shall be called as the Court's witness at trial unless otherwise directed by the Court. The GAL shall be subject to examination by the parties and the court. The GAL is qualified as an expert witness on the best interest of the child(ren) in question. The GAL may testify as to the foundation provided by witnesses and sources, and the results of the GAL's investigation, including a recommendation as to what is in a child's best interest. The GAL shall not be allowed to question witnesses or present argument, absent exceptional circumstances and upon express approval of the Court.

8. General and Miscellaneous Provisions.

a. Requesting Mental Fitness and Custody Evaluations. Based upon the facts and circumstances of the case, a GAL may request the Court to order the parties to undergo mental fitness and/or custody evaluations to be performed by a mental health expert approved by the Court. The Court shall provide for the parties' responsibility for payment of fees to the appointed experts.

b. Filing Motions and Pleadings. If appropriate, the GAL may file motions and pleadings if the GAL determines that the filing of such motion or pleading is necessary to preserve, promote, or protect the best interest of a child. This would include the GAL's right to file appropriate discovery requests and request the issuance of subpoe-

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nas. Upon the filing of any such motions or pleadings, the GAL shall promptly serve all parties with copies of such filings.

c. Right to Receive Notice of Mediations, Hearings and Trials. Counsel shall notify the GAL of the date and time of all mediations, depositions, hearings and trials or other proceedings concerning the child(ren). Counsel shall serve the GAL with proper notice of all legal proceedings, court proceedings wherein the child(ren)'s interests are involved and shall provide the GAL with proper and timely written notice of all noncourt proceedings involving the child(ren)'s interests.

d. Approval of Settlement Agreements. If the parties reach an Agreement concerning issues affecting the best interest of a child, the GAL shall be so informed and shall have the right and opportunity to make objections to the Court to any proposed settlement of issues relating to the children prior to the Court approving the Agreement.

e. Communications Between GAL and Counsel. A GAL may communicate with a party's counsel without including the other counsel in the same conversation, meeting, or, if by writing, notice of the communication. When communicating with the GAL, counsel is not required to notify opposing counsel of the communication or, if in writing, provide opposing counsel with a copy of the communication to the GAL.

f. Ex Parte Communication Between GAL and the Court. The GAL shall not have ex parte communications with the Court except in matters of emergency concerning the child's welfare or upon the consent of the parties or counsel. Upon making emergency concerns known to the Court, the GAL may request an immediate hearing to address the emergency. Notification shall be provided immediately to the parties and counsel of the nature of the emergency and time of hearing.

g. Payment of GAL Fees and Expenses. It shall be within the Court's discretion to determine the amount of fees awarded to the GAL, and how payment of the fees shall be apportioned between the parties. The GAL's requests for fees shall be considered, upon application properly served upon the parties and after an opportunity to be heard, unless waived. In the event the GAL determines that extensive travel outside of the circuit in which the GAL is appointed or other extraordinary expenditures are necessary, the GAL may petition the Court in advance for payment of such expenses by the parties.

h. Removal of GAL from the Case. Upon motion of either party or upon the court's own motion, the court may consider removing the GAL from the case for good cause shown.