

July 29, 2023

Timothy A. Gudas, Secretary
Advisory Committee on Rules
New Hampshire Supreme Court
One Charles Doe Drive
Concord, New Hampshire 03301

RE: Discussion Relative to Court Rule 48-A

Dear Mr. Gudas;

To the extent possible, I am writing to request that the rules committee meet on an expedited basis to review issues that have come up relative to changes made to Rule 48-A specifically around travel hours as a compensable event which went into effect October 2, 2022.

When the court rules were modified, Rule 47 & 48 included the following language: *Travel time to and from court hearings and to and from meetings with an incapacitated, incarcerated or juvenile client shall be compensable; otherwise travel is not a compensable event unless expressly authorized by the court. **Travel time shall not count toward the maximum fees set forth above.***

This language (specifically the last sentence) was not included in Rule 48-A, however, guidance that GAL's received from the Judicial Counsel treated mileage as not being counted toward the maximum fees and until June 23, 2023, we were being compensated accordingly. In the meantime, these fees are now being deducted from GAL billing statements and motions to exceed have needed to be filed to deal with this issue retroactively.

I personally have felt an added responsibility to sort through this as I had been part of training roundtables and shared the initial guidance and application with other practicing GALs around the State and with new GALs that have been recently certified.

A certain conflict that now exists, because travel hours are being treated as a charge against the fee cap, is that no change in the rules to allow for that have been put in place. In other words, we are able to be compensated for this additional time without an allowance for that having been calculated into the basic fee caps themselves. It seems patently unfair that those of

us providing services under Rule 48-A would be treated differently than those providing services under Rules 47 & 48.

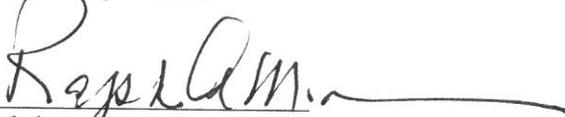
I do believe that this request should be looked at as expeditiously as possible as it appears to me that language, that would have followed along with other changes to court rules, may have been left out of 48-A inadvertently. This would naturally create an additional administrative burden for those of us practicing in the role of guardian ad litem statewide, and for the courts having to deal with an increased volume in filings for motions to exceed, or for motions to have travel hours exempt from the fee caps.

If there is a need for my testimony on this issue, I would be happy to comply any such request. I have attached my proposed language, as well as the June 23, 2023 letter to GALs from the Judicial Counsel. I have also included part of a court filing from my office that discussed how this issue had come to my attention.

In closing, I would admit that in preparing this request, I am definitely feeling out of my element. Whatever comes of this, I am hopeful that a balanced and fair application of travel hours will be developed for the benefit of the guardian ad litem population. We regularly travel to see the children or incapacitated persons that we are appointed to serve. The increase in hourly rate and the additional benefit of travel becoming a compensable event are certainly appreciated.

Thank you for considering my request and for taking the time to consider my thoughts.

Very Truly Yours,



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Attachments

Samdperil, Richard

Jun 23, 2023,
1:51 PM (4 days
ago)

Dear GAL's,

Over the past several months, the courts (and candidly also the Judicial Council) have been inconsistent in the way they (and we) have processed GAL payments as it relates to travel time. I am writing to share with you how I read Rule 48-A and how the Judicial Council will be treating travel time in GAL statements. I read Rule 48-A(2)(a) & (3) as allowing certain travel to be billed, but that travel time **does** count toward the fee cap.

Under Rule 48-A, "Maximum guardian ad litem compensation as authorized by the administrative justice shall be limited as follows: (a) Time properly chargeable to case: \$90 per hour. Travel time to and from court hearings and to or from meetings with a juvenile or an incapacitated person shall be a compensable event." The structure of this rule is different from the way Rules 47 & 48 deal with travel time. Those rules specifically state in a separate section that, "Travel time shall not count toward the maximum fees set forth above." This language is noticeably missing from Rule 48-A.

Given the placement of travel time in Rule 48-A under the maximum fee paragraph and given the absence of language stating that travel time does not count toward the fee cap, I believe the only way to read Rule 48-A is that travel time does count toward the maximum fee in a case.

I understand that many of you, particularly those of you who are GAL's in rural areas, often drive considerable distances to meet with juveniles or attend court hearings. And I absolutely agree that you should be compensated for your time doing so. So I encourage you to file motions to exceed the fee cap when significant travel time is required and whenever it may cause you to exceed the maximum fee allowed for the case. If you file a motion to exceed and the court approves it, the Judicial Council will be happy to pay the excess amount authorized by the court.

It is unknown to me whether the Rules Committee deliberately intended travel time be treated differently in Rule 48-A than it is in Rules 47 & 48. To the extent you think this distinction is either an oversight or unfair, I would encourage you to propose your requested change to the Committee. But until such time as the rule changes, the Judicial Council will interpret Rule 48-A as including travel time within the fee cap.

One last note, mileage is a separate reimbursement allowed under the rule. It does not count toward the fee cap. If you do not do so already, you should calculate your mileage separately on any billing statements.

Attached is the revised fee cap summary with updated citations to the applicable court rules. This is also available on the Judicial Council website.

The Council appreciates the hard work and commitment of GAL's. If you anticipate push-back from a court on a motion to exceed the fee cap in order to include travel time, please feel free to give me a call. When that request is necessary and reasonable (see R. 48-A(3)), the Judicial Council will be happy to support your request.

If you have questions or want to discuss any of this, please do not hesitate to contact me.

Richard

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Rule 48-A. Guardians Ad Litem Fees -- Indigent and Parental Notification Cases

(1) Itemization of Bills. All bills related to fees and expenses must be itemized as to the time spent and expenses incurred on each case, and there shall be no separate charge for overhead. A copy of the Notice of Appointment order on appointment or other supporting document must be attached to the bill with each submission.

(2) Fees. The provisions of this rule shall only apply to proceedings within the original jurisdiction of the circuit courts, in which guardians ad litem are appointed, and the party responsible for payment is indigent, and parental notification cases under RSA 132:34.

Maximum guardian ad litem compensation as authorized by the administrative justice shall be limited as follows:

(a) Time properly chargeable to case: \$90 per hour. Travel time to and from court hearings and to or from meetings with a juvenile or an incapacitated person shall be a compensable event. **[Travel time shall not count toward the maximum fees set forth below.]**

(b) Maximum fee for abuse and neglect cases through conclusion of dispositional hearing pursuant to RSA 169-C:19: \$2,100.

(c) Maximum fee for CHINS cases (169-D) or delinquency cases (169-B) through conclusion: \$1,350.

(d) Maximum fee for court review hearings in guardianship of minor or adult cases or abuse and neglect case: \$450.

(e) Maximum fee for TPR case (170-C): \$2,100.

(f) Maximum fee for appeals to the superior court: \$1,350.

(g) Maximum fee for guardianship cases pursuant to RSA chapters 463 or 464-A: \$2,100.

(h) Maximum fee for parental notification cases pursuant to RSA 132:34, excluding any appeal to the supreme court: \$1,500.

(i) Maximum fee for appeals to the supreme court in parental notification cases pursuant to RSA 132:34: \$750.

Only upon express, written finding for good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized.

A petition to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded. In any such case, fees in excess of the maximum compensation in this rule will be paid only if the administrative judge of the circuit court or the chief justice of the superior court, as the case may be, certifies the good cause and exceptional circumstances justifying the excess fees.

When a guardian ad litem represents more than one client on any particular day, the hours spent shall be allocated accordingly, including travel time. Representation of more than one client on the same day and in the same court shall be noted on the bills submitted. All bills shall be reviewed by the judge who presided over the case, if practicable.

The adequacy of the rates prescribed by this rule may, upon request of the supreme court, be reviewed periodically by the advisory committee on rules.

(3) Expenses - Reimbursable. In addition to the fees and fee caps listed in Section (2), above, investigative, expert, travel or other necessary services may be compensated only upon a finding of necessity and reasonableness by a justice of the appropriate court, made prior to said expense being incurred and shall not count toward the maximum fees set forth above.

(a) Except for those services for which rates are established by the supreme court, the presiding justice may consider, but shall not be bound by, the prevailing rates or any rates established by a licensing agency or professional association in approving fees for services specified above.

(b) Rates for the services of interpreters for all parties and the court shall be established by the supreme court.

(c) No cost for investigative, expert, or other necessary services as initially approved may be exceeded prior to a subsequent finding of necessity by a justice of the appropriate court.

(d) All bills for investigative, expert, or other necessary services shall be reviewed by the judge who presided over the case, if practicable.

(e) Guardians ad litem shall be reimbursed for the mileage expenses incurred in representing their client at the standard mileage reimbursement rate currently allowed by the Internal Revenue Service. Requests for reimbursement of mileage expenses shall specify the actual number of miles traveled.

(f) The expense of telephone calls shall not be reimbursed.

(4) Deadline for Filing Bills with Court. All bills related to fees and expenses must be submitted no later than sixty days after the close of the case. The court may allow late filing for good cause shown, when justice so requires.

Attachment to Motion to Exceed:

1. In recent weeks, the Manchester Family Court had returned a recent billing asking that I either submit a motion to exceed or reduce the total amount of my statement.
2. The crux of the issue with the above-mentioned billing statement was that the court believed that travel hours were a charge against the fee cap.
3. In that particular case, my travel hours pushed the bill to an amount that would have been over the fee limit, similar to what would be the current circumstance in the statement that I am submitting along with this request.
4. When a recent modification of Rule 47, 48 and 48-A went into effect on October 2, 2023, I had explored what this looked like with the Judicial Counsel.
5. As a matter of past billings, since the fees for services and allowance for travel time pay came into effect, I also reached out with examples of potential billing issues and got feedback on my billings from the Judicial Counsel before submitting them for payment.
6. It had been consistently reported to me that mileage and travel time were *not* a charge against the fee cap and I then billed accordingly without any problems.
7. I have also discussed this issue numerous times with Richard Sandperil the Interim Director at the Judicial Counsel regarding earlier billings and he reported to me that the Judicial Council is supportive of these requests being granted.
8. In the Manchester case I did end up resubmitting my billing statement requesting that if a motion to exceed was needed, that good cause and exceptional circumstances existed in the filing of a motion to exceed after the fees had already been accumulating.
9. The Administrative Justice did approve the travel time and I was paid in full for the time that I spent on that case.

10. I continue to hope that clarity is brought to this issue as it has been very unnerving to have this issue come up, particularly, as I regularly and consistently serve in numerous court funded matters and travel throughout the north country on a regular basis.¹
11. Further, if travel hours continue to be counted against the fee cap, without an increase in the cap, it will be impossible to manage the majority of these cases without regular motions to exceed.²
12. I include with this request the recent guidance provided by the Judicial Counsel to guardians ad litem here in NH.
13. Thank you for the court's consideration of this motion and the unusual set of circumstances that brings this matter to the court's attention.

¹ Based on how 48-A appears to be written, would it be reasonable for there to be a motion filed to exempt the travel hours from the fee cap. While the rule allows for travel hours to be compensable, later language in the rule states that expenses such as travel have to be requested and then when approved are not a charge against the fee cap? Anyone that I have talked to about this believes that 48-A is ambiguous at best, including the clerks at the judicial counsel.

² While I generally have enough of a case load in Berlin (for example) so that I can share travel and mileage expenses between cases, when I make a special trip for a hearing or when I attend full day adjudications, the mileage and travel hours are based on 3 hours of travel and 150 miles.