STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

ORDER FOR HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE MINNESOTA GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on November 7, 1997 at 1:30 p.m., to consider the recommendations of the Minnesota Supreme Court Advisory Committee on General Rules of Practice to amend the General Rules of Practice. A copy of the report containing the proposed amendments is annexed to this order and may also be found at the Court's World Wide Web site: (www.courts.state.mn.us).

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before November 4, 1997, and

2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before November 4, 1997.

DATED: October 7, 1997

BY THE COURT:

A.M. Keith
Chief Justice

STATE OF MINNESOTA
IN SUPREME COURT

CX-89-1863

In re:

Supreme Court Advisory Committee
on General Rules of Practice

Recommendations of Minnesota Supreme Court Advisory Committee on General Rules of Practice

Final Report

October 3, 1997

Hon. A. M. Keith, Chair

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G. Barry Anderson, Hutchinson
Steven J. Cahill, Moorhead
Hon. Lawrence T. Collins, Winona
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Leon A. Trawick, Minneapolis

David F. Herr, Minneapolis
Reporter

Michael B. Johnson, Saint Paul
Staff Attorney

ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE

Summary of Committee Recommendations

This Court's Advisory Committee on General Rules of Practice met September 19, 1997, to consider and discuss all comments or suggestions relating to these rules during the past year or so. This report contains nine separate suggestions for rule amendments that will make the rules continue to operate well to serve the needs of the bench and bar.

The committee does not believe any of the recommended changes are likely to engender significant public controversy, and none was opposed during the committee's deliberations. We respectfully suggest these amendments will improve the operation of the rules.

Advisory Committee Process

As is the practice of this advisory committee, all communications regarding the Minnesota General Rules of Practice are retained until the committee can consider them. As a general matter, the committee meets at least annually to consider developments, problems, and suggestions.

The majority of the amendments recommended in this report came to the committee from lawyers in practice or from the Conference of Chief Judges. These suggestions have been generally well-taken and quite helpful.

Summary of Advisory Committee Recommendations.

The nine recommendations contained in this report are summarized as follows:

1. Amend Rule 105 to make it clear that withdrawal papers need not be filed unless other papers have been filed in the case.
2. Amend Rule 114 to delete Forms 114.01 & 114.02.
3. Amend Rule 115 to provide specifically for motions for reconsideration in limited circumstances.
4. Clarify the scope of Rule 119 to obviate formal motions for fees in certain probate and trust matters.
5. Certain provisions of the Civil Trial Book should be moved to a rule governing all trial court proceedings.

6. The rule governing limited appeal of conciliation court proceedings should be clarified.
7. Housing Court Rule 606 should be amended to conform the rule to the requirements of a statute.
8. Bail bond approval procedures should be amended to conform to practice.
9. The Rules of Guardian ad Litem Procedure should be recodified as part of the General Rules of Practice.

Other Issues.

The committee is not aware of other pending issues relating to these rules. The committee will continue to monitor the operation of the rules and will again report to this Court upon its request. The committee considered a recommendation to allow a summary-disposition motion in conciliation court matters and believes that proposal should not be implemented. The committee views the use of summary adjudication procedures, including the appearance of lawyers for this purpose, fundamentally inconsistent with the purposes of conciliation court. The committee also believes this change would significantly limit access to the courts.

Inasmuch as the Ninth District Court has purported to adopt the provision of its proposed rule without approval of the Supreme Court as required by Minn. R. Civ. P. 83, this court should specifically direct its vacation by the Ninth District.

Effective Date

The committee has considered the effective date of these rules, and is submitting them to the court in October with the expectation that they could be considered for a possible January 1, 1998, effective date. The committee does not believe these amendments require significant "lead time" between adoption and effective date.

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE

Recommendation 1: Amend Rule 105 to make it clear that withdrawal papers need not be filed unless other papers have been filed in the case.

Rule 105 as written appears to require the filing of a notice of withdrawal of counsel in all cases in order for it to be effective. Many actions are commenced but not filed, and there is no reason for the withdrawal of counsel to be filed if no other documents have been filed with the court. This change was recommended to the Court by the MSBA Civil Litigation Section. Accordingly, the rule is amended to require filing only if other documents have been filed.

RULE 105. WITHDRAWAL OF COUNSEL

After a lawyer has appeared for a party in any action, withdrawal will be effective only if written notice of withdrawal is served on all parties who have appeared, or their lawyers if represented by counsel, and is filed with the court administrator if any other paper in the action has been filed. The notice of withdrawal shall include the address and phone number where the party can be served or notified of matters relating to the action.

Withdrawal of counsel does not create any right to continuance of any scheduled trial or hearing.

~~Task Force~~ Advisory Committee Comment - 1991~~7~~ ~~Adoption~~ Amendment

The Task Force believes that uniformity in withdrawal practice and procedure would be desirable. Existing practice varies, in part due to differing rules and in part due to differing practices in the absence of a rule of statewide application. The primary concern upon withdrawal is the continuity of the litigation. Withdrawal should not impose additional burdens on opposing parties. The Task Force considered various rules that would make it more onerous for lawyers to withdraw, but determined those rules are not necessary nor desirable. Consistent with the right of parties to proceed pro se, they may continue to represent themselves where their lawyers have withdrawn. This rule establishes the procedure for withdrawal of counsel; it does not itself authorize withdrawal nor does it change the rules governing a lawyer's right or obligation to withdraw in any way. *See* Minn. R. Prof. Cond. 1.16. The rule does not affect or lessen a lawyer's obligations to the client upon withdrawal. Those matters are governed by the Minnesota Rules of Professional Conduct. *See* Minn. R. Prof. Cond. 1.16. Enforcement of those rules is best left to the Lawyers Professional Responsibility Board.

~~The 1997 amendment removes any suggestion that the notice of withdrawal must be filed with the court if no other documents have been filed by any party. When other documents are filed by any party, however, it should be filed as required by Minn. R. Civ. P. 5.04.~~

The rule makes it clear that the withdrawal of counsel does not, in itself, justify continuance of any trial or hearing. Of course, withdrawal or substitution of counsel may be part of a set of circumstances justifying the exercise of the court's discretion to grant a continuance.

Recommendation 2: Amend Rule 114 to delete Forms 114.01 & 114.02.

The committee recommends that Forms 114.01 and 114.02 be deleted from the rules. The forms relate to the administration of the ADR programs and are therefore not necessary as court rules. The amendment of the rule will also conform the rule to the current practice of the ADR Review Board to amend the forms from time to time as necessary.

Recommendation 3: Amend Rule 115 to provide specifically for motions for reconsideration in limited circumstances.

Motions for reconsideration have proven a confusing area of practice for Minnesota trial court practitioners. They are often confused with motions for a new trial under Minn. R. Civ. P. 59 or motions for relief from orders or judgments under Minn. R. Civ. P. 60. The rules do not currently provide a procedure for bringing motions for reconsideration, and this has resulted in ambiguous responses from the courts. The committee believes that a procedure should exist for bringing these motions, and the procedure should limit their availability.

The federal district court for the District of Minnesota has adopted a rule serving these purposes, and the committee believes it is a good model for state court practice. Motions for reconsideration are not encouraged, but it is permissible to ask for leave to bring such a motion in appropriate circumstances. The comment makes it clear the bringing of such a motion does not affect the time limits for bringing an appeal.

RULE 115. MOTION PRACTICE

* * *

Rule 115.11 Motions to Reconsider

Motions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances. Requests to make such a motion, and any responses to such requests, shall be made only by letter to the court of no more than two pages in length, a copy of which must be sent to opposing counsel.

Advisory Committee Comment - 1997 Amendments

* * *

Rule 115.11 is added to establish an explicit procedure for submitting motions for reconsideration. The rule permits such motions only with permission of the trial court. The request must be by letter, and should be directed to the judge who issued the decision for which reconsideration is sought. The rule is drawn from a similar provision in the Local Rules of the United States District Court for the District of Minnesota. The rule is intended to remove some of the uncertainty that surrounds use of these motions in Minnesota, especially after the Minnesota Court of Appeals decision in *Carter v*

Anderson, 554 N.W.2d 110 (Minn. Ct. App. 1996). *See* Eric J. Magnuson, *Motions for Reconsideration*, 54 BENCH & BAR OF MINN., July 1997, at 36.

Motions for reconsideration play a very limited role in civil practice, and should be approached cautiously and used sparingly. It is not appropriate to prohibit them, however, as they occasionally serve a helpful purpose for the courts. Counsel should understand that although the courts may have the power to reconsider decisions, they rarely will exercise it. They are likely to do so only where intervening legal developments have occurred (*e.g.*, enactment of an applicable statute or issuance of a dispositive court decision) or where the earlier decision is palpably wrong in some respect. Motions for reconsideration are not opportunities for presentation of facts or arguments available when the prior motion was considered. Motions for reconsideration will not be allowed to "expand" or "supplement" the record on appeal. *See, e.g.*, *Sullivan v. Spot Weld, Inc.*, 560 N.W.2d 712 (Minn.App.1997); *Progressive Cas. Ins. Co. v. Fiedler*, 1997 WL 292332 (Minn.App.1997) (unpublished). Most importantly, counsel should remember that a motion for reconsideration does not toll any time periods or deadlines, including the time to appeal. See generally 3 ERIC J. MAGNUSON & DAVID F. HERR, MINNESOTA PRACTICE: APPELLATE RULES ANNOTATED § 103.17 (3rd ed. 1996, Supp. 1997).

Recommendation 4: **Clarify the scope of Rule 119 to obviate formal motions for fees in certain probate and trust matters.**

Rule 119 was adopted by this Court, effective January 1, 1997. The rule establishes a uniform procedure for bringing motions for attorneys' fees. The rule has worked well in practice, but various probate and trust law practitioners have identified problems relating to the routine application of the rule to informal probate proceedings and similar proceedings where the required documentation is not desired by the court and serves little useful purpose. The amended rule expressly exempts certain proceedings from the rule.

RULE 119 APPLICATIONS FOR ATTORNEYS' FEES

Rule 119.01 Requirement for Motion

In any action or proceeding in which an attorney seeks the award, or approval, of attorneys' fees in the amount of $1,000.00 for the action, or more, application for award or approval of fees shall be made by motion. As to probate and trust matters, application of the rule is limited to contested formal court proceedings. Unless otherwise ordered by the court in a particular proceeding, it does not apply to:

(a) informal probates,
(b) formal probates closed on consents,
(c) uncontested trust proceedings; and
(d) routine guardianship or conservatorship proceedings, except where the Court determines necessary to protect the interests of the ward.

Rule 119.02 Required Papers

The motion shall be accompanied by an affidavit of any attorney of record which establishes the following:

1. A description of each item of work performed, the date upon which it was performed, the amount of time spent on each item of work, the identity of the lawyer or legal assistant performing the work, and the hourly rate sought for the work performed.;
2. The normal hourly rate for each person for whom compensation is sought, with an explanation of the basis for any difference between the amount sought and the normal hourly billing rate, if any;
3. A detailed itemization of all amounts sought for disbursements or expenses, including the rate for which any disbursements are charged and the verification that the amounts sought represent the actual cost to the lawyer or firm for the disbursements sought; and

4. That the affiant has reviewed the work in progress or original time records, the work was actually performed for the benefit of the client and was necessary for the proper representation of the client, and that charges for any unnecessary or duplicative work has been eliminated from the application or motion.

Rule 119.03 Additional Records; *In Camera* Review

The court may require production of copies of additional records, including any fee agreement relevant to the fee application, bills actually rendered to the client, work in progress reports, time sheets, invoices or statements for disbursements, or other relevant records. These documents may be ordered produced for review by all parties or for *in camera* review by the court.

Rule 119.04 Memorandum of Law

The motion should be accompanied by a memorandum of law that discusses the basis for recovery of attorney's fees and explains the calculation of the award of fees sought and the appropriateness of that calculation under applicable law.

Advisory Committee Comment - 1996 Amendment

This rule is intended to establish a standard procedure for supporting requests for attorneys' fees. The committee is aware that motions for attorneys' fees are either not supported by any factual information or are supported with conclusionary, non-specific information that is not sufficient to permit the court to make an appropriate determination of the appropriate amount of fees. This rule is intended to create a standard procedure only; it neither expands nor limits the entitlement to recovery of attorneys' fees in any case.

Where fees are to be determined under the "lodestar" method widely used in the federal courts and adopted in Minnesota in *Specialized Tours, Inc. v. Hagen*, 392 N.W.2d 520, 542-43 (Minn. 1986), trial courts need to have information to support the reasonableness of the hours claimed to be expended as well as the reasonable hourly rate under the circumstances. This rule is intended to provide a standard set of documentation that allows the majority of fee applications to be considered by the court without requiring further information. The rule specifically acknowledges that cases involving complex issues or serious factual dispute over these issues may require additional documentation. The rule allows the court to require additional materials in any case where appropriate. This rule is not intended to limit the court's discretion, but is intended to encourage streamlined handling of fee applications and to facilitate filing of appropriate support to permit consideration of the issues.

This rule also authorizes the court to review the documentation required by the rule *in camera*. This is often necessary given the sensitive nature of the required fee information and the need to protect the party entitled to attorneys' fees from having to compromise its attorney's thoughts, mental impressions, or other work product in order to support its fee application. As an alternative to permitting in camera review by the trial judge, the court can permit submission of redacted copies, with privileged material removed from all copies.

The amendment in 1997, adding the exceptions to the requirements of the rule for certain probate and trust proceedings, is designed to obviate procedures that serve no purpose for the courts and unduly burden the parties. Probate and trust matters have separate statutes and case law relating to attorney fees. *See* Minn. Stat. § § 524.3-721 and 525.515; *In re Great Northern Iron Ore Properties*, 311 N.W.2d 488 (Minn. 1981) and *In re Living Trust Created by Atwood*, 227 Minn. 495, 35 N.W.2d 736 (1949). In probate and trust matters, if no interested party objects to the attorney fees, there is ordinarily no reason for the court to require the detail specified in Rule 119. In contested matters, however, such detail may be appropriate to enable the court to resolve the matter under the standards of applicable probate and trust law. The court may protect the sensitive and

confidential information that may be contained in attorney time records by entering an appropriate order in a particular case. Similarly, the exemption of these cases from the requirements of the rule does not prevent the court from requiring any of the fee application documentation in a particular matter.

Recommendation 5: Certain provisions of the Civil Trial Book should be moved to Rules governing all trial court proceedings.

The changes recommended here are simply the recodification of a few rules to permit the rules relating to courtroom decorum and role of judges and lawyers to be part of the rules applicable in all court proceedings. These changes were recommended to the Court by the Conference of Chief Judges.

Although the changes seem extensive, they comprise simply of moving portions of Sections 2, 3 & 4 of the Minnesota Civil Trialbook into Minn. Gen. R. Prac. 2. This change will make the rules expressly applicable in all trial court proceedings, subject to the provision of Rule 1.02 permitting the court to modify the application of any of the general rules in the interests of justice. These provisions were initially found in the Minnesota Rules of Uniform Decorum. The Minnesota Supreme Court Advisory Committee on Uniform Local Rules, in the report giving rise to the General Rules of Practice, recommended that these provisions be part of the rules themselves. In its adoption order the Court promulgated these provisions to become part of the new Minnesota Civil Trialbook as a separate Part H of the General Rules.

The Conference of Chief Judges initiated these changes. The primary impetus is the desire to have explicit provisions in the rules for imposing minimum standards of decorum on lawyers and parties in criminal cases as well as civil cases. The advisory committee continues to believe these rules should be regular rules of court, enforceable in the ordinary course of litigation but subject to modification as permitted by Minn. Gen. R. Prac. 1.02. Each of the new changes in Rule 2 is derived directly from a provision of the Minnesota Civil Trialbook as it now exists.

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RULE 2. COURT DECORUM; CONDUCT OF JUDGES AND LAWYERS

Rule 2.01 ~~Conduct of Judges and Lawyers~~ Behavior and Ceremony in General

~~(a) Acceptable Behavior.~~ Dignity and solemnity shall be maintained in the courtroom. ~~Lawyers shall appear in court in appropriate courtroom attire.~~ There shall be no unnecessary conversation, loud whispering, newspaper or magazine reading or other distracting activity in the courtroom while court is in session.

~~(b) Flag.~~ The flags of the United States and the State of Minnesota shall be displayed on or in close proximity to the bench when court is in session.

~~(c) Formalities in Opening Court.~~ At the opening of each court day, the formalities to be observed shall consist of the following: court personnel shall direct all present to stand, and shall say clearly and distinctly:

> Everyone please rise! The District Court of the _____ Judicial District, County of _____, State of Minnesota is now open. Judge _____ presiding. Please be seated.
>
> ~~(~~Rap gavel or give other signal immediately prior to directing audience to be seated.~~)~~

~~(~~At any time thereafter during the day that court is reconvened court personnel shall give warning by gavel or otherwise, and as the judge enters, cause all to stand until the Judge is seated.

~~(~~The above rule (to) or (to not) apply to midmorning and midafternoon recesses of the court at the option of the judge.~~)~~

~~**Rule 2.02 Addressing Court or Jury**~~

~~Except when making objections, lawyers shall rise and remain standing while addressing the court or the jury. In addressing the court, the lawyer shall refer to the judge as AYour Honor@ or AThe Court.@ Counsel shall not address or refer to jurors individually or by name or occupation, except during voir dire. During court proceedings, counsel shall not exhibit familiarity with the judge, jurors, witnesses, parties or other counsel, nor address them by first name (except for children).~~

~~**Rule 2.03 Approaching Bench**~~

~~The lawyers should address the court from counsel table. If a lawyer finds it necessary to discuss some question out of the hearing of the jury at the bench, the lawyer may so indicate to the court and, if invited, approach the bench for the purpose indicated. Lawyers shall not lean upon the bench or appear to engage the court in a familiar manner.~~

~~(d~~f) The Jury. Jurors shall take their places in the jury box before the judge enters the courtroom. Court personnel shall assemble the jurors when court is reconvened.

When a jury has been selected and is to be sworn, the presiding judge or clerk shall request everyone in the courtroom to stand.

~~(e~~g) Court Personnel. Court personnel shall maintain order as litigants, witnesses and the public assemble in the courtroom, during trial and during recesses. Court personnel shall direct them to seats and refuse admittance to the courtroom in such trials where the courtroom is occupied to its full seating capacity.

~~(f~~h) Swearing of Witnesses. When the witness is sworn, court personnel shall request the witness's full name, and after being sworn, courteously invite the witness to be seated on the witness stand.

(gi) Manner of Administration of Oath. Oaths and affirmations shall be administered to jurors and witnesses in a slow, clear, and dignified manner. Witnesses should stand near the bench, or witness stand as sworn. The swearing of witnesses should be an impressive ceremony and not a mere formality.

Rule 2.02 Role of Judges

(a) Dignity. The judge shall be dignified, courteous, respectful and considerate of the lawyers, the jury and witnesses. The judge shall wear a robe at all trials and courtroom appearances. The judge shall at all times treat all lawyers, jury members, and witnesses fairly and shall not discriminate on the basis of race, color, creed, religion, national origin, sex, marital status, sexual preference, status with regard to public assistance, disability, or age.

(b) Punctuality. The judge shall be punctual in convening court, and prompt in the performance of judicial duties, recognizing that the time of litigants, jurors and attorneys is of value and that habitual lack of punctuality on part of a judge justifies dissatisfaction with the administration of the business of the court.

(c) Impartiality. During the presentation of the case, the judge shall maintain absolute impartiality, and shall neither by word or sign indicate favor to any party to the litigation. The judge shall be impersonal in addressing the lawyers, litigants and other officers of the court.

(d) Intervention. The judge should generally refrain from intervening in the examination of witnesses or argument of counsel; however, the court shall intervene upon its own initiative to prevent a miscarriage of justice or obvious error of law.

(e) Decorum in Court. The judge shall be responsible for order and decorum in the court and shall see to it at all times that parties and witnesses in the case are treated with proper courtesy and respect.

(f) Accurate Record. The judge shall be in complete charge of the trial at all times and shall see to it that everything is done to obtain a clear and accurate record of the trial. It is a duty to see that the witnesses testify clearly so that the reporter may obtain a correct record of all proceedings in court.

(g) Comment Upon Verdict. The judge should not comment favorably or adversely upon the verdict of a jury when it may indirectly influence the action of the jury in causes remaining to be tried.

Rule 2.03 Role of Attorneys

(a) Officer of Court. The lawyer is an officer of the court and should at all times uphold the honor and maintain the dignity of the profession, maintaining at all times a respectful attitude toward the court.

(b) Addressing Court or Jury. Except when making objections, lawyers should rise and remain standing while addressing the court or the jury. In addressing the court, the lawyer should refer to the judge as "Your Honor" or "The Court." Counsel shall not address or refer to jurors individually or by name or occupation, except during voir dire, and shall never use the first name when addressing a juror in voir dire examination. During trial, counsel shall not exhibit familiarity with the judge, jurors, witnesses, parties or other counsel, nor address them by use of first names (except for children).

(c) Approaching Bench. The lawyers should address the court from a position at the counsel table. If a lawyer finds it necessary to discuss some question out of the hearing of the jury at the bench, the lawyer may so indicate to the court and, if invited, approach the bench for

the purpose indicated. In such an instance, the lawyers should never lean upon the bench nor appear to engage the court in a familiar manner.

(d) Non-Discrimination. Lawyers shall treat all parties, participants, other lawyers, and court personnel fairly and shall not discriminate on the basis of race, color, creed, religion, national origin, sex, marital status, sexual preference, status with regard to public assistance, disability, or age.

(e) Attire. Lawyers shall appear in court in appropriate courtroom attire.

~~Task Force~~ Advisory Committee Comment--1991~~7~~ ~~Adoption~~ Amendment

~~Rule 2.01 is derived from Rules 2-3 of the Rules of Uniform Decorum, respectively.~~

~~Rule 2.02 is derived from Rule 12 of the Rules of Uniform Decorum, and existing Trialbook && 29 and 58. The provisions of Rule 2.02 require counsel to stand when addressing comments, objections, or arguments to the judge or jury.~~

~~Rule 2.03 is derived from Rule 14 of the Rules of Uniform Decorum.~~

The majority of this rule was initially derived from the former Rules of Uniform Decorum. The adoption of these rules in 1991 included these provisions in Part H, Minnesota Civil Trialbook. They are recodified here to make it clear that the standards for decorum, for lawyers and judges, apply in criminal as well as civil proceedings.

The Task Force on Uniform Local Rules considered the recommendations of the Minnesota Supreme Court Task Force on Gender Fairness, and recommended Rule 2.03(d) be adopted to implement, in part, the recommendations of that body. *See Minnesota Supreme Court Task Force for Gender Fairness in the Courts*, 15 WM. MITCHELL L. REV. 825 (1989). The rule specifically incorporated the definition of discriminatory conduct in the Minnesota Human Rights Act, MINN. STAT. § 363.01, subd. 1(1) (1990). The Task Force added to the statutory definition of discrimination the category of sexual preference.

The inclusion of these provisions in the rules is intended to establish uniform standards to be followed in most cases. Nothing in this rule limits the power of the court to modify the rules or their application in a particular case. *See* Rule 1.02. It is not intended that the failure to follow these rules, in itself, would be the subject of claimed error in the conduct of the trial court proceedings in the absence of aggravating circumstances, such as repeated violations or persistent violation after objections by a party or direction from the court.

PART H. MINNESOTA CIVIL TRIALBOOK

* * *

~~**SECTION 2. COURT DECORUM**~~

~~**(a) Flag.** The flags of the United States and the State of Minnesota shall be displayed on or in close proximity to the bench when court is in session.~~

~~**(b) Formalities in Opening Court.** At the opening of each court day, the formalities to be observed shall consist of the following: court personnel shall direct all present to stand, and shall say clearly and distinctly:~~

~~Everyone please rise! The District Court of the _____ Judicial District, County of _____, State of Minnesota is now open. Judge _____ presiding. Please be seated.~~

~~(Rap gavel or give other signal immediately prior to directing audience to be seated.)~~

~~At any time thereafter during the day that court is reconvened court personnel shall give warning by gavel or otherwise, and as the judge enters, cause all to stand until the Judge is seated.~~

(The above subsection (b) (to) or (to not) apply to midmorning and midafternoon recesses of the court at the option of the judge.)

(c) The Jury. Jurors shall take their places in the jury box before the judge enters the courtroom. Court personnel shall assemble the jurors when court is reconvened.

When a jury has been selected and is to be sworn, the presiding judge or clerk shall request everyone in the courtroom to stand.

(d) Court Personnel. Court personnel shall maintain order as litigants, witnesses and the public assemble in the courtroom, while court is in session and during recesses. Court personnel shall direct them to seats and refuse admittance to the courtroom in such proceedings where the courtroom is occupied to its full seating capacity.

(e) Swearing of Witnesses. When the witness is sworn, court personnel shall request the witness's full name, and after being sworn, courteously invite the witness to be seated on the witness stand.

(f) Manner of Administration of Oath. Oaths and affirmations shall be administered to jurors and witnesses in a slow, clear, and dignified manner. Witnesses should stand near the bench, or witness stand as sworn. The swearing of witnesses should be an impressive ceremony and not a mere formality.

Task Force Comment - 1991 Adoption

Subsection (a) is derived from Rule 1 of the Rules of Uniform Decorum respectively.
Subsection (b) is derived from Rules 4 and 5 of the Rules of Uniform Decorum.
Subsection (c) is derived from Rule 6 of the Rules of Uniform Decorum.
Subsection (d) is derived from Rule 8 of the Rules of Uniform Decorum.
Subsection (e) is derived from Rule 9 of the Rules of Uniform Decorum.
Subsection (f) is derived from Rule 10 of the Rules of Uniform Decorum.

SECTION 3. ROLE OF JUDGES

(a) Dignity. The judge shall be dignified, courteous, respectful and considerate of the lawyers, the jury and witnesses. The judge shall wear a robe at all trials and courtroom appearances. The judge shall at all times treat all lawyers, jury members, and witnesses fairly and shall not discriminate on the basis of race, color, creed, religion, national origin, sex, marital status, sexual preference, status with regard to public assistance, disability, or age.

(b) Punctuality. The judge shall be punctual in convening court, and prompt in the performance of judicial duties.

(c) Impartiality. the judge shall maintain absolute impartiality, and shall neither by word or sign indicate favor to any party to the litigation. The judge shall be impersonal in addressing the lawyers, parties, jurors and court personnel.

(d) Intervention. The judge should generally refrain from intervening in the examination of witnesses or argument of counsel; however, the court shall intervene upon its own initiative to prevent a miscarriage of justice or obvious error of law.

(e) Decorum in Court. The judge shall be responsible for order and decorum in the court and shall ensure at all times that parties and witnesses in the case are treated with proper courtesy and respect.

(f) Accurate Record. The judge shall be in complete charge of the proceedings at all times and shall ensure that everything is done to obtain a clear and accurate record of the trial. The judge shall ensure that the witnesses testify clearly so that the reporter may obtain a correct record of all proceedings in court.

(g) Comment Upon Verdict. The judge should not comment favorably or adversely upon the verdict of a jury when it may indirectly influence the action of the jury in causes remaining to be tried.

Task Force Comment--1991 Adoption

Subsection (a) is derived from Rules 23 and 24 of the former Rules of Uniform Decorum. The quoted material from the Code of Judicial Conduct is deleted from the section as surplusage.

Subsection (b) is derived from Rule 25 of the Rules of Uniform Decorum.

Subsection (c) is derived from Rules 26 and 29 of the Rules of Uniform Decorum.

Subsection (d) is derived from Rule 27 of the Rules of Uniform Decorum.

Subsection (e) is derived from Rule 30 of the Rules of Uniform Decorum.

Subsection (f) is derived from Rule 31 of the Rules of Uniform Decorum.

The Task Force considered the recommendations of the Minnesota Supreme Court Task Force on Gender Fairness, and recommends that this section be adopted to implement, in part, the recommendations of that body. See *Minnesota Supreme Court Task Force for Gender Fairness in the Courts*, 15 Wm. Mitchell L. Rev. 825 (1989). The section specifically incorporates the definition of discriminatory conduct in the Minnesota Human Rights Act, Minn. Stat. § 363.01, subd. 1(1) (1990). The Task Force has added to the statutory definition of discrimination the category of sexual preference.

SECTION 4. ROLE OF LAWYERS

(a) Officer of Court. A lawyer is an officer of the court and he or she shall at all times uphold the honor and maintain the dignity of the profession, maintaining at all times a respectful attitude toward the court.

(b) Non-Discrimination. Lawyers shall treat all parties, participants, other lawyers, and court personnel fairly and shall not discriminate on the basis of race, color, creed, religion, national origin, sex, marital status, sexual preference, status with regard to public assistance, disability, or age.

Task Force Comment--1991 Adoption

Subsection (a) is derived from Rule 12 of the Rules of Uniform Decorum.

Subsection (d) is new.

The Task Force considered the recommendations of the Minnesota Supreme Court Task Force on Gender Fairness, and recommends that this section be adopted to implement, in part, the recommendations of that body. See *Minnesota Supreme Court Task Force for Gender Fairness in the Courts*, 15 Wm. Mitchell L. Rev. 825 (1989). The section specifically incorporates the definition of discriminatory conduct in the Minnesota Human Rights Act, Minn. Stat. § 363.01, subd. 1(1) (1990). The Task Force has added to the statutory definition of discrimination the category of sexual preference.

Recommendation 6: The Rule Governing Limited Appeal of Conciliation Court Proceedings Should Be Clarified.

Rule 521 governs the limited removal process for review by the district court. The procedure and timing requirements for such a motion are not clearly defined in the existing rule, and the Committee recommends an amendment of the rule to clarify this aspect of procedure. The amendment conforms the rule to the prevailing practice under the existing rule, and is not expected to produce any difficulties in operation under the rule.

RULE 521 REMOVAL (APPEAL) TO DISTRICT COURT

* * *

(e) Limited Removal.

(1) When a motion for vacation of an order for judgment, or judgment under Rule 520 (a) or (b) of these rules, is denied, the aggrieved party may demand limited removal to the district court for hearing de novo (new hearing) on the motion. Procedure for service and filing of the demand for limited removal and notice of hearing de novo, proof of service of the notice, and procedure in case of inability of the aggrieved party to make service on the opposing party or the opposing party's lawyer shall be in the same manner prescribed in part (b) of this Rule, ~~except that the~~ deadline for effecting limited removal shall be twenty days after the date that the court administrator mails notice of the denial of the motion for vacation of the order for judgment or judgment. The fee payable by the aggrieved party to the court administrator for limited removal shall be the same as the filing fee prescribed by law for filing of a civil action in district court. The court administrator shall then place the matter on the special term calendar for the date specified in the notice. At the hearing in district court, either party may be represented by a lawyer.

(2) A judge other than the conciliation court judge who denied the motion, shall hear the motion de novo (anew) and may (A) deny the motion or (B) grant the motion. In determining the motion the judge shall consider the entire file plus any affidavits submitted by either party or their lawyers.

(3) The court administrator shall send by mail a copy of the order made in district court after de novo hearing to both parties and the venue shall be transferred back to conciliation court.

1993 Committee Comment

Rule 521(b) establishes a twenty-day time period for removing the case to district court. The twenty days is measured from the mailing of the notice of judgment, and the law requires that an additional three days be added to the time period when notice is served by mail. *Wilkins v. City of Glencoe*, 479 N.W.2d 430 (Minn. App. 1992) (construing rule

6.05 of the Minnesota Rules of Civil Procedure). Computing the deadline can be difficult and confusing for lay persons, and Rule 514 attempts to alleviate this problem by requiring the court administrator to perform the computation and specify the resulting date in the notice of order for judgment, taking into consideration applicable rules, including rule 503 of these rules and rule 6.05 of the Minnesota Rules of Civil Procedure.

In district court, personal service may only be made by a sheriff or any other person not less than 18 years of age who is *not* a party to the action. *Reichel v. Hefner*, 472 N.W.2d 436 (Minn. App. 1991). This applies to personal service under this Rule 521. Service may not be made on Sunday, a legal holiday, or election day. Minn. Stat. ~~§§~~ 624.04, 645.44, subd. 5 (1990); Minn. Const. art. VII, ~~§~~ 4.

Advisory Committee Comment - 1997 Amendment

~~Rule 521(e)(1), as amended in 1997, allows limited removal to district court from a denial of a motion to vacate the order for judgment or judgment made pursuant to Rule 520(a) or (b). To obtain limited removal under Rule 521(e)(1), a party must follow the same procedural steps for obtaining removal under Rule 521(b), except that the event that triggers the twenty-day time period for effecting removal is the date that the court administrator mails the notice of denial of the motion to vacate the order for judgment or judgment. The law requires that an additional three days be added to the time period when notice is served by mail. *Wilkins v. City of Glencoe*, 479 N.W.2d 430 (Minn. App. 1992).~~

Recommendation 7: **Housing Court Rule 606 should be amended to conform the rule to the requirements of a statute.**

Rule 606 of the Housing Court Rules relates to the filing of affidavits relating to service or posting of notice in lieu of service. This change was recommended by the Conference of Chief Judges and conforms the service provisions in the rule to the requirements of MINN. STAT. §566.06 (1996). The amendment will eliminate the conflict between the statute and the existing rule as to filing and also obviate repeated trips to the courthouse for filing and will lessen the cost of service in many cases.

RULE 606. FILING OF AFFIDAVITS

Upon return of the sheriff or other process server indicating that the defendant cannot be found in the county and, in the case of a nonresidential premises, where no person actually occupies the premises described in the complaint, or, in the case the premises described in the complaint is residential, service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 and 10:00 p.m., the plaintiff or plaintiff's lawyer shall:

~~(1)~~ file an affidavit stating that the defendant cannot be found or on belief that the defendant is not in the state~~.~~, and

(2) file an affidavit stating that a copy of the summons and complaint has been mailed to the defendant at the defendant's last known address or that such an address is unknown to the plaintiff.

Service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the premises for not less than one week. A separate affidavit shall be filed stating that the summons has been posted and the date and location of the posting.

~~Following the filing of such affidavit, the court administrator shall issue copies of the summons and complaint for posting and mailing. A copy of the summons and complaint shall be mailed by the plaintiff or the plaintiff's lawyer to the defendant at the defendant's last known address, if any is known to the plaintiff. Service of the summons may then be made upon the defendant by posting the summons in a conspicuous place on the premises for not less than 1 week.~~

~~Upon issuance of the summons and complaint for posting and mailing, the plaintiff or plaintiff's lawyer shall file another affidavit stating that a copy of the summons and compliant has been mailed to the defendant at defendant's last known address or that such an address is unknown to the plaintiff. A separate affidavit shall be filed stating that the summons has been posted and the date and location of posting.~~

Advisory Committee Comment - 1997 Amendments

This rule is amended to conform the service requirements to the service provisions of MINN. STAT. § 566.06 (1996). The procedure of the revised rule also streamlines the procedure for issuance, service, and filing of process, and should permit service to be accomplished at a lower cost.

Recommendation 8: Bail Bond Approval Procedures Should be Amended to Conform to Practice.

Rule 702 is amended to allow approval of bail bond procurers in a form used throughout Minnesota. This amendment was recommended by the Conference of Chief Judges. The rule as amended conforms the rule to the practice in use in most courts at present, and the rule works well. The amendment includes promulgation of the required standard from.

RULE 702. BAIL

(a) Approval of Bond Procurers Required. No person shall engage in the business of procuring bail bonds, either cash or surety, for persons under detention until an application is approved by a majority of the judges in the judicial district. The application form shall be obtained from the court administrator. The completed application shall then be filed with the administrator stating the information requested and shall be accompanied by verification that the applicant is licensed as an insurance agent by the Minnesota Department of Commerce. The approval granted under this rule may be revoked or suspended by the chief judge of the judicial district or the chief judge's designee and such revocation or suspension shall apply throughout the State of Minnesota.

*** * ***

(d) Posting Bonds. Before any person is released on bond, the bond must be approved by a judge after submission to the prosecuting lawyer for approval of form and execution and filed with the court administrator during business hours or thereafter with the custodian of the jail. In cases where bail has been set by the court and the defendant has provided a bail bond with corporate surety ~~when a judge is not available to approve the bond~~, approval by a judge is unnecessary if the bond ~~is accompanied by a certificate, on behalf of the corporate surety issuing the bond, that the absence of a signature of a judge approving such bond at the time the defendant was released shall not be used as a defense to any claim of forfeiture of such bond~~ conforms to Form 701.

*** * ***

(f) Reinstatement. Any motion for reinstatement of a forfeited bond or cash bail shall be supported by a petition and affidavit and shall be filed with the court ~~A~~administrator. A copy of said petition and affidavit shall be served upon the ~~county~~ prosecuting attorney and the principal of the bond in the manner required by Minn. R. Civ. P. 4.03(3)(1). A petition for reinstatement filed within ninety (90) days of the date of th~~is~~e order of forfeiture shall be heard and determined by the judge who ordered forfeiture, or the chief judge. Reinstatement may be ordered on such terms and conditions as the court may require. A petition for reinstatement

filed between ninety (90) days and one hundred eighty (180) days from date of forfeiture shall be heard and determined by the judge who ordered forfeiture or the judge's successor and reinstatement may be ordered on such terms and conditions as the court may require, but only with the concurrence of the ~~C~~chief ~~J~~judge and upon the condition that a minimum penalty of not less than ten percent (10%) of the forfeited bail be imposed. No reinstatement of a forfeited bail or cash bail shall be allowed unless the petition and affidavit are filed within one hundred eighty (180) days from the date of the order of forfeiture.

Advisory Committee Comments - 1995~~7~~ Amendments

This Rule is derived from 4th Dist. R. 8.02. Pretrial release is governed by Minn. R. Crim. P. 6, and this rule supplements the provisions of that rule. The Task Force believes that specific, written standards relating to the issuance and forfeiture of bail bonds would be useful to practitioners, courts, and to those issuing bonds.

The Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure recommended that this local rule be incorporated in the General Rules of Practice for the District Courts for uniform statewide application and the Task Force concurs in that recommendation. ~~The 1997 amendment continues the practice of statewide uniformity, established an uniform bail bond application procedure and making the posting of bonds easier by using a standard form. The rule conforms the rule to the practice in use prior to 1997.~~

Rule 702(h) was amended in 1993, effective January 1, 1994, to establish statewide suspension of bonding privileges for a surety and a surety's agent in the event of failure to make payment on a forfeited bond. This rule is necessary to ensure that irresponsible sureties not be allowed to move from district to district.

The power to revoke bail bonding privileges must be exercised sparingly. Courts considering this action should give consideration to the appropriate procedure and the giving of notice and an opportunity to be heard if such process is due the bond person. *See, e.g., In re Cross*, 617 A.2d 97, 100-02 (R.I.1992) (show cause hearing procedure based on probable cause, with clearly defined burden of proof, not inherently unconstitutional); *American Druggists Ins. Co. v. Bogart*, 707 F.2d 1229, 1234-36 (11th Cir.1983) (corporate surety authorized by Secretary of Treasury has right under U.S. Constitution to represent bonds to court for approval.)

New Form 702 is set forth on the following page.

FORM 702

BAIL BOND FOR APPEARANCE ONLY

Filed in _____ County District Court

STATE OF MINNESOTA, *PLAINTIFF*

v. COURT FILE NO._____

_____, *DEFENDANT*

Bond Amount: _____ ($ _____)

Charges: _____

(Include any amendments or lesser included charges.)

BOND OBLIGATION AND CONDITIONS

The Defendant, as Principal, and _____ as Surety, hereby agree and acknowledge that they are indebted to pay to the District Court the Bond Amount if Defendant fails to personally appear in Court at such times and on such dates as specified by the Court to answer the charge(s) identified in this Bond, including any amendments of these charges or lesser included charges.

Provided, however, the obligation of the Surety becomes null and void upon the happening of any of the following events:

1. The dismissal of the charge(s) identified in this Bond.
2. The finding or verdict that Defendant is not guilty of the charges identified in this Bond.
3. The sentencing of Defendant (whether imposed or stayed) with respect to the charge(s) identified in this Bond.

This is an appearance bond only and does not guaranty compliance with conditional release requirements imposed upon the Defendant by the Court and shall not be used for payment of any fines, surcharges, costs, or other financial obligation imposed upon the Defendant by the Court.

By: _____ _____

Attorney in Fact for Surety Defendant, Principal

ACKNOWLEDGMENT OF PRINCIPAL

State of Minnesota)
) ss.
County of _____)

This instrument was acknowledged before me on _____ (date) by _____ (name(s) of person(s).

_____
Notary Public

ACKNOWLEDGMENT OF SURETY

State of Minnesota)
) ss.
County of _____)

This instrument was acknowledged before me on _____ (date) by _____ (name(s) of person(s) as _____ _____ (type of authority or office) of _____, Surety.

_____
Notary Public

TO BE COMPLETED BY COURT ADMINISTRATION

Filed this _____ day of _____.

Recommendation 9: **The Rules of Guardian ad Litem Procedure should be recodified as part of the General Rules of Practice.**

On August 27, 1997, this Court adopted the Rules of Guardian ad Litem Procedure as a set of 13 free-standing rules. *See* Order, Promulgation of Rules of Guardian ad Litem Procedure, No. C0-95-1475 (Minn. Sup. Ct., Aug. 27, 1997). The advisory committee recommends that these 13 rules be re-promulgated as Rules 901-913 of the Minnesota General Rules of Practice.

The committee believes these rules relate to existing rule provisions, *see, e.g.*, Minn. Gen. R. Prac. 108, and deal generally with the types of matters covered by the General Rules. The committee believes Minnesota litigants will be well served by having these rules codified as part of the General Rules. Because the Guardian ad Litem rules were promulgated with an effective date of January 1, 1999, over one year hence, this renumbering should cause no inconvenience to lawyers, litigants, or the courts.

RULES OF GUARDIAN AD LITEM PROCEDURE

EFFECTIVE JANUARY 1, 1999

RULE 901. ~~[~~PURPOSE STATEMENT; IMPLEMENTATION.~~]~~

~~Subdivision 1. PURPOSE STATEMENT~~ **Rule 901.01 Purpose of Rules**

The purpose of Rules 902 to 913 is to provide standards governing the qualifications, recruitment, screening, training, selection, appointment, supervision, evaluation, responsibilities, and removal of guardians ad litem appointed to advocate for the best interests of the child in family and juvenile court cases. For purposes of Rules 902 to 913:

(a) The phrase "family court" case refers to the types of proceedings set forth in the Comment to Rule 301 of ~~the Rules of Family Court Procedure~~ these rules, including, but not limited to, marriage dissolution, legal separation, and annulment proceedings; child custody enforcement proceedings; domestic abuse and harassment proceedings; support enforcement proceedings; contempt actions in family court; parentage determination proceedings; and other proceedings that may be heard or treated as family court matters.

(b) The phrase "juvenile court" case refers to the child protection matters set forth in Rule 37.01 of the Minnesota Rules of Juvenile Procedure, including all child in need of protection or services, neglected and in foster care, termination of parental rights, review of out of home placement matters, and other matters that may be heard or treated as

child protection matters, including, but not limited to, suspension of parental rights proceedings, guardianship proceedings, and adoption proceedings occurring as part of a permanency plan. The phrase "juvenile court" case also refers to the juvenile delinquency proceedings set forth in Rule 1.01 of the Minnesota Rules of Juvenile Procedure.

~~Subd. 2. [IMPLEMENTATION.]~~ Rule 901.02 Implementation Rules 901 to 913 shall be implemented in each judicial district on or before the date for implementation prescribed by the Supreme Court in its order adopting Rules 901 to 913. The chief judge of the judicial district shall be responsible for insuring the implementation of Rules 901 to 913. The responsibilities set forth in Rules 903 to 907 shall be carried out in each judicial district at the direction of one or more program coordinators to be designated by the chief judge of the judicial district. The chief judge may establish a panel to assist in the selection of the program coordinator(s). The designation of a program coordinator may be terminated by the judges of the judicial district.

A program coordinator may be an individual, other than a judge or referee serving in the judicial district, or an organization. To be eligible to serve as a program coordinator, an individual or, if an organization, the person directly responsible for its operation, must have management experience, must complete the program coordinator orientation, and must satisfy the minimum qualifications set forth in Rule 902, clauses (c), (d), (g), and (h). An individual or organization may serve in more than one county in a judicial district. A program coordinator may delegate the responsibilities set forth in Rules 903 and 904 to a person who has not completed the training requirements set forth in Rule 910, provided that if the person is not under the direct supervision of the program coordinator, the person to whom the responsibilities are delegated has completed the program coordinator orientation and the delegation must be approved by the chief judge of the judicial district. A person who has concerns regarding the performance of a program coordinator may submit those concerns in writing to the chief judge of the district. The chief judge, or chief judge's designee, shall take whatever action, if any, the chief judge determines to be appropriate.

Advisory Task Force Comments

~~Subdivision 2~~ Rule 901.02 is designed to allow judicial districts flexibility in the implementation of Rules 902 to 913. Both single-county and multi-county judicial districts have used a variety of guardian ad litem programs within a district. ~~Subdivision 2~~ Rule 901.02 allows that practice to continue. For example, the chief judge of a single-county judicial district could designate one or more individuals or organizations to act in the capacity of program coordinator. Likewise, the chief judge of a multi-county judicial district could designate one individual or organization to act in the capacity of program coordinator for all counties in the judicial district or could designate more than one individual or organization to act in that capacity for one or more of the counties in the district. A program coordinator could be a district court or county court administrator or a member of an administrator's staff, or could be an organization providing guardian ad litem services. Likewise, a program coordinator could delegate the responsibilities set forth in Rules 3 and 4 to a member of the program coordinator's staff or, for example, to the director of court services if the delegation is approved by the chief judge of the judicial district.

RULE 902. ~~[~~MINIMUM QUALIFICATIONS.~~]~~

Before a person may be recommended for service as a guardian ad litem pursuant to Rule 904, the person must satisfy the following minimum qualifications:

(a) have an abiding interest in children and their rights and needs;

(b) have sufficient listening, speaking, and writing skills in the person's primary language to successfully conduct interviews, prepare written reports, and make oral presentations;

(c) not have been involved in any conduct or activity that would interfere with the person's ability to discharge the duties assigned by the court;

(d) have knowledge and an appreciation of the ethnic, cultural, and socio-economic backgrounds of the population to be served;

(e) be available for at least 18 months and have sufficient time, including evenings and weekends, to gather information, make court appearances, and otherwise discharge the duties assigned by the court;

(f) have the ability to (1) relate to a child, family members, and professionals in a careful and confidential manner; (2) exercise sound judgment and good common sense; and (3) successfully discharge the duties assigned by the court;

(g) not have been removed from a panel of approved guardians ad litem following an unsatisfactory performance evaluation pursuant to Rule 906.03~~, subdivision 2~~; and

(h) have satisfactorily completed the pre-service training requirements set forth in Rule 910, and demonstrated a comprehension of the responsibilities of guardians ad litem as set forth in Rule 908.01~~; subdivision 1~~.

RULE 903. ~~[~~SELECTION OF GUARDIANS AD LITEM.~~]~~

~~Subdivision 1. [RECRUITMENT.]~~ Rule 903.01. Recruitment

The recruitment of persons to apply to be guardians ad litem shall be announced to the general public. Public announcements shall be made by, or under the direction of, the program coordinator. Every public announcement shall contain an equal opportunity statement, and a reasonable, good faith effort shall be made to solicit applications from individuals whose gender and ethnic, racial, cultural, and socio-economic backgrounds reflect the diversity of the population the applicant is expected to serve. Announcements shall be provided to tribal social service agencies and to public agencies and private organizations serving ethnic and cultural communities, and shall be placed in publications directed to ethnic and cultural communities in the county or counties to be served.

~~Subd. 2. [APPLICATION PROCESS.]~~ Rule 903.02 Application Process

Any person who desires to become a guardian ad litem shall be required to submit a completed written application. The application shall address the minimum qualifications set forth in Rule 902 and may be translated into other languages to accommodate applicants whose primary language is not English. Every completed application must be accompanied by a signed release of information authorization sufficient to enable the program coordinator to

independently verify the facts set forth in the application and freely check into the applicant's background and qualifications.

~~Subd. 3. [SCREENING PROCESS.]~~ Rule 903.03 Screening Process

Before an applicant is approved by the program coordinator for inclusion on a panel of guardians ad litem maintained pursuant to ~~subdivision 4~~ subsection .04 of this rule,

(a) the written application shall be reviewed,

(b) the applicant shall be interviewed,

(c) the applicant's references shall be contacted, and

(d) a criminal history and personal background check shall be completed.

~~Subd. 4. [PANEL OF APPROVED GUARDIANS AD LITEM.]~~ Rule 903.04 Panel of Approved Guardians Ad Litem

Each program coordinator shall maintain a current panel of approved guardians ad litem. To be included on the panel, a guardian ad litem shall satisfy the minimum qualifications set forth in Rule 902.

RULE 904 ~~[~~APPOINTMENT OF GUARDIAN~~S~~ AD LITEM.~~]~~

~~Subdivision 1. [REQUEST BY COURT; RECOMMENDATION OF GUARDIAN AD LITEM FOR APPOINTMENT.]~~ Rule 904.01 Request by Court; Recommendation of Guardian Ad Litem for Appointment

Except as provided in ~~subdivision 2~~ subsection .02 of this rule, when the court determines that the appointment of a guardian ad litem is appropriate in a particular case, the court shall request that the program coordinator recommend a guardian ad litem for appointment. In cases where the appointment of a guardian ad litem is statutorily mandated, the request shall be made at the earliest practicable time. Upon receipt of a request, the program coordinator shall promptly recommend a guardian ad litem to the court, applying the factors set forth in ~~subdivision 3~~ subsection .03 of this rule. Unless the court determines, in the exercise of judicial discretion and applying the factors set forth in ~~subdivision 3~~ subsection .03 of this rule, that the guardian ad litem recommended is not appropriate for appointment, and communicates the reasons for that determination to the program coordinator, the court shall enter a written order pursuant to ~~subdivision 4~~ subsection .04 of this rule appointing the guardian ad litem recommended. If the court communicates a determination to not appoint the guardian ad litem recommended, the program coordinator shall promptly recommend another guardian ad litem for appointment.

~~Subd. 2. [DIRECT SELECTION BY COURT.]~~ Rule 904.02 Direct Selection by Court

When the court determines that an emergency exists which requires the appointment of a guardian ad litem with such immediacy that completion of the process set forth in ~~subdivision 1~~ subsection .01 of this rule is not practical, the court may select a guardian ad litem for appointment, applying the factors set forth in ~~subdivision 3~~ subsection .03 of this rule. The court shall enter an order pursuant to ~~subdivision 4~~ subsection .04 of this rule appointing the guardian ad litem.

~~Subd. 3. [FACTORS TO BE CONSIDERED IN SELECTION.]~~ Rule 904.03 Factors to Be Considered in Selection

All pertinent factors shall be considered in the identification and selection of the guardian ad litem to be appointed, including the age, gender, race, cultural heritage, and needs of the child; the cultural heritage, understanding of ethnic and cultural differences, background, and expertise of each available guardian ad litem, as those factors relate to the needs of the child; the caseload of each available guardian ad litem; and such other circumstances as may reasonably bear upon the matter. In every case, the goal is the prompt appointment of an independent guardian ad litem to advocate for the best interests of the child. To be appointed pursuant to ~~subdivision 4~~ subsection .04 of this rule, a guardian ad litem must meet the minimum qualifications set forth in Rule 902, must have no conflict of interest regarding the case, and must be listed on a panel of approved guardians ad litem maintained pursuant to Rule 903.04~~, subdivision 4~~. The parties to a case may recommend that a particular guardian ad litem be appointed, but may not, by agreement, select, or preclude the selection of a particular guardian ad litem for appointment. No person shall be appointed as a guardian ad litem in any case governed by the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act unless that person demonstrates knowledge and an appreciation of the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

~~Subd. 4. [APPOINTMENT ORDER; SPECIFICATION OF DUTIES.]~~ Rule 904.04 Appointment Order; Specification of Duties

A guardian ad litem shall not be appointed or serve except upon written order of the court. The order shall set forth the role of a guardian ad litem; the specific duties to be performed by the guardian ad litem in the case; establish, to the extent appropriate, deadlines for the completion of the duties set forth; and the duration of the appointment.

RULE 905. ~~[~~OATH OR AFFIRMATION.~~]~~

Prior to performing the responsibilities of a guardian ad litem, the guardian ad litem shall take an oath or make an affirmation. At the discretion of the program coordinator, the oath may be taken or the affirmation made at the time the guardian ad litem is included on a panel of approved guardians ad litem maintained pursuant to Rule 903.04, ~~subdivision 4,~~ or at the time the guardian ad litem is appointed to a particular case pursuant to Rule 904.04, ~~subdivision 4,~~ or at both times.

RULE 906. ~~[~~SUPERVISION AND EVALUATION OF GUARDIANS AD LITEM; REMOVAL FROM PANEL.~~]~~

~~Subdivision 1. [SUPPORT, ADVICE, AND SUPERVISION.]~~ Rule 906.01 Support, Advice, and Supervision

The program coordinator shall be responsible to provide support, advice, and supervision to guardians ad litem serving in the county.

~~Subd. 2. [PERFORMANCE EVALUATION.]~~ Rule 906.02 Performance Evaluation

The program coordinator(s) shall provide for the periodic evaluation of the performance of guardians ad litem serving in the judicial district. The evaluation shall be objective in nature and shall include a review of the cases assigned to the guardian ad litem; a review of the guardian ad litem's compliance with the continuing education requirements set forth in Rule 911; inquiries to judges presiding over cases in which the guardian ad litem was appointed; a review of complaints filed against the guardian ad litem, if any; follow-up checks pursuant to Rule 902(c), ~~clause (c),~~ if warranted; and such other information as may have come to the attention of the program coordinator. The evaluation shall be undertaken, at least in part, by means of a written performance evaluation instrument. A written record of the completed evaluation shall be maintained in the guardian ad litem's personnel file. The performance of each guardian ad litem shall be evaluated once during the first six months after the guardian ad litem is first appointed as a guardian ad litem and, thereafter, at least annually.

~~Subd. 3. [REMOVAL FROM PANEL].~~ Rule 906.03 Removal From Panel

On the basis of the performance evaluation, the program coordinator shall determine whether to retain the guardian ad litem on the panel of approved guardians ad litem maintained pursuant to Rule 903.04~~, subdivision 4~~. A guardian ad litem removed from a panel of approved guardians ad litem following an unsatisfactory performance evaluation shall not be eligible for service as a guardian ad litem in any judicial district. When a guardian ad litem is removed from a panel of approved guardians ad litem following an unsatisfactory performance evaluation, notice of the removal shall be given by the program coordinator to the State Court Administrator. The State Court Administrator shall maintain a list of guardians ad litem removed from panels of approved guardians ad litem following unsatisfactory performance evaluations. A guardian ad litem who has been removed from the panel of approved guardians ad litem following an unsatisfactory performance evaluation may submit in writing to the chief judge a request that the chief judge review the decision of the program coordinator.

Advisory Task Force Comments

A guardian ad litem may receive an unsatisfactory performance evaluation and be removed from the panel of guardians ad litem for failure to comply with a directive of the court, including the provisions of the order appointing the guardian ad litem; failure to comply with the responsibilities set forth in Rule 908.01, ~~subdivision 1~~; or for any other reason deemed appropriate by the program coordinator.

In appropriate cases, as an alternative to removal from the panel of guardians ad litem following an unsatisfactory performance evaluation, the program coordinator may place the guardian ad litem on probation, require the guardian ad litem to complete a mentorship, require the guardian ad litem to attend additional training, or take other action deemed appropriate by the program coordinator under the circumstances.

RULE 907. [COMPLAINT PROCEDURE; REMOVAL OF GUARDIAN AD LITEM ROM PARTICULAR CASE.]

~~Subdivision 1. [COMPLAINT PROCEDURE.]~~ Rule 907.01 Complaint Procedure

A person who has concerns regarding the performance of a guardian ad litem may present those concerns to the program coordinator. Upon receipt of a signed, written complaint regarding the performance of a guardian ad litem, the program coordinator shall promptly conduct an investigation into the merits of the complaint. In conducting the investigation, the

program coordinator shall seek information from the person making the complaint and the guardian ad litem, and may seek information from any other source deemed appropriate by the program coordinator. Upon completion of the investigation, the program coordinator shall take whatever action the program coordinator determines to be appropriate, and shall prepare a written report describing the nature of the complaint, the nature and extent of the investigation conducted, and the action taken. A copy of the report shall be provided to the person making the complaint and to the guardian ad litem and, upon request, the complaint, report, or other information shall be made available as permitted by the applicable statutes or rules governing the disclosure of information. If the complaint is found to be meritorious, a copy of the investigation report shall be submitted to the appointing judge. A person receiving the report may request that the chief judge review the decision of or action(s) taken by the program coordinator. Unless authorized by written order following an *in camera* review by the court, neither the report nor the subject matter of the report shall be introduced as evidence or used in any manner in any case in which the guardian ad litem is serving, has served, or may serve in the future.

~~Subd. 2. [REMOVAL OF GUARDIAN AD LITEM FROM PARTICULAR CASE.]~~
Rule 907.02 Removal of Guardian Ad Litem From Particular Case

A guardian ad litem appointed to serve in a particular case may be removed from the case only by order of the presiding judge. A party who wishes to seek the removal of a guardian ad litem for cause must proceed by written motion before the judge presiding over the case. A motion to remove a guardian ad litem for cause shall be served upon the parties and the guardian ad litem and filed and supported in compliance with the applicable rules of court. At the time the motion is served, a copy of the motion and all supporting documents shall be provided to the program coordinator by the party making the motion. A guardian ad litem who has been removed from a particular case may submit in writing to the chief judge a request that the chief judge review the decision of the presiding judge.

Advisory Task Force Comments

As the result of an investigation regarding a complaint, the program coordinator may reprimand or counsel the guardian ad litem, place the guardian ad litem on probation, require the guardian ad litem to complete a mentorship, require the guardian ad litem to attend additional training, remove the guardian ad litem from the panel of approved guardians ad litem, or take other steps deemed appropriate under the circumstances.

A guardian ad litem may be removed from a particular case by the presiding judge for failure to comply with a directive of the court, including the provisions of the order appointing the guardian ad litem; failure to comply with the responsibilities set forth in Rule 908.01~~, subdivision 1~~; or for any other reason deemed appropriate by the presiding judge.

As an alternative to removal from a specific case, the presiding judge may reprimand the guardian ad litem, place the guardian ad litem on probation, require the guardian ad litem to complete a mentorship, require the guardian ad litem to attend additional training, remove the guardian ad litem from the panel of approved guardians ad litem, or direct other action deemed appropriate under the circumstances.

RULE 908. [GENERAL RESPONSIBILITIES OF GUARDIANS AD LITEM; OTHER ROLES DISTINGUISHED; CONTACT WITH COURT.]

~~Subdivision 1. [GENERAL RESPONSIBILITIES OF GUARDIANS AD LITEM.]~~ Rule 908.01 General Responsibilities of Guardians Ad Litem

Consistent with the responsibilities set forth in Minnesota Statutes section 260.155, subdivision 4(b), and section 518.165, subdivision 2a, other applicable statutes and rules of court, and the appointment order entered pursuant to Rule 904.04, ~~subdivision 4,~~ in every family court and juvenile court case in which a guardian ad litem is appointed, the guardian ad litem shall perform the responsibilities set forth in clauses (a) to (n).

(a) The guardian ad litem shall advocate for the best interests of the child.

(b) The guardian ad litem shall exercise independent judgment, gather information, participate as appropriate in negotiations, and monitor the case, which activities must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case.

(c) The guardian ad litem shall, as appropriate to the case, make written and/or oral reports to the court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based.

(d) The guardian ad litem shall complete work in a timely manner, and advocate for timely court reviews and judicial intervention, if necessary.

(e) The guardian ad litem shall be knowledgeable about community resources for placement, treatment, and other necessary services.

(f) The guardian ad litem shall maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child.

(g) The guardian ad litem shall, during service as a guardian ad litem, keep all records, notes, or other information confidential and in safe storage. At the conclusion of service, the guardian ad litem shall keep or destroy the notes and records in accordance with the requirements of the guardian ad litem program.

(h) The guardian ad litem shall complete continuing education requirements, and seek advice as necessary from the program coordinator or, if the program coordinator is not available, from another guardian ad litem.

(i) The guardian ad litem shall treat all individuals with dignity and respect while carrying out her or his responsibilities.

(j) The guardian ad litem shall be knowledgeable about and appreciative of the child's religious background and racial or ethnic heritage, and sensitive to the issues of cultural and socio-economic diversity, and in all cases governed by the Indian Child Welfare Act or the Minnesota Indian Family Heritage Preservation Act shall apply the prevailing social and cultural standards of the Indian community in which the parent or

extended family resides or with which the parent or extended family members maintain social and cultural ties.

(k) The guardian ad litem shall use the guardian ad litem appointment and authority appropriately to advocate for the best interests of the child, avoid any impropriety or appearance of impropriety, and not use the position for personal gain.

(l) The guardian ad litem shall comply with all state and federal laws regarding the reporting of child abuse and/or neglect.

(m) The guardian ad litem shall inform individuals contacted in a particular case about the role of the guardian ad litem in the case.

(n) The guardian ad litem shall ensure that the appropriate appointment and discharge documents are timely filed with the court.

~~Subd. 2. [OTHER ROLES DISTINGUISHED.]~~ Rule 908.02 Other Roles Distinguished

In a case in which a guardian ad litem is serving pursuant to Rule 904.04~~, subdivision 4,~~ the guardian ad litem may not be ordered to, and may not perform the role of mediator, as that role is prescribed in Minnesota Statutes section 518.619 and Rule 310 of these ~~Minnesota Rules of Family Court Procedure~~, or visitation expeditor, as that role is prescribed in Minnesota Statutes sections 518.619 and 518.1751. Unless specified in the appointment order entered pursuant to Rule 904.04, ~~subdivision 4,~~ a guardian ad litem shall not conduct custody or visitation evaluations. A guardian ad litem may not be ordered to conduct a custody or visitation evaluation unless the court makes specific findings in the appointment order that there is no other person who is regularly responsible for the performance of, or who is available to conduct, custody visitation evaluations, and that the guardian ad litem has been properly trained to conduct those evaluations. If ordered to conduct a custody or visitation evaluation, the guardian ad litem shall, as applicable to the case, apply the factors set forth in Minnesota Statutes section 257.025 or section 518.17, subdivisions 1 and 2, and shall be subject to the requirements of Minnesota Statutes section 518.167.

~~Subd. 3. [CONTACT WITH COURT.]~~ Rule 908.03 Contact with Court

Except as to procedural matters not affecting the merits of a case, all communications between the court and the guardian ad litem shall be in the presence of the parties or in writing with copies to the parties, or if represented, the party's attorney.

Advisory Task Force Comments

Contact with the Child.

The guardian ad litem must have sufficient contact with the child to ascertain the best interests of the child. The frequency and duration of contact will vary from child to child depending upon the nature of the case, the age of the child, and the needs of the child.

Considering the Child's Wishes.

The role of a guardian ad litem is to advocate for the best interests of the child, which interests may or may not conflict with the wishes of the child. In arriving at a recommendation as to the child's best interests, one factor that may be considered by the guardian ad litem, as appropriate to each case, is the wishes of the child as to the matters that are before the court. In that regard, the guardian ad litem, as appropriate to each case, may attempt to ascertain the child's wishes regarding the matters that are before the court.

If the guardian ad litem determines that it is appropriate to ascertain the child's wishes, careful interviewing techniques must be used to elicit those wishes without creating conflicts for the child. Directly asking the child for her or his opinion regarding the matters before the court is not recommended, as doing so may create conflict for the child.

For example, directly asking the child for a custody preference is not recommended as it places the child in the position of choosing between two parents for whom the child may care deeply. In addition, if the court implements the child's expressed preference, the child may feel guilty or may feel that the other parent has been betrayed. Instead, questions should be open ended and the guardian ad litem should be prepared to listen carefully.

If the wishes of the child are ascertained, the guardian ad litem should use discretion in deciding whether to communicate those wishes to the court, and/or to the child's parents, and may do so if it is in the child's best interests. Depending upon a number of factors, including the child's age, culture, maturity, emotional stability, and ability to reason, communicate, and understand, the guardian ad litem must be prepared to choose an appropriate course of action. This may include simply listening to the child's wishes, listening and reporting them to the court if appropriate, reporting them to the court even if the guardian ad litem considers them not in the child's best interests, or requesting the court to appoint independent legal counsel for the child for the purpose of representing and advocating for the child's wishes.

Pursuant to Rules 4.06 and 40.02 of the Minnesota Rules of Juvenile Procedure, the child's guardian ad litem is represented by the child's counsel. If the guardian ad litem determines that the wishes of the child conflict with the guardian ad litem's recommendation as to what is in the child's best interests, thereby creating a conflict of interest between the child and the guardian ad litem pursuant to the Rules 4.06 and 40.02, the guardian ad litem shall notify the child, the child's counsel if any, and the court of the existence of the conflict of interest and, if necessary, shall seek appointment of separate counsel to represent the guardian ad litem.

Reports to the Court.

Written reports required by any statute or rule shall be served and filed in a timely manner. *See, e.g.*, Minn. Gen. R. Prac. 108 (written reports must be submitted at least ten days before hearing). Written reports may be updated by oral comments at the hearing.

Serving as a Custody or Visitation Evaluator, Mediator, or Visitation Expeditor.

The roles of guardians ad litem and custody evaluators are not in conflict as, ultimately, each has the responsibility to make recommendations to the court regarding the best interests of the child. Therefore, when ordered to do so, a guardian ad litem may conduct custody and/or visitation evaluations, but only if there are no other persons in the jurisdiction who are regularly responsible for serving in such roles, or such person is not available, and the guardian ad litem (1) is properly trained to conduct such evaluations, and (2) appropriately applies all statutory factors set forth at Minnesota Statutes section 518.17, subdivisions 1 and 2, (family court statute) or section 257.025 (parentage statute).

Guardians ad litem have occasionally been assigned the role of mediator or visitation expeditor. There is an inherent conflict of interest between the role of a guardian ad litem and the role of a person appointed to serve as mediator, as that role is prescribed in Minnesota Statutes section 518.619 and Rule 310 of these ~~Minnesota Rules of Family Court Procedure~~, or visitation expeditor, as that role is prescribed in Minnesota Statutes section 518.1751. Specifically, the responsibilities of mediators or visitation expeditors to facilitate or conduct negotiations, effect settlements, or make decisions which may be binding upon the parties, conflict with the responsibilities of guardians ad litem to advocate for the best interests of the child. Further, unlike information and records obtained by guardians ad litem, information and records obtained by mediators are private and not available as evidence in court proceedings. Therefore, no court should order a person to, and no person should serve in a particular case as both guardian ad litem and mediator, as that role is prescribed in Minnesota Statutes section 518.619 and Rule 310 of these ~~Minnesota Rules of Family Court Procedure~~, or visitation expeditor, as that role is prescribed in Minnesota Statutes section 518.1751. Rule 908.02, ~~subdivision 2~~, however, does not preclude a guardian ad litem from facilitating visitation, or from negotiating or mediating on an informal basis.

Inappropriate Guardian Ad Litem Responsibilities.

The provision of direct services to the child or the child's parents is generally beyond the scope of the guardian ad litem's responsibilities. Therefore, except in special circumstances, the appointing court should not order the guardian ad litem, and the guardian ad litem should not undertake, to provide such direct services. Providing such direct services could create a conflict of interest and/or cause a child or family to become dependent upon the guardian ad litem for services that should be provided by other

agencies or organizations. The guardian ad litem may locate and recommend services for the child and family, but should not routinely deliver services.

Specifically, a guardian ad litem should not: (a) provide "counseling" or "therapy" to a child or parent; (b) foster a friendship or "big brother/big sister" relationship with a child or parent by inviting the child or parent into the home of the guardian ad litem, routinely entertaining the child or parent at the movies, or giving money or gifts to the child or parent; (c) give legal advice or hire an attorney for the child or parent; (d) supervise visits between the child and parent or third parties, except as ordered by the court; (e) routinely provide transportation for the child or parent, except as ordered by the court; (f) provide child care services for the child; (g) make placement arrangements for the child or remove a child from the home; or (h) provide a "message service" for parents to communicate with each other.

~~Specific Responsibilities of Guardians Ad Litem~~.

Rule 908.01, subdivision 1, sets forth the general responsibilities of guardians ad litem in every family and juvenile court case. In addition to these general responsibilities, the Advisory Task Force also identified examples of specific responsibilities that may be required of or assumed by guardians ad litem at different stages of family and juvenile court proceedings, respectively. The examples are intended as practical guides for judges presiding over family and juvenile court proceedings to assist them in assigning to guardians ad litem only those responsibilities which they may be expected to perform and for which they have received training. The examples are also intended as practical guides for guardians ad litem to assist them in those cases where specific instructions have not been provided by the appointing judge.

RULE 909. ~~[~~RIGHTS AND POWERS OF GUARDIANS AD LITEM.~~]~~

~~Subdivision 1. [RIGHTS AND POWERS OF GUARDIANS AD LITEM IN EVERY CASE.]~~ Rule 909.01 Rights and Powers of Guardians Ad Litem in Every Case

Consistent with the responsibilities set forth in Rule 908.01, ~~subdivision 1,~~ in every case in which a guardian ad litem is appointed pursuant to Rule 904.04, ~~subdivision 4,~~ the guardian ad litem shall have the rights and powers set forth in clauses (a) to (e).

(a) The guardian ad litem shall have access to the child and to all information relevant to the child's and family's situation. The access of the guardian ad litem to the child and all relevant information shall not be unduly restricted by any person or agency.

(b) The guardian ad litem shall be furnished copies of all pleadings, documents, and reports by the party which served or submitted them. A party submitting, providing, or serving pleadings, documents, or reports shall simultaneously provide copies to the guardian ad litem.

(c) The guardian ad litem shall be notified of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the case. Timely notice of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the case shall be provided to the guardian ad litem by the party scheduling the proceeding.

(d) The guardian ad litem shall have the right to participate in all proceedings through submission of written and oral reports.

(e) Upon presentation of a copy of the order appointing the guardian ad litem, any person or agency, including, without limitation, any hospital, school, organization, department of health and welfare, doctor, health care provider, mental health provider, chemical health program,

psychologist, psychiatrist, or police department, shall permit the guardian ad litem to inspect and copy any and all records relating to the proceeding for which the guardian ad litem is appointed, without the oral or written consent of the child or the child's parents.

~~Subd. 2. [RIGHTS AND POWERS AS A PARTY.]~~ Rule 909.02 Rights and Powers as a Party

In addition to the rights and powers set forth in ~~subdivision 1~~ subsection .01 of this rule, in every case in which a guardian ad litem is designated, by statute, rule, or order of the court, as a party to the case, the guardian ad litem shall have the rights and powers set forth in clauses (a) to (d). The exercise of these rights and powers shall not constitute the unauthorized practice of law.

(a) The guardian ad litem shall have the right to file pleadings, motions, notices, memoranda, briefs, and other documents, and conduct and respond to discovery, on behalf of the child. The guardian ad litem may exercise these rights on her or his own or may seek the appointment of an attorney to act on her or his behalf.

(b) The guardian ad litem shall have the right to request hearings before the court as appropriate to the best interests of the child.

(c) The guardian ad litem shall have the right to introduce exhibits, subpoena witnesses, conduct direct and cross examination of witnesses, and appeal the decision of the court.

(d) The guardian ad litem shall have the right to fully participate in the proceedings through oral arguments and submission of written reports.

Advisory Task Force Comments

Guardians ad litem have certain rights and powers in every family and juvenile court case, and those rights and powers are identified in ~~subdivision 1~~ Rule 909.01. In addition, in those cases where a guardian ad litem is designated as a party to the case, either by statute, rule, or order of the court, the guardian ad litem should have certain rights and powers beyond those rights and powers present in every case. Following is a summary of the circumstances under which guardians ad litem are designated as parties in family and juvenile court cases and, therefore, endowed with the additional rights and powers set forth in ~~subdivision 2~~ Rule 909.02.

Family Court Cases.

Pursuant to Rule 302.04(b) of these ~~Minnesota R~~rules ~~of Family Court Procedure~~, a guardian ad litem is not automatically a party to a dissolution, legal separation, custody, or domestic abuse proceeding, but "may be designated a party to the proceeding in the order of appointment." The Comment to Rule 302.04(b) provides that a non-party guardian ad litem appointed in a family court proceeding "may only initiate and respond to motions and make oral statements and written reports on behalf of the child."

A guardian ad litem appointed pursuant to the Parentage Act, Minnesota Statutes section 257.60, "becomes a party to the action if the child is made a party." Pursuant to the Comment to Rule 302.04(b), a guardian ad litem who is a party to a paternity determination proceeding "would be entitled to initiate and respond to motions, conduct discovery, call and cross-examine witnesses, make oral or written arguments or reports, and appeal on behalf of the child without the necessity of applying to other court."

Juvenile Court Cases.

While the Minnesota Rules of Juvenile Procedure at Rules 3.03 (juvenile delinquency) and 39.04 (child in need of protection or services) and Minnesota Statutes section 260.155, subdivision 4, establish that a guardian ad litem may under certain circumstances participate in a juvenile court proceeding, neither the rules nor the statute establish the extent of such participation or whether a guardian ad litem may participate as a party. In

considering this issue, however, the Minnesota Supreme Court has cited Minnesota Statutes section 260.155, subdivision 4, for the proposition that a guardian ad litem has "standing as a party to protect the interests of the child." In re the Welfare of Solomon, 291 N.W.2d 364, 369 (Minn. 1980) (child protection and termination of parental rights matter). The Court has cited Minnesota Statutes section 260.155, subdivision 6, for the proposition that the rights accorded to a guardian ad litem who is a party to a juvenile court proceeding are identical to those accorded to other parties, including the right "to be heard, to present evidence material to the case, and to cross-examine witnesses appearing at the hearing."

RULE 910. ~~[~~PRE-SERVICE TRAINING REQUIREMENTS.~~]~~

~~Subdivision 1. [PRE-SERVICE TRAINING REQUIREMENTS FOR NEW GUARDIANS AD LITEM.]~~ Rule 910.01 Pre-Service Training Requirements for New Guardians Ad Litem

The purpose of pre-service training is to equip guardians ad litem with the skills, techniques, knowledge, and understanding necessary to effectively advocate for the best interests of children. To be listed on a panel of approved guardians ad litem maintained pursuant to Rule 903.04, ~~subdivision 4,~~ each person, except those persons who meet the criteria set forth in ~~subdivision 2~~ subsection .02 of this rule, shall satisfy the following pre-service training requirements:

(a) attend a minimum of 40 hours of pre-service training and demonstrate a comprehension of the topics discussed during the training;

(b) if the person intends to serve in family court, attend an additional training course regarding family law matters and demonstrate a comprehension of the topics discussed during the training relating to family law matters; and

(c) if the person intends to serve in juvenile court, attend an additional training course regarding juvenile law matters and demonstrate a comprehension of the topics discussed during the training relating to juvenile law matters.

~~Subd. 2. [PRE-SERVICE TRAINING REQUIREMENTS FOR EXISTING GUARDIANS AD LITEM.]~~ Rule 910.02 Pre-service Training Requirements for Existing Guardians Ad Litem

To be listed on a panel of approved guardians ad litem maintained pursuant to Rule 903.04, ~~subdivision 4,~~ each person appointed to serve as a guardian ad litem prior to the effective date of Rules 901 to 913 shall either:

(a) satisfy the pre-service training requirements set forth in ~~subdivision 1~~ subsection .01 of this rule; or

(b) submit to the program coordinator written proof sufficient to verify that the person has undergone previous training substantially similar in nature and content to that provided by the pre-service training requirements set forth in ~~subdivision 1~~ subsection .01 of this rule. The person must attend those sessions of the pre-service training for which the person is unable to provide written proof of prior training. The program coordinator shall identify the training sessions which the person must attend.

~~Subd. 3. [INTERNSHIP REQUIREMENTS.]~~ Rule 910.03 Internship Requirements

In addition to satisfying the pre-service training requirements set forth in either ~~subdivision 1 or 2~~ subsections .01 or .02 of this rule, whichever is applicable, during the six months immediately following the date on which the person's name is listed on a panel of approved guardians ad litem, each person who intends to serve as a guardian ad litem in juvenile court shall make a reasonable, good faith effort to satisfy the internship requirements set forth in clauses (a) to (d), and each person who intends to serve as a guardian ad litem in family court shall make a reasonable, good faith effort to satisfy the internship requirements set forth in clauses (e) and (f), or submit to the program coordinator written proof sufficient to verify that the person has previously satisfied the requirements.

(a) Visit a shelter and foster home.

(b) Visit the local social service agency and/or child protection office.

(c) With the court's permission, observe a variety of juvenile court proceedings, including, but not limited to, an initial child protection hearing, a child protection review hearing, a foster care review hearing, and an administrative review.

(d) Intern with an experienced guardian ad litem on at least two juvenile court cases.

(e) Observe a variety of family court proceedings, including, but not limited to, a temporary relief hearing, a child custody hearing, and a domestic abuse hearing.

(f) Intern with an experienced guardian ad litem on at least two family court cases.

Advisory Task Force Comments

If an attorney wishes to receive continuing legal education credits for attending guardian ad litem pre-service training and/or continuing education courses, it shall be the sole responsibility of that person to apply for accreditation from the State Board of Continuing Legal Education, and the State Board of Continuing Legal Education shall have sole discretion in determining whether accreditation shall be accorded and, if so, to what extent. If the guardian ad litem is a member of a profession which requires continuing education credits, and the guardian ad litem wishes to receive credits for attending guardian ad litem pre-service training and/or continuing education courses, it shall be the sole responsibility of the guardian ad litem to apply for accreditation from the professional body responsible for approving courses of credit.

RULE 911. [CONTINUING EDUCATION REQUIREMENTS.]

Once a guardian ad litem is listed on a panel of approved guardians ad litem maintained pursuant to Rule 903.04, ~~subdivision 4,~~ the guardian ad litem may maintain that listing only by annually completing eight hours of continuing education. The continuing education requirement shall begin in the calendar year following the year in which the guardian ad litem is first listed on a panel of approved guardians ad litem and shall continue each year thereafter until such time as the guardian ad litem is no longer listed on the panel of approved guardians ad litem.

RULE 912. ~~[~~TRAINING CURRICULA; CERTIFICATION OF TRAINERS.~~]~~

~~**Subdivision 1. [PRE-SERVICE TRAINING CURRICULUM.]**~~ **Rule 912.01 Pre-Service Training Curriculum**

The State Court Administrator, through the Office of Continuing Education in consultation with the Advisory Task Force on the Guardian Ad Litem System, shall develop a core curriculum to be used in the pre-service training of guardians ad litem and guardian ad litem program coordinators. The pre-service training curriculum should be reviewed and updated at least every three years.

~~**Subd. 2. [CONTINUING EDUCATION CURRICULUM.]**~~ **Rule 912.02 Continuing Education Curriculum**

The continuing education curriculum shall include developments in relevant guardian ad litem, family court, or juvenile court topics.

~~**Subd. 3. [CERTIFICATION OF TRAINERS.]**~~ **Rule 912.03 Certification of Trainers**

The pre-service training and continuing education of guardians ad litem shall be coordinated by persons certified by the State Court Administrator through the Office of Continuing Education. To be certified, a person shall satisfy the following qualifications ~~set forth in clauses (a) to (d)~~.

(a) The person shall have substantial knowledge, training, and experience regarding the roles and responsibilities of guardians ad litem.

(b) The person shall understand the policies, procedures, and functions of family and juvenile court.

(c) The person shall have substantial experience and be competent in providing technical training to adults.

(d) The person shall complete the pre-service training program developed by the State Court Administrator, through the Office of Continuing Education in consultation with the Advisory Task Force on the Guardian Ad Litem System.

RULE 913. ~~[~~COMMUNITY EDUCATION.~~]~~

The State Court Administrator, in consultation with the Advisory Task Force on the Guardian Ad Litem System, shall develop a brochure, the purpose of which shall be to educate judges, attorneys, parents, case participants, and others regarding the purpose, roles, and responsibilities of guardians ad litem, and opportunities to serve as a guardian ad litem. Each judicial district shall provide for distribution of the brochure to interested persons.