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# MINNESOTA SUPREME COURT

## ADVISORY TASK FORCE ON THE GUARDIAN AD LITEM SYSTEM

**FINAL REPORT**

**February 16, 1996**

STATE OF MINNESOTA

IN SUPREME COURT

CO-95-1475

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**ADVISORY TASK FORCE ON THE  
GUARDIAN AD LITEM SYSTEM**

**FINAL REPORT**

**February 16, 1996**

Minnesota Supreme Court  
State Court Administration  
Office of Research and Planning  
25 Constitution Avenue, Suite 120  
St. Paul, Minnesota 55155  
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## **PART I: INTRODUCTION**

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### **A. ACKNOWLEDGEMENTS**

The Minnesota Supreme Court Advisory Task Force on the Guardian Ad Litem System wishes to thank all who contributed to the work of the Task Force. Although too numerous to individually name, the Task Force expresses its special appreciation to those members of the public, including guardians ad litem, parents, judges, attorneys, court personnel, and public and private agencies, organizations, interest groups, and advocacy groups, who significantly contributed to the work of the Task Force by submitting written and oral comments regarding the draft of rules proposed by the Task Force. Initial formulation of the Task Force's policy considerations was based, in part, upon the findings and recommendations of the Legislative Auditor set forth in the 1995 Report evaluating Minnesota's guardian ad litem system. The final policy concepts, however, were developed only after careful consideration of, and extensive deliberation regarding the comments submitted by members of the public committed to improving the quality of guardian ad litem services in Minnesota. To those persons, the Task Force is truly grateful.

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## **PART I: INTRODUCTION**

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### **B. TASK FORCE MEMBERSHIP**

***CHAIR:***

**Honorable Stephen D. Swanson**  
District Court Judge, Fourth Judicial District

***SUBCOMMITTEE CHAIRS:***

**Roles and Responsibilities:**

**Honorable Steven D. Wheeler**  
Chief Judge, Worker's Compensation Court of Appeals;  
Guardian Ad Litem (Hennepin County)

**Selection, Appointment, and Supervision:**

**Honorable Stephen D. Swanson**  
District Court Judge, Fourth Judicial District

**Training and Education:**

**Jean F. Holloway**  
Attorney at Law; Children's Defense Fund - Minnesota

***MEMBERS:***

**Honorable Howard R. Albertson**, District Court Judge, Tenth Judicial District (Washington County)

**Bettie Genrich Anderson**, Guardian Ad Litem (Douglas County); Guardian Ad Litem Training Instructor (Seventh Judicial District)

**Honorable Stephen J. Askew**, District Court Judge, Tenth Judicial District (Anoka County)

**Candace Barr**, Attorney at Law; Guardian Ad Litem (Hennepin County)

**Honorable Timothy J. Baland**, District Court Judge, Seventh Judicial District (Wadena County)

**Honorable Tanya M. Bransford**, District Court Judge, Fourth Judicial District (Hennepin County Juvenile Court)

**Karim El-Ghazzaway**, Attorney at Law; Guardian Ad Litem (Hennepin County)

**Patricia Gimbel**, Attorney at Law; Guardian Ad Litem (Crow Wing County)

**Peggy Flaig Hellier**, Assistant County Attorney (Scott County)

## **PART I: INTRODUCTION**

**Steven Hirsh**, Managing Attorney, Anishinabe Legal Services (Leech Lake, White Earth and Red Lake Reservations) (Becker, Beltrami, Cass, Clearwater, Hubbard, Itasca, and Mahnommen Counties)

**Eileen Hudon**, Child Advocacy Coordinator, Minnesota Coalition for Battered Women

**Nancy Jones**, Assistant County Attorney (Hennepin County)

**Carol Leopold**, Guardian Ad Litem Program Coordinator (Kandiyohi County)

**Karen Linder**, Attorney at Law; Guardian Ad Litem (Hennepin, Dakota, Scott, and Carver Counties)

**Janice Lindstrom**, State of Minnesota Ombudsperson for Indian Families

**Janet Mahle**, Guardian Ad Litem Program Coordinator (Olmsted County)

**Hugh McLeod III**, Children First Organization; Attorney at Law (Ramsey and Washington Counties)

**Honorable J. Thomas Mott**, District Court Judge, Second Judicial District (Ramsey County)

**Karen Nasby**, Assistant Public Defender (Hennepin County)

**Jo Prouty**, Guardian Ad Litem Program Director (Ramsey County)

**Sigrid Ruhland**, Guardian Ad Litem Program Coordinator (Carver, LeSuer, McLeod, Scott, and Sibley Counties)

**Patti Schneider**<sup>1</sup>, Robert B. Lewis Shelter Intervention Project (Dakota County)

**Charlotte Sitzer**, Family Court Services (Ramsey County)

**Marie Sunlitis**, Court Administrator (Washington County)

**Mark Vierling**, Attorney at Law; Guardian Ad Litem (Washington County)

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<sup>1</sup>The Minnesota Coalition for Battered Women was originally represented on the Task Force by Patti Schneider. Pursuant to the request of that organization, in December, 1995, Eileen Hudon replaced Ms. Schneider as a member of the Task Force.

## **PART I: INTRODUCTION**

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### ***SUPREME COURT LIAISON:***

**Honorable A.M. Keith**, Chief Justice, Minnesota Supreme Court

### ***STAFF:***

**Janet K. Marshall**, Director of Planning, State Court Administration

**Judith C. Nord**, Staff Attorney, Advisory Task Force on the Guardian Ad Litem System, State Court Administration

## **PART II: EXECUTIVE SUMMARY**

### **A. MINNESOTA'S CURRENT GUARDIAN AD LITEM SYSTEM**

In 1975, in response to the Federal Government's enactment of the Child Abuse Prevention and Treatment Act, Minnesota enacted legislation mandating the appointment of a guardian ad litem in every juvenile court proceeding involving child abuse or neglect. Similar legislation was adopted by the Legislature in 1985 regarding family court proceedings involving child abuse or neglect. At the time Minnesota enacted its child protection legislation, there was no obvious state agency to administer a statewide guardian ad litem program. As a result, Minnesota delegated the responsibility for overseeing guardian ad litem appointments to the counties, resulting in a decentralized system.

During the 1980s, the Minnesota Judges Association began to recognize the ever-increasing role, and the ever-increasing number of appointments of guardians ad litem in family and juvenile court cases. The Judges Association also recognized, however, that there was a lack of statutes, rules, and case law defining the roles and responsibilities of guardians ad litem, leading to confusion about what guardians ad litem should and should not be doing once they were appointed to cases. Some judges appointed guardians ad litem for the purpose of making recommendations regarding the best interests of the child (the main role of a guardian ad litem), while other judges assigned additional duties, including serving as a custody evaluator, mediator, or visitation expeditor. As a result of the lack of clarity regarding the roles and responsibilities of guardians ad litem, and partly in response to the 1985 legislation regarding appointment of guardians ad litem in family court cases, in June, 1986, the Judges Association published Guidelines for Guardians Ad Litem, a manual setting guidelines for serving as a guardian ad litem in family and juvenile court cases. The Guidelines are not mandatory and do not carry the authority of a rule. Moreover, the Guidelines were not widely distributed and, as a result, are used only sporadically throughout Minnesota.

The decentralized guardian ad litem system still exists today. Today, every court in each of Minnesota's ten judicial districts appoints guardians ad litem to advocate for the best interests of the children involved in certain family and juvenile court cases. Minnesota's statutes specify the types of cases for which guardian ad litem appointments are mandatory, as well as those where appointment of a guardian ad litem is discretionary. However, because of the absence of uniform guardian ad litem standards, the practices and procedures for selecting, appointing, training, supervising, evaluating, and removing guardians ad litem currently vary from judicial district to judicial district, and often from county to county and from judge to judge within each district. Specifically, Minnesota's judicial districts do not identically define the qualifications or training necessary to become a guardian ad litem; the practices for selecting, appointing, supervising, evaluating, or removing a guardian ad litem; the responsibilities of a guardian ad litem; or the distinctions between the roles and responsibilities of guardians ad litem and the roles and responsibilities of other professionals, such as attorneys for children, custody evaluators, visitation expeditors, mediators, and social workers.

## **PART II: EXECUTIVE SUMMARY**

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With the increase in the number of cases to which guardians ad litem are being appointed has come a growing awareness that the optimal way to advocate for the best interests of Minnesota's children in family and juvenile court proceedings is through the appointment of qualified, well-trained guardians ad litem whose roles and responsibilities are clearly defined. There is also a growing awareness that guardians ad litem may be better equipped to advocate for the best interests of children if they are part of well-managed, structured guardian ad litem programs operating under clearly defined policies and procedures for selecting, training, supervising, evaluating, and removing guardians ad litem. There is a further awareness that guardians ad litem, judges, attorneys, parents, case participants, and members of the public should be educated regarding these standard policies and procedures.

### **B. REPORT OF LEGISLATIVE AUDITOR**

The absence of uniform guardian ad litem standards has resulted in the public expressing concerns to the Legislature regarding the quality of services provided by Minnesota's guardians ad litem. As a result of those concerns, in 1994 the Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate guardian ad litem services in Minnesota and elsewhere, and to make recommendations for improving Minnesota's guardian ad litem system. In February, 1995, the Legislative Auditor submitted its report to the Legislature, concluding that "guardian ad litem services in Minnesota could be improved if the State -- the Legislature and the Supreme Court -- provided more guidance to Minnesota counties and district courts." While setting forth numerous detailed recommendations regarding guardian ad litem selection, training, qualifications, supervision, evaluation, and program operation, the Legislative Auditor generally recommended that "the Legislature should clearly articulate the primary roles of guardians ad litem in Minnesota Statutes" and "the Supreme Court should update and adopt the 1986 Guidelines for Guardians Ad Litem."

Based upon the recommendations of the Legislative Auditor, during its 1995 session the Minnesota Legislature amended the existing guardian ad litem statutes, for both family court and juvenile court matters, to provide as follows:

A guardian ad litem shall carry out the following responsibilities:

- (a) conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which 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; interviewing parents, caregivers, and others with knowledge relevant to the case;



## **PART II: EXECUTIVE SUMMARY**

- (b) advocate for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;
- (c) 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;
- (d) monitor the child's best interests throughout the judicial proceeding; and
- (e) present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.

In addition to articulating the primary responsibilities of guardians ad litem, the Legislature also directed the State Court Administrator to report to the Chairs of the Judiciary Committees of the House of Representatives and Senate by February 15, 1996, regarding adoption of rules and guidelines to deal with the specific recommendations set forth in the Report of the Legislative Auditor.

### **C. ESTABLISHMENT OF ADVISORY TASK FORCE ON THE GUARDIAN AD LITEM SYSTEM**

To accomplish the directive of the Legislature, the State Court Administrator requested that the Minnesota Supreme Court establish an advisory committee to assist with the development of rules and guidelines to deal with the concerns raised by the Legislative Auditor. On July 26, 1995, the Minnesota Supreme Court issued an Order establishing the Advisory Task Force on the Guardian Ad Litem System. The twenty-seven members of the Task Force include judges, attorneys, guardians ad litem (including volunteers, paid attorneys, and paid non-attorneys), program coordinators, court personnel, and representatives of child- and parent-related interest and advocacy groups from throughout the State of Minnesota, all of whom are dedicated to improving the quality of services provided by Minnesota's guardians ad litem and the effectiveness of its guardian ad litem system.

In the Order establishing the Task Force, the Supreme Court charged the Task Force with the responsibility for developing "rules and guidelines" to deal with the following issues:

1. guardian ad litem selection, training, evaluation, and removal;
2. distinguishing the roles of guardians ad litem and custody evaluators;

## **PART II: EXECUTIVE SUMMARY**

3. developing procedures for guardians ad litem to work with parents who have an order for protection;
4. requiring judges to write more detailed appointment orders defining their expectations of the guardian ad litem role;
5. ascertaining and communicating to the court the wishes of the child regarding matters before the court;
6. developing standards for contact between the guardian ad litem and the child, specifying when limited or no contact with the child may be appropriate;
7. developing a procedure for bringing complaints against a guardian ad litem;
8. specifying selection criteria, responsibilities, and necessary training for guardian ad litem program coordinators;
9. educating parents, judges, attorneys, and other professionals about the purpose and role of guardians ad litem; and
10. such other areas of the guardian ad litem system as deemed appropriate by the advisory committee.

### **D. OVERVIEW OF TASK FORCE ORGANIZATIONAL STRUCTURE AND DELIBERATIONS**

At its first meeting on August 10, 1995, the Task Force agreed to organize into three subcommittees, corresponding to three general topics: training and education for guardians ad litem, judges, case participants, and the public; guardian ad litem roles and responsibilities; and selection, appointment, supervision, evaluation, and removal of guardians ad litem. The Task Force subcommittees met in August, September, and October and undertook the challenge of drafting recommendations to resolve the various issues identified by the Supreme Court. Included in this process was a review of the findings and recommendations of the Legislative Auditor regarding its evaluation of Minnesota's guardian ad litem system. The recommendations of the three subcommittees were compiled into one comprehensive set of proposed rules and guidelines for review by all members of the Task Force.

## **PART II: EXECUTIVE SUMMARY**

The full Task Force reconvened in November, 1995, at which time it began reviewing the subcommittees' recommended rules and guidelines. In early December, 1995, the proposed rules and guidelines were revised based upon the policy decisions made by the Task Force, and were drafted into the format of Proposed Rules, as directed by the Supreme Court in its Order establishing the Task Force. On December 4, 1995, the Task Force distributed the Second Draft of Proposed Rules to over 460 organizations, advocacy and interest groups, and individuals throughout the State of Minnesota, each of whom is involved with or interested in Minnesota's guardian ad litem system. The Task Force requested written comments regarding the provisions of the Proposed Rules. In January, 1996, the Task Force also held a special meeting during which oral comments regarding the provisions of the Proposed Rules were received. The Task Force received extensive written and oral comments regarding the provisions of the Proposed Rules. During meetings held in January and February, 1996, the Task Force carefully considered the public's comments as it debated the issues set forth in the Supreme Court Order and the policy considerations they raised. Through this process the Task Force finalized its work product, the Proposed Minnesota Rules of Guardian Ad Litem Procedure.

### **E. TASK FORCE RECOMMENDATIONS**

As charged by the Supreme Court in its Order dated July 26, 1995, the Task Force examined the Report of the Legislative Auditor and carefully considered all information available to it regarding Minnesota's guardian ad litem system, including the comments received from interest groups, advocacy groups, and members of the public. As a result of its efforts, the Task Force makes the following recommendations, which are also set forth in Part V of this Report:

1. The Minnesota Supreme Court should proceed to adopt the Proposed Minnesota Rules of Guardian Ad Litem Procedure, and, based upon a fiscal impact analysis to be prepared by the State Court Administrator, determine appropriate dates for implementation and to what extent, if any, funding considerations should be addressed by the Minnesota Legislature.
2. In the rule-adoption process, the Minnesota Supreme Court should establish an effective date for implementation of the Proposed Rules that allows for the continuation of guardian ad litem services pending full implementation by judicial districts and guardian ad litem programs.
3. The Proposed Rules are intended to be consistent with and to conform to the requirements of Minnesota's existing law and procedure. To the extent that there are conflicts with existing statutes or rules, all inconsistent statutes or rules should be re-evaluated and amended in light of and with reference to the Proposed Rules.

## **PART II: EXECUTIVE SUMMARY**

4. The State Court Administrator, through the Office of Continuing Education in consultation with the Task Force, should immediately begin to develop the pre-service training and continuing education curricula and a program for the certification of persons to coordinate the delivery of training, as prescribed in Rule 12 of the Proposed Rules.

5. The State Court Administrator, through the Office of Continuing Education in consultation with the Task Force, should provide for the training of judges regarding the purpose, roles, and responsibilities of guardians ad litem, and the application of the Proposed Rules.

6. The State Court Administrator, in consultation with the Task Force, should prepare a brochure, the purpose of which should be to educate judges, attorneys, parents, case participants, and others regarding the purpose, roles, and responsibilities of guardians ad litem and regarding opportunities to serve as a guardian ad litem.

7. Because the majority of cases in which guardians ad litem are appointed to serve are in family and juvenile court, the Task Force limited itself to developing Proposed Rules regarding these two areas. The Minnesota Supreme Court should consider the need for adoption of rules to guide those involved in probate and civil commitment proceedings.

8. Included among the appendices to the Proposed Rules is a Guardian Ad Litem Application (Appendix A to the Proposed Rules) and a model for Screening Process Topics and Interview Questions (Appendix B to the Proposed Rules). While the Task Force agreed upon the content of these two appendices, they have not been reviewed with regard to their compliance with Title VII, the Minnesota Human Rights Act, the Americans with Disabilities Act, or any other state or federal statutes. As part of the rule-adoption process, the Guardian Ad Litem Application and the Screening Process Topics and Interview Questions should be reviewed for compliance with state and federal statutes.

9. The Minnesota Supreme Court should charge the Task Force with the continuing responsibility of advising the Court in its implementation of paragraphs 1 to 8.

### **F. OVERVIEW OF TASK FORCE REPORT**

This Report is divided into seven Parts, including the Introduction (Part I) and this Executive Summary (Part II). Part III summarizes the milestones leading to formation of the Advisory Task Force on the Guardian Ad Litem System. Included is a summary of the Child Abuse Prevention and Treatment Act, the first Federal legislation specifically designed to address the issues of child abuse and neglect and to require the appointment of guardians ad litem in

## **PART II: EXECUTIVE SUMMARY**

cases involving child abuse and neglect; a brief history of Minnesota's guardian ad litem system; a summary of the 1995 Report of the Legislative Auditor evaluating and making recommendations for improvement of Minnesota's guardian ad litem system; a summary of the Legislature's response to the Report of the Legislative Auditor, including a request that the State Court Administrator address the issues raised by the Legislative Auditor; and a summary of the Supreme Court Order establishing the Task Force, including the issues to be addressed by the Task Force.

Section A of Part IV of the Report describes the organizational structure and procedural methods of the Task Force. Section B of Part IV includes a detailed examination of the issues delineated in the Supreme Court Order, including a summary of the findings and recommendations of the Legislative Auditor; a summary of the deliberations of the Task Force, including the public policy considerations reviewed by the Task Force; and the provisions of the Proposed Rules recommended by the Task Force for resolving each issue. Section C of Part IV sets forth a summary of additional issues considered by the Task Force: implementation of the Proposed Rules, including funding considerations; recruitment of guardians ad litem; distinguishing the roles of guardians ad litem and mediators or visitation expeditors; and communication between guardians ad litem and judges. Section C also summarizes the Task Force's deliberations regarding three issues for which alternative language is proposed by some members of the Task Force. As noted below, the proposed alternative language for each issue is set forth in an Appendix, Part VII, of the Report.

Part V of the Report sets forth the Recommendations of the Task Force, which are also set forth above in Section E.

Part VI of the Report sets forth the Proposed Minnesota Rules of Guardian Ad Litem Procedure.

Part VII of the Report sets forth three Appendices, including alternative language to Rule 7, subdivision 2, proposing removal of a guardian ad litem without cause from a pending case; alternative language to Rule 8, subdivision 2, proposing that guardians ad litem be permitted to serve as visitation expeditors; and alternative language to Rule 4, subdivisions 1 and 2, proposing selection of guardians ad litem by the appointing judge.

## **PART III: TASK FORCE BACKGROUND**

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### **A. FEDERAL LEGISLATION REGARDING GUARDIANS AD LITEM**

"Concerns about child abuse as a problem of national magnitude are of relatively recent origin."<sup>2</sup> In fact, it was not until 1962 that child abuse was formally recognized as a medical condition.<sup>3</sup> Awareness of the effects and widespread incidence of child abuse and neglect grew throughout the 1960s and early 1970s, as did public support for establishment of child protective services.<sup>4</sup> In 1974, the Federal Government responded to the public outcry by enacting the Child Abuse Prevention and Treatment Act [hereinafter CAPTA],<sup>5</sup> which instituted "the first Federal programs specifically designed to address the problems of child abuse and neglect."<sup>6</sup> CAPTA offered Federal grants to States to assist them in "developing, strengthening, and carrying out child abuse and neglect prevention, treatment, and research programs."<sup>7</sup> To qualify for Federal funding to improve child protection services, CAPTA required each State to enact legislation providing for the appointment of a guardian ad litem in every judicial proceeding involving an abused or neglected child.<sup>8</sup>

### **B. BRIEF HISTORY OF GUARDIANS AD LITEM IN MINNESOTA**

Within one year of CAPTA's enactment, Minnesota adopted legislation mandating the appointment of a guardian ad litem in every juvenile court proceeding involving child abuse or neglect.<sup>9</sup> Similar legislation was enacted in 1986 mandating appointment of a guardian ad litem in every family court proceeding involving child abuse or neglect.<sup>10</sup> While the courts in some

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<sup>2</sup>H.R. Rep. 100-135, 100th Cong., 2nd Sess. at 75 (1988).

<sup>3</sup>*Id.*

<sup>4</sup>*Id.*

<sup>5</sup>42 U.S.C. §§ 5101 to 5119 (1974).

<sup>6</sup>H.R. Rep. 100-135, *supra* note 2, at 75.

<sup>7</sup>42 U.S.C. § 5106a(a)(5).

<sup>8</sup>*Id.* at § 5106a(b)(6).

<sup>9</sup>Minn. Stat. § 260.155, subd. 4 (1975 & 1995).

<sup>10</sup>*Id.* at § 518.165, subd. 2 (1986 & 1994). *See also* Minn. Stat. § 518.165, subd. 1 (1986 & 1994) (discretionary appointment of guardian ad litem in family court matters when custody or visitation is an issue).

### **PART III: TASK FORCE BACKGROUND**

Minnesota counties had previously begun appointing guardians ad litem on a limited basis,<sup>11</sup> it was not until after enactment of CAPTA that widespread appointment of guardians ad litem began in earnest.<sup>12</sup> Under CAPTA, implementation of guardian ad litem programs and establishment of guardian ad litem qualifications, training requirements, and responsibilities was left to each State.<sup>13</sup> When Minnesota enacted its child protection legislation, there was no obvious state agency to administer a statewide guardian ad litem program.<sup>14</sup> Consequently, like most states, Minnesota delegated the responsibility for managing guardian ad litem appointments and developing guardian ad litem programs, if any, to individual district courts and counties, resulting in a decentralized system.<sup>15</sup>

The decentralized system remains in place today. Minnesota counties currently vary as to the management structures of their guardian ad litem programs. These structures range from management by court services or court administration, to management by contract with independent for-profit or non-profit agencies.<sup>16</sup> Differences among the structures of the county-based guardian ad litem programs "reflect the significant demographic, social, and economic variations that exist in Minnesota."<sup>17</sup> The counties also vary as to the types of programs used to deliver guardian ad litem services, including use of volunteers, paid attorneys, paid non-attorneys, or various combinations of each.<sup>18</sup> The type of guardian ad litem program in place in each county depends upon "the case volume, local resources, history, and philosophy of the court."<sup>19</sup> In Minnesota, most guardians ad litem are women, and relatively few guardians ad litem are persons of color.<sup>20</sup>

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<sup>11</sup>Guardians Ad Litem, Program Evaluation Division, Office of the Legislative Auditor, State of Minnesota [hereinafter Report of Legislative Auditor] at 7 (February, 1995).

<sup>12</sup>Id. at 6.

<sup>13</sup>Id.

<sup>14</sup>Id. at 7.

<sup>15</sup>Id.

<sup>16</sup>Id.

<sup>17</sup>Id. at 17.

<sup>18</sup>Id. at 21.

<sup>19</sup>Id. at 23.

<sup>20</sup>Id. at 24.

### **PART III: TASK FORCE BACKGROUND**

In Minnesota, as elsewhere, the cases to which guardians ad litem are appointed are often contentious and emotionally charged, and the outcomes are seldom satisfactory to all parties.<sup>21</sup> Under Minnesota law, appointment of a guardian ad litem is mandatory in every proceeding for custody, marriage dissolution, or legal separation "in which custody or visitation is an issue, if the court has reason to believe that the minor child is a victim of domestic child abuse or neglect."<sup>22</sup> In all other family court proceedings in which custody or visitation is an issue, appointment of a guardian ad litem is within the discretion of the court.<sup>23</sup> In juvenile court proceedings, appointment of a guardian ad litem is mandatory "when it appears, at any stage of the proceedings, that the minor is without a parent or guardian, or that the minor's parent is a minor or incompetent, or that the parent or guardian is indifferent or hostile to the minor's interests, and in every proceeding alleging a child's need for protection or services."<sup>24</sup> In all other juvenile court proceedings, appointment of a guardian ad litem is within the discretion of the court.<sup>25</sup>

CAPTA provides no guidance as to the specific responsibilities of a guardian ad litem, only that the role of a guardian ad litem is to "represent the child."<sup>26</sup> Prior to 1995, some conflict existed in Minnesota as to whether the role of a guardian ad litem was to "represent the interests of the child"<sup>27</sup> or to "protect the interests of the minor."<sup>28</sup> While this language was retained, in 1995 the Legislature enacted legislation which virtually eliminated the conflict. The legislation clearly establishes that in Minnesota the role of a guardian ad litem in family and

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<sup>21</sup> *Id.* at 18.

<sup>22</sup> Minn. Stat. § 518.165, subd. 2 (1994).

<sup>23</sup> *Id.* at subd. 1.

<sup>24</sup> *Id.* at § 260.155, subd. 4(a).

<sup>25</sup> *Id.*

<sup>26</sup> Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a(b)(6) (1974).

<sup>27</sup> Minn. Stat. § 518.165, subs. 1, 2 (1994) (dissolutions, legal separations, and custody proceedings). See also Minn. Stat. § 257.60 (1994) (paternity matters).

<sup>28</sup> *Id.* at § 260.155, subd. 4(a) (1994) (juvenile court proceedings). See also Minn. R. Juv. P. 5.01, 41.01 (1995) (delinquency and child protection rules providing that the role of the guardian ad litem is to "protect the interests of the child").



### **PART III: TASK FORCE BACKGROUND**

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juvenile court cases is to "advocate for the child's best interests."<sup>29</sup> In contrast to the role of a guardian ad litem, the role of an attorney for the child is to represent to the court the wishes of the child.<sup>30</sup>

#### **C. MINNESOTA JUDGES ASSOCIATION'S 1986 GUIDELINES FOR GUARDIANS AD LITEM**

The Minnesota Judges Association recognized the ever-increasing role of guardians ad litem in both juvenile and family court cases, as well as the significant benefit provided to courts by the services of guardians ad litem.<sup>31</sup> The Judges Association realized that to assure the provision of high quality guardian ad litem services throughout the State, "it is necessary to provide clear expectations of the role and responsibilities of the guardian ad litem."<sup>32</sup> The Judges Association recognized, however, that there was "a lack of case law and legislation defining the responsibilities of the guardian ad litem" which could "result in significant gaps in mandating how the duties of the guardian ad litem should be carried out."<sup>33</sup> In June, 1986, partly in response to legislation requiring use of guardians ad litem in family court cases in which child abuse or neglect was at issue, the Minnesota Judges Association published Guidelines For Guardians Ad Litem [hereinafter Guidelines], a manual setting forth "guidelines for guardian ad litem practice in family and juvenile courts."<sup>34</sup>

In developing the Guidelines, the Judges Association received input from "judges, guardian ad litem program coordinators, guardians ad litem, and court personnel from thirteen [Minnesota] counties" representing both rural and urban settings.<sup>35</sup> The Guidelines set forth "a compilation of practices and policies already in use, as well as concepts suggested by those

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<sup>29</sup>Minn. Stat. §§ 518.165, subdivision 2a(2) (Supp. 1995) (family court) and 260.155, subdivision 4(b)(2) (Supp. 1995) (juvenile court).

<sup>30</sup>Report of Legislative Auditor, supra note 11, at 5-6.

<sup>31</sup>Guidelines for Guardians Ad Litem [hereinafter Guidelines], Minnesota Judges Association, at Introduction (first unnumbered page) (June, 1986).

<sup>32</sup>Id.

<sup>33</sup>Id.

<sup>34</sup>Id.

<sup>35</sup>Id.

### **PART III: TASK FORCE BACKGROUND**

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providing or utilizing guardian ad litem services."<sup>36</sup> The practices and procedures recommended in the Guidelines reflect the Judges Association's policy consideration that "there is no ideal method or practice" for establishing a quality guardian ad litem program.<sup>37</sup> Rather, each guardian ad litem program "is affected by factors such as whether it is urban or rural, the size of the program, and the financial resources available to it."<sup>38</sup> In drafting the Guidelines, the Judges Association recognized that "each county is autonomous in its operation, and each presiding judge must address the individual case situation and apply the most fitting solution. Most important in these suggested guidelines is the need for flexibility to be applied as situations arise."<sup>39</sup>

The Guidelines are not mandatory, "do not carry the authority of statute or rule, are not uniformly applied, and are inconsistent with some [recently adopted] court rules related to guardians ad litem."<sup>40</sup> The Guidelines have been cited in Minnesota case law, most notably regarding the issue of guardian ad litem immunity.<sup>41</sup> Rather, the Guidelines set forth recommended practices and procedures for recruiting, screening, training, supervising, evaluating, and removing guardians ad litem, as well as recommended guardian ad litem responsibilities and suggestions for effective guardian ad litem program operation. The Guidelines also distinguish the types of cases for which appointment of a guardian ad litem is mandatory or discretionary. Included in the Guidelines are numerous appendices setting forth examples of screening interview questions, appointment orders, evaluation forms, and data practices policies, as well as summaries of statutes and rules affecting guardians ad litem.

Although the Minnesota District Judges Association, in conjunction with the Minnesota Association of Guardians Ad Litem, began drafting revisions to the Guidelines in the Fall of 1993, the Guidelines have never been formally updated.

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<sup>36</sup>Id. at second unnumbered page.

<sup>37</sup>Id.

<sup>38</sup>Id.

<sup>39</sup>Id.

<sup>40</sup>Report of Legislative Auditor, supra note 11, at x (Executive Summary).

<sup>41</sup>Tindell v. Rogosheske, 421 N.W.2d 340, 342 (Minn Ct. App. 1988), aff'd, 428 N.W.2d 386 (Minn. 1988).

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### **D. FEBRUARY, 1995, REPORT OF LEGISLATIVE AUDITOR**

Over the past few years, parents, judges, attorneys, and others have expressed concerns to the Minnesota Legislature regarding the nature and quality of services provided by guardians ad litem.<sup>42</sup> While some concerns were raised in regard to juvenile court proceedings, most have been in regard to family court cases, especially in contested dissolution proceedings.<sup>43</sup> Generally, the concerns "focused on guardian bias, lack of oversight and accountability, inadequate training, and inappropriate communication between guardians and judges."<sup>44</sup> Parents specifically complained that there is no mechanism for seeking relief if a problem with a guardian ad litem arises.<sup>45</sup>

As a result of these concerns, in July, 1994, the Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate guardian ad litem services in Minnesota and elsewhere.<sup>46</sup> The Commission requested "an objective analysis of Minnesota's current system for providing guardian ad litem services and options for revising the current system."<sup>47</sup>

In carrying out its directive, the Legislative Auditor surveyed Minnesota court administrators regarding their programs for providing guardian ad litem services, including funding mechanisms.<sup>48</sup> Judges, county attorneys, public defenders, and juvenile and family court attorneys were requested to rate their overall experiences with guardians ad litem regarding specific characteristics.<sup>49</sup> Court administrators, program coordinators, judges, and guardians ad litem in eight counties were interviewed regarding a variety of subjects.<sup>50</sup> Parents,

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<sup>42</sup>Report of Legislative Auditor, supra note 11, at ix (Executive Summary).

<sup>43</sup>Id.

<sup>44</sup>Id.

<sup>45</sup>Id.

<sup>46</sup>Id.

<sup>47</sup>Id. at 1.

<sup>48</sup>Id. at 17.

<sup>49</sup>Id.

<sup>50</sup>Id.

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advocates, and other interested citizens were also interviewed.<sup>51</sup> In addition, the Legislative Auditor reviewed Minnesota's statutes and rules, the 1986 Guidelines, and national literature to determine the primary roles and responsibilities of guardians ad litem.<sup>52</sup>

In February, 1995, following its investigation, the Legislative Auditor submitted to the Legislature its report which "attempts to go beyond dissatisfaction with individual guardians and instead focuses on the broader system in which guardians function."<sup>53</sup> The report addressed three general questions: "(1) How are guardian ad litem services provided in other states?; (2) How are guardian ad litem services organized and delivered in Minnesota?; and (3) How can guardian ad litem services in Minnesota be improved?"<sup>54</sup> Among the Legislative Auditor's most significant findings were the following: with respect to program operation "[t]here is no regional or statewide system to process complaints about a guardian, and there are no uniform statewide procedures to remove a guardian from a case or program";<sup>55</sup> "[t]here is not a universally understood or consistently applied definition of the appropriate roles and responsibilities for guardians in Minnesota, leading to frequent confusion and differing expectations";<sup>56</sup> "[t]hirty-three counties do not have any basic training requirements and 57 counties do not have any continuing education requirements";<sup>57</sup> and "[i]t is nearly impossible to identify one type of guardian ad litem [program, whether volunteer, paid attorney, or paid non-attorney] that would best serve all jurisdictions."<sup>58</sup>

Based upon its investigation and findings, the Legislative Auditor generally concluded that "[a] centralized, statewide guardian system might address some of the problems identified in this report, such as fragmentation, but would not solve all problems and would reduce the level of flexibility and responsiveness to local concerns present in the guardian system today."<sup>59</sup>

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<sup>51</sup> Report of Legislative Auditor, supra note 11, at 33.

<sup>52</sup> Id.

<sup>53</sup> Id. at ix (Executive Summary).

<sup>54</sup> Id.

<sup>55</sup> Id. at x.

<sup>56</sup> Id. at xi.

<sup>57</sup> Id.

<sup>58</sup> Id. at xii.

<sup>59</sup> Id.

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As a result, the Legislative Auditor did "not recommend a new centralized statewide system."<sup>60</sup> Rather, the Legislative Auditor suggested that "guardian ad litem services in Minnesota could be improved if the state -- the Legislature and the Supreme Court -- provided more guidance to Minnesota counties and district courts."<sup>61</sup> The Legislative Auditor further suggested that "the guardian ad litem system is primarily a function of the judicial branch and most of the solutions should come from the courts."<sup>62</sup> However, because the Legislature is involved in regard to determination of the circumstances in which guardians ad litem are appointed, the Legislative Auditor also suggested that the Legislature should take part in improving Minnesota's guardian ad litem system.<sup>63</sup> Consequently, the Legislative Auditor directed its suggestions to both the legislative and the judicial branches of Minnesota's government, and recommended that (1) "[t]he Legislature should clearly articulate the primary roles of guardians ad litem in Minnesota Statutes" and (2) "[t]he Supreme Court should update and adopt the 1986 Guidelines for Guardians Ad Litem."<sup>64</sup>

With respect to updating the Guidelines, the Legislative Auditor generally recommended that the Supreme Court should:

1. Outline the roles and specify the responsibilities that guardians ad litem are expected to undertake to fulfill their duties;
2. Distinguish the roles of guardians ad litem and custody evaluators;
3. Develop procedures to govern the working relationship between guardians ad litem and parents who have orders for protection;
4. Develop standards and procedures to govern the evaluation and removal of guardians ad litem;
5. Develop standards for selecting guardians ad litem, including the processes and procedures for assigning guardians ad litem to particular cases;

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<sup>60</sup>Id.

<sup>61</sup>Id.

<sup>62</sup>Id.

<sup>63</sup>Id.

<sup>64</sup>Id.

### **PART III: TASK FORCE BACKGROUND**

6. Define the key characteristics of guardian ad litem program coordinators, including selection criteria, training requirements, and responsibilities;
7. Require that guardians ad litem submit written reports to the court, including recommendations and the factual background and conclusions upon which they are based;
8. Require judges to prepare more detailed appointment orders clearly defining the roles and responsibilities of the guardian ad litem in each specific case;
9. Provide education regarding the purpose, roles, and responsibilities of guardians ad litem in family and juvenile court proceedings, including developing and making available to parents, lawyers, and other professionals written materials regarding these topics;
10. Adopt minimum hourly pre-service training requirements and minimum hourly annual continuing education requirements for all guardians ad litem, including attorneys;
11. Develop pre-service training and continuing education curricula, including components on family violence and appropriate communication with judges;
12. Provide pre-service training and continuing education for guardians ad litem, allowing those counties with adequate training programs to continue operating them and allowing guardians ad litem to waive certain training components upon proof of previous, appropriate training regarding those components; and
13. Establish a guardian ad litem oversight board (composed of judges, lawyers, guardians ad litem, and members of the community) in each judicial district to consider and resolve complaints regarding guardians ad litem, address appeals of program coordinator decisions, and provide a mechanism to generally review guardian ad litem programs.<sup>65</sup>

#### **E. LEGISLATURE'S RESPONSE TO REPORT OF LEGISLATIVE AUDITOR**

In 1995, the Minnesota Legislature responded to the recommendations of the Legislative Auditor by amending Minnesota's statutes to articulate the primary responsibilities of guardians

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<sup>65</sup>Id. at xii - xv.

### **PART III: TASK FORCE BACKGROUND**

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ad litem in family and juvenile court cases.<sup>66</sup> Specifically, the Legislature amended Minnesota Statutes section 260.155, subdivision 4(b), and section 518.165, subdivision 2a, to provide as follows:

A guardian ad litem shall carry out the following responsibilities:

- (a) conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which 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; interviewing parents, caregivers, and others with knowledge relevant to the case;
- (b) advocate for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;
- (c) 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;
- (d) monitor the child's best interests throughout the judicial proceeding; and
- (e) present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.<sup>67</sup>

In addition to articulating the primary responsibilities of guardians ad litem, the Legislature directed the State Court Administrator to report to the Chairs of the Judiciary Committees of the House of Representatives and Senate by February 15, 1996, regarding implementation of the recommendations set forth in the 1995 Report of the Legislative Auditor.<sup>68</sup> The State Court Administrator was directed to address revision of the 1986 Guidelines and "adoption of rules" to deal with the issues identified by the Legislative Auditor

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<sup>66</sup>1995 Minn. Laws 226, art. 6, §§ 6, 10.

<sup>67</sup>Id.

<sup>68</sup>Id. at § 16.

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as set forth above.<sup>69</sup> The State Court Administrator was also directed "to describe how the Supreme Court will educate parents, judges, lawyers, and other professionals about the purpose and role of guardians ad litem."<sup>70</sup> In addressing these issues, the State Court Administrator was directed to "consult with interest groups, advocacy groups, and the public."<sup>71</sup>

#### **F. SUPREME COURT ORDER ESTABLISHING ADVISORY TASK FORCE ON THE GUARDIAN AD LITEM SYSTEM**

To accomplish the directive of the Legislature, the State Court Administrator requested that the Minnesota Supreme Court establish an advisory committee to assist in the development of rules and guidelines.

On July 26, 1995, the Minnesota Supreme Court established the Advisory Task Force on the Guardian Ad Litem System [hereinafter Task Force].<sup>72</sup> The Order establishing the Task Force identifies the members of the Task Force, each of whom is dedicated to improving the quality of services provided by Minnesota's guardians ad litem and the effectiveness of its guardian ad litem system.<sup>73</sup> The twenty-seven members, selected from throughout the State of Minnesota, include district and appellate court judges, a court administrator, a representative of family court services, family and juvenile court attorneys, an assistant county attorney, a public defender, guardian ad litem program coordinators, guardians ad litem (including volunteers, paid attorneys, and paid non-attorneys), a representative from legal aid services, representatives of people of color, and representatives of organizations sensitive to children's issues and women's issues.<sup>74</sup>

In addition to identifying the members of the Task Force, the Supreme Court Order also sets forth the charge to the Task Force, which was to review all data, reports, and information

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<sup>69</sup>Id.

<sup>70</sup>Id.

<sup>71</sup>Id.

<sup>72</sup>In Re the Advisory Task Force on the Guardian Ad Litem System, Minnesota Supreme Court, File No. CO-95-1475 (July 26, 1995).

<sup>73</sup>Id. at 2-3.

<sup>74</sup>Id.



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available regarding implementation of the Report of the Legislative Auditor, and to "develop rules and guidelines" to deal with the following:

1. guardian ad litem selection, training, evaluation, and removal;
2. distinguishing the roles of guardians ad litem and custody evaluators;
3. developing procedures for guardians ad litem to work with parents who have an order for protection;
4. requiring judges to write more detailed appointment orders defining their expectations of the guardian ad litem role;
5. ascertaining and communicating to the court the wishes of the child regarding matters before the court;
6. developing standards for contact between the guardian ad litem and the child, specifying when limited or no contact with the child may be appropriate;
7. developing a procedure for bringing complaints against a guardian ad litem;
8. specifying selection criteria, responsibilities, and necessary training for guardian ad litem program coordinators;
9. educating parents, judges, attorneys, and other professionals about the purpose and role of guardians ad litem; and
10. such other areas of the guardian ad litem system as deemed appropriate by the advisory committee.<sup>75</sup>

The Supreme Court directed the Task Force to report to the Court by January 15, 1996.<sup>76</sup>

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<sup>75</sup> Id. at 1.

<sup>76</sup> Id. at 3.

## **PART IV: TASK FORCE DELIBERATIONS**

### **A. ORGANIZATIONAL STRUCTURE AND PROCEDURES OF TASK FORCE**

The ten issues identified by the Supreme Court in its charge to the Task Force may be grouped into three broad topics: (1) training of guardians ad litem and education of case participants, judges, attorneys, and the public regarding the roles and responsibilities of guardians ad litem; (2) establishment of uniform roles and responsibilities of guardians ad litem and program coordinators; and (3) selection, appointment, supervision, evaluation, and removal of guardians ad litem.

The Task Force met for the first time on August 10, 1995, at which time the membership agreed that three subcommittees should be established corresponding to the three broad topics to be addressed by the Task Force. The Task Force further agreed that because the majority of cases to which guardians ad litem are appointed to serve are in family court (including cases involving orders for protection and harassment restraining orders) and juvenile court (including delinquency and child protection cases), the Task Force should limit itself to developing recommendations regarding those two areas. Each subcommittee met several times during the months of August, September, and October, and each undertook the challenge of drafting recommendations relating to the focus of its subcommittee. In early November, 1995, the subcommittees' recommendations were compiled into one comprehensive draft of Proposed Rules for review and consideration by all members of the Task Force.

The full Task Force reconvened on November 9, 1995, and commenced discussions regarding the format and content of the Proposed Rules. Discussions regarding the specific provisions of the Proposed Rules continued at the meeting held November 30th. Thereafter, a second draft of the Proposed Rules was prepared which incorporated the revisions agreed upon by the Task Force.

On December 4, 1995, the Second Draft of Proposed Rules was distributed for review and comment to over 460 individuals throughout the State of Minnesota. Among those receiving copies of the Second Draft of Proposed Rules were all trial court judges, all judicial district administrators, all court administrators, and all existing guardian ad litem program coordinators. Other organizations and individuals who received the Second Draft of Proposed Rules included various public defenders; county attorneys; family and juvenile court attorneys; attorney and non-attorney guardians ad litem; parents involved in family and juvenile court cases; representatives of organizations sensitive to the issues of children, women, and men; minority group organizations and bar associations; and sections of the Minnesota State Bar Association dealing with family law and children's issues. In addition, anyone who requested a copy of the Second Draft of Proposed Rules received a copy. The Task Force requested that written comments regarding the provisions of the Proposed Rules be submitted by December 12, 1995. While the Task Force realized that the time period in which to submit comments was limited,

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the time frame was dictated by the Supreme Court's directive that the final report of the Task Force be submitted to the Court by January 15, 1996.

Despite the limited time frame, the Task Force received extensive substantive comments relating to every provision of the Proposed Rules. In addition, the Task Force received numerous comments regarding the procedures of the Task Force, including the lack of time in which to submit written comments, and the lack of any Task Force meetings at which oral comments could be presented.

The Task Force had planned to review the written comments at the meeting scheduled for December 14, 1995. However, because of the numerous comments regarding the lack of time in which to comment upon the Proposed Rules and to present oral comments, and because of the complex nature of the Proposed Rules and the heightened awareness of the work of the Task Force, the Task Force agreed that it should respond to these valid procedural comments by seeking from the Minnesota Supreme Court an extension of time in which to submit its report and recommendations.<sup>77</sup> The Task Force agreed to extend the comment period to January 10, 1996, the date of its next scheduled meeting. The Task Force further agreed that the January 10th meeting should be dedicated to receiving oral comments regarding the provisions of the Proposed Rules.

On December 18, 1995, the Task Force distributed to the 460 persons who received the Proposed Rules a Memorandum advising them of the extension of time in which to submit written comments and of the meeting scheduled for January 10th at which time the Task Force would receive oral comments. The Memorandum also advised these individuals of procedures for submitting comments via the telephone, in the event an individual did not wish to appear at the meeting or did not wish to submit written comments.

At the January 10th meeting the Task Force received over five hours of oral comments, even though each person's comments were limited to five to eight minutes. The Task Force heard enlightening testimony and received instructive comments from interest groups and advocacy groups working with families involved in the judicial system. Most sobering was the experience of listening to parents who came forward to share problems they had encountered with the guardians ad litem involved in their cases and their perceptions of how the guardian ad litem system must change. The Task Force learned that problems exist throughout Minnesota,

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<sup>77</sup>Based upon action of the Supreme Court, following consultation by the State Court Administrator with appropriate members of the Legislature, the date for submitting the Task Force Report to the Supreme Court was extended to February 16, 1996. The date for submitting the Report of the State Court Administrator to the Chairs of the House and Senate Judiciary Committees was extended to March 16, 1996.

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including lack of guardian ad litem education and training, lack of guardian ad litem supervision and accountability, lack of clarity regarding the role and responsibilities of guardians ad litem, lack of understanding regarding the authority of guardians ad litem, and lack of a mechanism in which to bring complaints against guardians ad litem. During the extended comment period the Task Force also received additional written comments. In all, comments were received from 83 persons and organizations.

At its meetings on January 24th, January 31st, and February 7th, the Task Force addressed the comments expressed by the public as it debated the topics set forth in the Supreme Court Order and the policy issues they raised. Through this process the Task Force finalized its work product, the Proposed Minnesota Rules of Guardian Ad Litem Procedure [hereinafter Proposed Rules], set forth in Part VI of this Report. The expressed purpose of the Proposed Rules 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." (Rule 1, subdivision 1).

The Proposed Rules establish minimum expectations of guardians ad litem, guardian ad litem programs, and program coordinators, and establish a framework for improving the quality of services provided by Minnesota's guardians ad litem. The Proposed Rules are flexible so that each local guardian ad litem program may best meet the special needs and circumstances of its local community. Further, the Proposed Rules reflect a consensus among Task Force members that, in significant part, the integrity and success of the guardian ad litem programs in Minnesota, regardless of the form of the program (volunteer or paid, attorney or non-attorney), depends upon (1) an improved recruitment, screening, and selection process (Rule 3); (2) improved support and supervision (Rule 6); (3) the institution of a complaint process (Rule 7); (4) expanded training (Rules 10 to 12); and clarification of guardian ad litem roles and responsibilities (Rule 8). Central to these concepts is the identification of one or more program coordinators in each judicial district to be directly responsible for implementation of the Proposed Rules (Rule 1, subdivision 2).

Throughout its deliberations, the intent of the Task Force was to develop rules and guidelines which, if adopted and implemented, would achieve a three-fold purpose: (1) assisting judges in assigning to guardians ad litem only those duties that are appropriate; (2) educating judges, attorneys, parents, case participants, and the public regarding the roles and responsibilities of guardians ad litem; and (3) guiding those who have committed themselves to advocating for Minnesota's children and making a positive difference in their lives. It is with these three purposes in mind that the Task Force recommends adoption and implementation of the Proposed Rules.

## **PART IV: TASK FORCE DELIBERATIONS**

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### **B. IDENTIFICATION OF ISSUES SET FORTH IN SUPREME COURT ORDER, FINDINGS AND RECOMMENDATIONS OF LEGISLATIVE AUDITOR, TASK FORCE DELIBERATIONS, AND PROVISIONS OF PROPOSED RULES RECOMMENDED BY TASK FORCE FOR RESOLVING ISSUES**

After lengthy discussion and debate regarding the numerous policy issues raised, the Task Force succeeded in achieving consensus on most of the issues identified in the Supreme Court's Order establishing the Task Force. Following is a summary of each issue addressed by the Task Force, including the findings and recommendations of the Legislative Auditor, the deliberations of the Task Force, and the provisions from the Proposed Rules recommended by the Task Force for resolving each issue.

#### **1. SELECTION AND MINIMUM QUALIFICATIONS OF GUARDIANS AD LITEM**

##### *Findings and Recommendations of Legislative Auditor*

In conducting its investigation, the Legislative Auditor found that in Minnesota "[t]here is little consistency among guardian programs in the criteria used to select guardians."<sup>78</sup> While the Minnesota Judges Association's 1986 Guidelines do not specify any minimum educational requirements, they do recommend nine minimum guardian ad litem qualifications.<sup>79</sup> In general, the Guidelines recommend that guardians ad litem be at least 21 years of age; have an interest in children and their rights and needs; be able to provide his or her own transportation; have an ability to work with children, family members, and professionals; have adequate verbal and writing skills; be available for 12 to 18 months; be free of a history of crimes against persons; be able to use good judgment and have high integrity; and have a high degree of stability.<sup>80</sup> Despite the existence of the Guidelines' recommendations, the Legislative Auditor found that some counties require a high school diploma, while others require a higher level of education, and still others have no minimum education requirements.<sup>81</sup> Among the qualifications most

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<sup>78</sup>Report of Legislative Auditor, supra note 11, at 50.

<sup>79</sup>Id. at 49.

<sup>80</sup>Guidelines, supra note 31, at 15-16.

<sup>81</sup>Report of Legislative Auditor, supra note 11, at 50.

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often required by counties, although not required by all counties, were "[e]xperience with children, communication skills, flexibility, and maturity."<sup>82</sup>

As for the guardian ad litem selection process, the Legislative Auditor found that several counties use a screening process, including conducting candidate interviews and observing potential guardians ad litem during training.<sup>83</sup> The Legislative Auditor further found that "[t]he Guidelines suggest a probation period as an additional screening technique, but only a few counties reported using this method."<sup>84</sup> With respect to criminal background checks, the Legislative Auditor found that only two-thirds of those counties that responded require such background checks.<sup>85</sup>

Based upon its investigation, the Legislative Auditor recommended that each guardian ad litem program establish "standards for guardian selection, including education, experience, and personal characteristics."<sup>86</sup> The Legislative Auditor also recommended that programs establish clear guidelines and procedures for selecting guardians ad litem, including "a written application, structured interview, personal references, criminal background check, observation during training, and a probation period."<sup>87</sup>

### *Task Force Deliberations*

The Task Force members agreed that minimum guardian ad litem qualifications should be established so that only persons who were qualified would be permitted to serve. The intent of the Task Force was to develop a list of qualifications that would permit a broad range of persons to serve as guardians ad litem, including parents, retirees, persons who are economically disadvantaged, persons of color, and attorneys and other professionals, to name just a few. In developing the qualifications, the Task Force was ever mindful that the list not be so expansive as to preclude or dissuade members of any particular group from applying to serve as a guardian ad litem.

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<sup>82</sup> Id. at 51.

<sup>83</sup> Id.

<sup>84</sup> Id.

<sup>85</sup> Id.

<sup>86</sup> Id. at 52.

<sup>87</sup> Id.

## **PART IV: TASK FORCE DELIBERATIONS**

The 1986 Guidelines were the basis for the Task Force's discussion regarding minimum guardian ad litem qualifications. After reviewing the primary roles and responsibilities of guardians ad litem, the Task Force set about creating a list of qualifications necessary to carry out those roles and responsibilities. The Task Force decided that the minimum qualifications should include an interest in children and their rights and needs; sufficient listening, speaking, and writing skills to conduct interviews, draft written reports, and make presentations in court and at other proceedings; knowledge and an appreciation of the ethnic, cultural, and socio-economic backgrounds of the population to be served; availability to serve for at least 18 months; ability to relate to children, family members, and professionals; and ability to exercise sound judgment and good common sense.

The minimum qualifications also provide that persons who have been removed from a panel of approved guardians ad litem following an unsatisfactory performance evaluation are precluded from serving as a guardian ad litem. The application process requires each applicant to state whether she or he has ever been removed from a panel of approved guardians ad litem.

Also included as a minimum qualification is the requirement that each applicant must satisfactorily complete the pre-service training set forth in Rule 10, and demonstrate a comprehension of the responsibilities of guardians ad litem set forth in Rule 8.

While the Task Force decided that one's age is a factor to be considered in deciding whether a person should be a guardian ad litem, it determined that there is no minimum age which a person must be to serve as a guardian ad litem. Instead, the Task Force determined that a person's age should be considered in the context of the person's other personal qualities, such as maturity.

Initially, the Task Force included in the minimum qualifications a list of crimes which would preclude a person from serving if she or he had been convicted of any of the crimes. During its deliberations, however, several Task Force members expressed the concern that by listing some crimes and not others an argument could be made that a person convicted of any crimes not listed would be permitted to serve as a guardian ad litem. For this reason, the Task Force decided to delete the list of crimes, and instead included language that the person must 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. Further, the Task Force agreed that part of the screening process would include a background check, including driving and criminal records.

With respect to the selection of persons to participate as guardians ad litem, the Task Force determined that the processes and procedures for carrying out the selection process should be uniform throughout the State to ensure that all guardians ad litem meet the minimum qualifications. The selection process begins with a written application, an example of which is set forth in Appendix A to the Proposed Rules. All guardian ad litem applications prepared by

## **PART IV: TASK FORCE DELIBERATIONS**

guardian ad litem programs must contain, at a minimum, the questions set forth in Appendix A. The Task Force also determined that the selection process should include uniform screening procedures, including reviewing the completed application, interviewing the applicant, contacting the applicant's references, and conducting criminal history and personal background checks. Appendix B to the Proposed Rules sets forth model Screening Process Topics and Interview Questions.

### ***Provisions of Proposed Rules Recommended by Task Force for Resolving Issue***

Rules 2 and 3 of the Proposed Minnesota Rules of Guardian Ad Litem Procedure address the issues of selection and minimum qualifications of guardians ad litem.

Rule 2 sets forth guardian ad litem minimum qualifications and provides that before a person may be recommended for service as a guardian ad litem, 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 6, subdivision 2; and



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- (h) have satisfactorily completed the pre-service training requirements set forth in Rule 10, and demonstrated a comprehension of the responsibilities of guardians ad litem as set forth in Rule 8, subdivision 1.

Rule 3 establishes the processes and procedures for selecting guardians ad litem. Rule 3, subdivision 2, sets forth the application process and provides that any person who desires to become a guardian ad litem shall be required to submit a completed written application. The application shall contain, at a minimum, the questions set forth in Appendix A, 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. Rule 3, subdivision 3, sets forth the screening process and provides that before an applicant is approved by the program coordinator for inclusion on a panel of guardians ad litem, the written application must be reviewed, the applicant must be interviewed, the applicant's references must be contacted, and a criminal history and personal background check must be completed.

### **2. TRAINING OF GUARDIANS AD LITEM**

#### ***Findings and Recommendations of Legislative Auditor***

During its investigation the Legislative Auditor found that "[t]here are no uniform standards or requirements among Minnesota counties for either basic or continuing training for guardians ad litem."<sup>88</sup> While 54 counties have some basic training requirements, 33 counties have no basic training requirements whatsoever.<sup>89</sup> Among those counties requiring basic training, the number of hours of training varies, with 31 of the 87 counties requiring a minimum of 40 hours of training.<sup>90</sup> Basic training regarding juvenile and family court issues ranges from four to 50 hours.<sup>91</sup> Of the guardians ad litem who were surveyed by the Legislative Auditor, nearly 57 percent reported completing 40 or more hours of basic training, 83 percent reported receiving some basic training, and nearly 17 percent reported receiving no basic training prior

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<sup>88</sup>Report of Legislative Auditor, supra note 11, at 70.

<sup>89</sup>Id. at 71.

<sup>90</sup>Id.

<sup>91</sup>Id.

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to their first assignment.<sup>92</sup> Some counties have different basic training requirements for guardians ad litem, depending upon whether they will serve in family or juvenile court cases.<sup>93</sup>

With respect to which types of guardians ad litem receive training, the Legislative Auditor reported that according to one national study attorneys serving as guardians ad litem receive less training than non-attorneys.<sup>94</sup> The Legislative Auditor found this holds true in Minnesota, with some counties either not requiring or not providing training to attorney guardians ad litem.<sup>95</sup>

With respect to continuing education, the Legislative Auditor found that "fifty-seven Minnesota's counties do not have continuing education requirements for guardians.<sup>96</sup> Of those counties that do require continuing education, the average number of annual hours required is six."<sup>97</sup>

In addition to variations in guardian ad litem training requirements, the Legislative Auditor also found that Minnesota's "counties use a variety of methods to provide basic training."<sup>98</sup> These methods range from providing on-the-job training through internships, to providing formalized class-room training utilizing a written curriculum, or combinations of both types of training methods.<sup>99</sup> Another variation is that some counties with few numbers of guardians ad litem, and small caseloads contract with other counties for guardian ad litem training.<sup>100</sup>

As a result of its investigation, the Legislative Auditor concluded that "training is essential for the effectiveness of guardians ad litem, whether the person is an attorney or non-

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<sup>92</sup>Id. at 73.

<sup>93</sup>Id. at 71.

<sup>94</sup>Id. at 73.

<sup>95</sup>Id.

<sup>96</sup>Id.

<sup>97</sup>Id. at 75.

<sup>98</sup>Id. at 73.

<sup>99</sup>Id. at 74.

<sup>100</sup>Id.

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attorney. Without adequate training guardians may not understand issues involved in court proceedings involving abuse, neglect, custody, and visitation. Training also helps educate new guardians about their roles and responsibilities."<sup>101</sup> The Legislative Auditor recommended that the Supreme Court "adopt minimum hourly basic training requirements for all guardians, including attorneys, before assignment of their first case, and a minimum hourly annual continuing education requirement."<sup>102</sup>

### ***Task Force Deliberations***

The Task Force believes that it is essential for guardians ad litem, regardless of whether they are attorneys or non-attorneys, to be fully trained regarding their purpose, roles, and responsibilities. In addition, there was a consensus that guardians ad litem must be trained regarding the relevant state and federal statutes, rules, and regulations. Training regarding guardian ad litem skills, such as writing reports and advocating for the child, are also considered necessary, as is training regarding issues specifically relating to family and juvenile court issues.

Based upon the information available to the Task Force, it was determined that a minimum of 40 hours of pre-service training is necessary to address the essential core topics. It was further decided that additional training sessions regarding either family or juvenile court topics (or both), depending upon the type of case in which the guardian ad litem intends to serve, would be required beyond the core training sessions. While some suggested that 40 hours would not be sufficient to train guardians ad litem regarding the core topics, the Task Force decided that it should not recommend additional hours for core pre-service training because of the possibility that many people would be unable to attend due to time and financial constraints. Instead, the Task Force determined that it would complement the pre-service training with an internship in family or juvenile court (or both), again depending upon the type of case in which the guardian ad litem intends to serve. Internships will allow program coordinators to monitor whether guardians ad litem are appropriately carrying out their responsibilities, to provide support and guidance, and to provide constructive criticism. In addition, the Task Force strongly believes that continuing education is an essential training component. The Task Force determined that an annual minimum of eight hours of continuing education is necessary to learn of developments in juvenile and family law issues and revisions to state and federal statutes, and to maintain the advocacy and other skills required of guardians ad litem.

In addition to establishing the training requirements, the Task Force also agreed to the topics which must, at a minimum, be included in the core pre-service training curriculum (Appendix I to the Proposed Rules), including specific components for family and juvenile court

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<sup>101</sup> *Id.* at 67.

<sup>102</sup> *Id.* at 79.

## **PART IV: TASK FORCE DELIBERATIONS**

issues (Appendix J to the Proposed Rules). The Task Force also developed standards for the continuing education curriculum, which must include developments in the topics set forth in Appendices I and J, and other relevant guardian ad litem, family court, and juvenile court topics.

The Task Force also determined that the pre-service training and continuing education must be coordinated by persons certified by the State Court Administrator. The Task Force also established minimum qualifications for certification of these training coordinators.

### ***Provisions of Proposed Rules Recommended by Task Force for Resolving Issue***

Rules 10, 11, and 12 of the Proposed Minnesota Rules of Guardian Ad Litem Procedure address the issues of guardian ad litem pre-service training, internships, and continuing education requirements; training curricula; and certification of training coordinators.

Rule 10, subdivision 1, provides that 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. Subdivision 1 also establishes the pre-service training requirements for new guardians ad litem and provides that to be listed on a panel of approved guardians ad litem maintained pursuant to Rule 3, subdivision 4, each person, except those persons who meet the criteria set forth in subdivision 2, 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 set forth in Appendix I;
- (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 set forth in Appendix J 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 set forth in Appendix J relating to juvenile law matters.

Rule 10, subdivision 2, establishes the training requirements for existing guardians ad litem and provides that to be listed on a panel of approved guardians ad litem maintained pursuant to Rule 3, subdivision 4, each person appointed to serve as a guardian ad litem prior to the effective date of Rules 1 to 13 shall either:

- (a) satisfy the pre-service training requirements set forth in subdivision 1; or

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- (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. 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.

Rule 10, subdivision 3, establishes guardian ad litem internship requirements and provides that in addition to satisfying the pre-service training requirements set forth in either subdivision 1 or 2, 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.

Rule 11 sets forth continuing education requirements and provides that once a guardian ad litem is listed on a panel of approved guardians ad litem maintained pursuant to Rule 3, 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 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.

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Rule 12 sets forth the requirements for the pre-service training and continuing education curricula, and requirements for the certification of trainers. Rule 12, subdivision 1 provides that 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. At a minimum, the core curriculum shall address the topics set forth in Appendix I to the Proposed Rules regarding the training of all guardians ad litem, and shall address the topics set forth in Appendix J to the Proposed Rules regarding the training of guardians ad litem who will serve in family and juvenile court cases. The pre-service training curriculum should be reviewed and updated at least every three years.

Rule 12, subdivision 2 provides that the continuing education curriculum shall include developments in the topics set forth in Appendices I and J, and other relevant guardian ad litem, family court, or juvenile court topics.

Rule 12, subdivision 3 provides that 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 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.

### **3. SUPERVISION OF GUARDIANS AD LITEM**

#### ***Findings and Recommendations of Legislative Auditor***

During its investigation the Legislative Auditor found that in Minnesota guardian ad litem supervision is provided in most volunteer and in some paid non-attorney guardian ad litem

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programs, but those programs usually have full- or part-time coordinators, well-defined policies and procedures, and sometimes mentorships between new and experienced guardians ad litem.<sup>103</sup> The Legislative Auditor learned that judges often actively participate in the supervision of guardians.<sup>104</sup> Court administrators reported that for some paid non-attorney guardian ad litem programs, judges combine with others to provide supervision, "but for paid attorney programs and some paid non-attorney programs, judges provided the only supervision."<sup>105</sup>

The Legislative Auditor found that "[j]udges believe most programs, especially volunteer guardian programs, are well supervised."<sup>106</sup> However, unlike judges, many public defenders and other lawyers believe guardians ad litem are inadequately supervised.<sup>107</sup> The Legislative Auditor reported that while judges read the written case reports of guardians ad litem, "it is less likely that they review guardian ad litem case files or critique written reports outside the courtroom" for the purpose of providing constructive criticism and supervision.<sup>108</sup> The Legislative Auditor suggested that, "[i]n fact, such evaluation might be considered inappropriate because of the degree of independence necessary between judges and guardians."<sup>109</sup> From parents and lawyers, the Legislative Auditor learned that they believe "judges often work too closely with guardians, that guardians may be recruited by a judge, and that judges may feel obligated to 'protect' a guardian they selected and appointed."<sup>110</sup> The Legislative Auditor found that "[a] lack of independent supervision contributes to this perception."<sup>111</sup>

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<sup>103</sup> Report of Legislative Auditor, supra note 11, at 55.

<sup>104</sup> Id. at 53.

<sup>105</sup> Id.

<sup>106</sup> Id.

<sup>107</sup> Id.

<sup>108</sup> Id. at 55.

<sup>109</sup> Id.

<sup>110</sup> Id.

<sup>111</sup> Id.

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As a result of its investigation, the Legislative Auditor recommended establishment of "[a]n independent mechanism for guardian supervision."<sup>112</sup>

### ***Task Force Deliberations***

The Proposed Rules reflect a consensus among Task Force members that the integrity and success of Minnesota's guardian ad litem programs, regardless of whether they are comprised of volunteers, attorneys, or paid non-attorneys, depends in large part upon improved support and supervision of guardians ad litem. The Task Force determined that program coordinators, rather than judges, should supervise guardians ad litem, but that judges should have input regarding guardian ad litem evaluations.

### ***Provisions of Proposed Rules Recommended by Task Force for Resolving Issue***

Rule 6, subdivision 1, of the Proposed Minnesota Rules of Guardian Ad Litem Procedure addresses the issue of guardian ad litem supervision and provides that the program coordinator shall be responsible to provide support, advice, and supervision to guardians ad litem serving in the county.

- 4. EVALUATION OF GUARDIANS AD LITEM, COMPLAINT PROCESS, REMOVAL OF GUARDIANS AD LITEM FROM PANEL OF APPROVED GUARDIANS AD LITEM, AND REMOVAL OF GUARDIANS AD LITEM FROM PENDING CASES**

### ***Findings and Recommendations of Legislative Auditor***

During its investigation the Legislative Auditor found that in Minnesota "[t]he nature of guardian evaluation varies depending on the model used to provide guardian services."<sup>113</sup> Nationally, nearly all volunteer guardians ad litem are frequently monitored and annually evaluated, in contrast to attorney guardians ad litem in Minnesota who are regularly monitored in only 35 percent of the counties.<sup>114</sup> The Legislative Auditor stated that, generally,

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<sup>112</sup>Report of Legislative Auditor, *supra* note 11, at 58.

<sup>113</sup>*Id.* at 14.

<sup>114</sup>*Id.*



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Minnesota's attorneys are either provided no oversight or are only informally monitored by judges.<sup>115</sup>

With respect to the process used to handle complaints against guardians ad litem, the Legislative Auditor found that in Minnesota, according to court administrators and judges, "[a]ll volunteer programs and about one-third of paid non-attorney programs have a formal complaint process, but only the judge who appointed a guardian can remove that guardian ad litem from a specific case."<sup>116</sup>

The Legislative Auditor reported that during its investigation "[p]arent advocacy groups often expressed concern about the mechanism for complaining about a guardian ad litem," including the guardian ad litem's general qualifications or actions in a specific case.<sup>117</sup> Those counties where the programs were managed by court administrators were least likely to report having a formal complaint process; instead, complaints were directed to the judge who appointed the guardian ad litem.<sup>118</sup> In contrast, "programs with a formal complaint process reported using court services or administration or program coordinators, alone or in combination with judges, to review complaints."<sup>119</sup>

The Legislative Auditor received anecdotal information from private lawyers, public defenders, parents, and others regarding guardian ad litem bias against men, women, minority group members, and the economically disadvantaged.<sup>120</sup> To address this perceived bias, a written complaint regarding the guardian ad litem was usually submitted through an attorney to the program coordinator, court administrator, or judge.<sup>121</sup> The Legislative Auditor learned that while parents generally have no input into who is selected as a guardian ad litem, they do have the right to petition the court for removal of the guardian ad litem from a particular case.<sup>122</sup> The Legislative Auditor learned, however, that parents do not feel comfortable addressing their

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<sup>115</sup>Id.

<sup>116</sup>Id. at 56.

<sup>117</sup>Id.

<sup>118</sup>Id. at 56-58.

<sup>119</sup>Id. at 58.

<sup>120</sup>Id. at 56.

<sup>121</sup>Id. at 58.

<sup>122</sup>Id.

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complaints regarding guardians ad litem to the judges who selected and appointed the guardians ad litem.<sup>123</sup> The Legislative Auditor further learned that, despite the lack of desire to bring their complaints to judges, parents have no other formal mechanism for review of their complaints because "[p]rocedures to complain about a guardian do not exist as they do for other professionals such as lawyers."<sup>124</sup> The Legislative Auditor also found that even when parents do petition judges for removal of a guardian ad litem from a pending case, such requests are only infrequently granted.<sup>125</sup>

With respect to the issue of guardian ad litem immunity, the Legislative Auditor found that while Minnesota's statutes and rules are silent as to this issue, "in 1988 Minnesota's courts clearly defined guardian immunity in case law, eliminating the need to define immunity in statute."<sup>126</sup> The Legislative Auditor cited *Tindell v. Rogosheske*,<sup>127</sup> wherein the Minnesota Supreme Court found that a "guardian ad litem is absolutely immune from liability for acts within the scope of that guardian's exercise of statutory responsibilities."<sup>128</sup> As a result of its investigation regarding this issue, the Legislative Auditor concluded that "[c]ase law on immunity is quite clear and easily defined."<sup>129</sup> The Legislative Auditor concluded that a change regarding guardian ad litem immunity is not needed, adding that "[b]etter definition of general guardian roles and responsibilities . . . would better identify what it is appropriate for guardians to do for the purpose of guardian immunity."<sup>130</sup>

As a result of its investigation, the Legislative Auditor concluded that "an independent mechanism for guardian supervision and evaluation is necessary to identify potential problems with guardian performance and correct borderline behavior."<sup>131</sup> The Legislative Auditor further concluded that the mechanism should include policies and procedures for "complaints,

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<sup>123</sup> Id.

<sup>124</sup> Id.

<sup>125</sup> Id.

<sup>126</sup> Id. at 63.

<sup>127</sup> 428 N.W.2d 386 (Minn. 1988).

<sup>128</sup> Id. at 387. See Report of Legislative Auditor, supra note 11, at 63.

<sup>129</sup> Report of Legislative Auditor, supra note 11, at 64.

<sup>130</sup> Id.

<sup>131</sup> Id. at 58.

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correction, and removal."<sup>132</sup> The Legislative Auditor recommended that the Supreme Court "develop standards for guardian evaluation and removal," and that "each guardian ad litem program should have in place specific procedures for administering these standards."<sup>133</sup> The Legislative Auditor further recommended that "[t]he program coordinator should have authority to discipline, suspend, and remove guardians from the program (as opposed to a specific case) after a regular review" and "should also be involved in any process to remove a guardian ad litem from a specific case, although the final authority should rest with the judge."<sup>134</sup> While the Legislative Auditor stated that "increased supervision and clarification of guardian roles will increase accountability," the Legislative Auditor nevertheless recommended that "a guardian ad litem oversight board be established within each court district to provide an avenue for complaints about guardians, appeals of program coordinator decisions, and a mechanism to generally review guardian programs in that district."<sup>135</sup>

### ***Task Force Deliberations***

With respect to guardian ad litem performance evaluations, there was a consensus among Task Force members that such evaluations are essential to a successful guardian ad litem system and are necessary to improve guardian ad litem accountability. The Task Force decided that performance evaluations should occur for the purposes of evaluating the guardian ad litem's skills, such as conducting independent investigations, gathering information, and preparing reports; evaluating the guardian ad litem's conduct in court, with the parties to cases, and with other professionals; providing support and constructive criticism; and deciding whether to retain or remove a guardian ad litem from the panel of approved guardians ad litem. It was also decided that the performance of each guardian ad litem should 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. Each performance evaluation must be undertaken, at least in part, by means of a written evaluation instrument, an example of which is included as Appendix F to the Proposed Rules. A copy of the completed evaluation must be maintained in the guardian ad litem's personnel file.

The Task Force members agreed that the procedures for performance evaluations should include review of the cases assigned to a guardian ad litem, review of the guardian ad litem's compliance with continuing education requirements, inquiries to judges presiding over cases in

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<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 59.

## **PART IV: TASK FORCE DELIBERATIONS**

which the guardian ad litem was appointed, review of any complaints filed against the guardian ad litem, follow-up on background checks if warranted, and review of any other information that the program coordinator believes is pertinent.

The Task Force also agreed that following an unsatisfactory performance evaluation a program coordinator could remove a guardian ad litem from the panel of approved guardians ad litem. The program coordinator is to notify the State Court Administrator of the names of guardians ad litem removed from an approved panel, and the State Court Administrator is to maintain a list of the names of such individuals because they will be prohibited from serving as guardians ad litem in any district.

With respect to bringing complaints against guardians ad litem, the Task Force members agreed that establishing a mechanism for ensuring guardian ad litem accountability, a mechanism that parents would feel comfortable using, is essential to improving the effectiveness of Minnesota's guardian ad litem programs. While the Task Force agreed upon the general concept of establishing a mechanism to bring complaints against guardians ad litem, the procedural aspects of that mechanism were a topic of much debate.

The Task Force agreed that a person who has a complaint against a guardian ad litem should bring the complaint to the attention of the program coordinator, who will then conduct an investigation into the merits of the complaint. While the Task Force received many comments from parents and their advocates regarding inappropriate guardian ad litem conduct, the Task Force believes that some contacts that will be made to program coordinators will not rise to the level of actual complaints but, instead, will be in the form of questions about whether certain guardian ad litem conduct is or is not appropriate. For that reason, the Task Force determined that the complaint investigation process will not be triggered unless and until a signed, written complaint is received by the program coordinator.

Program coordinators on the Task Force indicated that if they receive a complaint against a guardian ad litem which is found to be meritorious, the action taken will depend upon the degree of inappropriateness of the guardian ad litem's conduct. The action taken may range from requiring the guardian ad litem to undergo a refresher course regarding a particular topic, to a reprimand, to asking the guardian ad litem to resign from the program. For this reason the Task Force decided that, rather than delineating the specific actions that a program coordinator should or could take if the coordinator found a complaint to be meritorious, it should be left to the discretion of the program coordinator to take whatever action that person deems appropriate under the circumstances. To ensure program accountability, however, the Task Force decided that it was necessary to require the program coordinator to document the investigation in the form of a written report, including the nature of the complaint, the nature and extent of the investigation, and the action taken.

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Some Task Force members suggested that each guardian ad litem program should be permitted to utilize an advisory panel to assist the program coordinator in reviewing the merits of any complaints filed against guardians ad litem. Ultimately, this suggestion was not adopted by the full Task Force.

One topic discussed by the Task Force on a number of occasions was the issue of to whom the complaint investigation report should be made available. Some Task Force members believe that only the person making the complaint and the guardian ad litem should receive copies of the report, others believe all parties to the pending case should receive copies, and still others believe it should not be distributed to anyone but, instead, be maintained in the guardian ad litem's personnel file with access permitted by the parties. The Task Force resolved this issue by reviewing Minnesota's existing statutes and rules governing disclosure of information. It was determined that under both the Minnesota Government Data Practices Act and the Rules of Public Access to the Records of the Judicial Branch, certain employee or personnel information is accessible to the public, including "the existence and status of any complaints or charges against the employee, whether or not the complaint or charge resulted in any disciplinary action[,] [and] the final disposition of any disciplinary action and supporting documentation."<sup>136</sup> Neither the statute nor the rule provides for the dissemination of such information unless a request is made. In contrast to the statute and rule, the Task Force decided that the person making the complaint and the guardian ad litem should automatically receive a copy of the investigation report, and that others may receive it in accordance with the applicable statutes or rules governing the disclosure of information.

While the Legislative Auditor recommended using an oversight board in each judicial district to review complaints against guardians ad litem, the Task Force decided that it is not necessary at this time to create such a structure. Instead, the Task Force anticipates that implementation of the Proposed Rules, which establish uniform standards regarding guardian ad litem selection, appointment, training, supervision, evaluation, and responsibilities, will lessen the number of complaints against guardians ad litem. The Task Force also felt that, because of funding concerns, establishment of oversight boards in each judicial district is not warranted at this time, but could, if appropriate, be considered in the future.

With respect to seeking removal of a guardian ad litem from a pending case, from the outset there was a strong consensus among Task Force members that the only person who should remove a guardian ad litem from a pending case is the presiding judge. As a result of this policy decision, in Rule 7, subdivision 2, the Task Force established a formal mechanism for seeking the removal of a guardian ad litem from a pending case.

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<sup>136</sup>Minn. Stat. § 13.43, subd. 2 (1994); Minn. R. Pub. Access to Rec. of Jud. Branch 5 (1995).

## **PART IV: TASK FORCE DELIBERATIONS**

Among the comments received by the Task Force was the suggestion that a party to a particular case should be allowed to remove the guardian ad litem without cause within certain time limits of receiving notice of the guardian ad litem's appointment to the case. While the Task Force decided to not incorporate this suggestion into Rule 7, subdivision 2, several Task Force members felt strongly about this issue. Appendix A to Part VII of this Report sets forth alternative language to Rule 7, subdivision 2, drafted by Task Force member Hugh McLeod, proposing removal of a guardian ad litem without cause from a pending case.

### ***Provisions of Proposed Rules Recommended by Task Force for Resolving Issue***

Rules 6 and 7 of the Proposed Minnesota Rules of Guardian Ad Litem Procedure address the issues of evaluation of guardians ad litem, complaint procedures, removal from the panel of approved guardians ad litem, and removal from a pending case.

Rule 6, subdivision 2, sets forth standards for conducting performance evaluations and establishes a mechanism for removing a guardian ad litem from the panel of approved guardians ad litem. Subdivision 2 provides that 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 11; 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 2, 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, which may be in the form set forth in Appendix F. 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. On the basis of the 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 3, 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.

Rule 7, subdivision 1, addresses the issue of bringing complaints against guardians ad litem and provides that a person who has concerns regarding the performance of a guardian ad

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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. 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.

Rule 7, subdivision 2, addresses the issue of removing a guardian ad litem from a pending case and provides that 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.

### **5. ROLES AND RESPONSIBILITIES, AND RIGHTS AND POWERS OF GUARDIANS AD LITEM**

#### ***Findings and Recommendations of Legislative Auditor***

In conducting its investigation, the Legislative Auditor found that "the citations for guardian roles and responsibilities are scattered throughout statutes, court rules, and judicial guidelines."<sup>137</sup> The Legislative Auditor stated that in addition to the statutory provisions which identify the circumstances under which guardians ad litem are to be appointed in family and juvenile court cases, "Minnesota uses a combination of judicial guidelines and court rules to

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<sup>137</sup> Report of Legislative Auditor, supra note 11, at 36.

## **PART IV: TASK FORCE DELIBERATIONS**

define guardian roles and responsibilities."<sup>138</sup> The Legislative Auditor found that while the statutes establish the circumstances under which guardians are to be appointed, "they provide little direction on the roles and responsibilities of guardians once they are appointed," and instead, "simply direct guardians to 'protect the interests of the minor' or 'represent the interests of the child'."<sup>139</sup>

As a result of its investigation, the Legislative Auditor concluded that "clearer definition of guardian roles and responsibilities would increase understanding of guardian duties without impeding the flexibility of the system."<sup>140</sup> As a result, the Legislative Auditor recommended that "[t]he Legislature should clearly articulate the primary roles of guardians ad litem in Minnesota statutes."<sup>141</sup> The Legislative Auditor further recommended that the Minnesota Supreme Court should adopt rules and guidelines articulating the specific responsibilities of guardians ad litem.<sup>142</sup>

### ***Task Force Deliberations***

The Task Force members agreed that the responsibilities of guardians ad litem should be articulated. In establishing these responsibilities, the Task Force reviewed the list of primary responsibilities enacted by the Legislature in 1995. So as to be consistent with those statutes, and so that guardians ad litem would be required to look to only one source of information regarding their responsibilities, the Task Force incorporated the provisions of the 1995 statute into the Proposed Rules. The Task Force also decided to include in the list of responsibilities several ethical duties.

The Proposed Rules identify a list of fourteen responsibilities which a guardian ad litem must fulfill in every family and juvenile court case. In addition to these general responsibilities, Appendices G and H to the Proposed Rules set forth 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. Appendices G and H establish specific responsibilities for the pre-trial and trial phases in family court matters and for the first appearance and dispositional phases in juvenile court proceedings. The Task Force also determined that the specific

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<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 35.

<sup>140</sup> *Id.* at 37.

<sup>141</sup> *Id.* at 38.

<sup>142</sup> *Id.* at xii (Executive Summary).



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responsibilities are cumulative in nature and, although a specific responsibility may be listed under only one section, such as the pretrial phase or trial phase, each specific responsibility should be deemed continuing in nature and should be repeated as often as necessary throughout the proceeding as appropriate to the case. Appendices G and H 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. Appendices G and H 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.

The Task Force also decided that guardians ad litem have certain rights and powers in every family and juvenile court case, and those rights and powers are identified in Rule 9, subdivision 1. 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 Task Force determined that the guardian ad litem should have certain rights and powers beyond those rights and powers present in every case; those rights and powers are set forth in subdivision 2 of Rule 9. The Comment to Rule 9 summarizes the circumstances under which guardians ad litem are designated as parties to family and juvenile court proceedings, and, therefore, endowed with the additional rights and powers set forth in subdivision 2. Rule 9 does not expand the types of cases in which a guardian ad litem is designated as a party.

### ***Provisions of Proposed Rules Recommended by Task Force for Resolving Issue***

Rules 8 and 9 of the Proposed Minnesota Rules of Guardian Ad Litem Procedure set forth the roles and responsibilities and rights and powers of guardians ad litem.

Rule 8, subdivision one deals with the issue of guardian ad litem responsibilities and provides that 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 4, 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.

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- (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. If no document retention policy has been established, the guardian ad litem should exercise reasonable discretion.
- (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.

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- (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.

With respect to Rule 8, subdivision 1(c), the Comment to Rule 8 provides that written reports required by any statute or rule shall be served and filed in a timely manner. Written reports may be updated by oral comments at the hearing.

The Comment to Rule 8 establishes that 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.

Appendices G and H to the Proposed Rules set forth Guidelines in Family Court Cases and Guidelines in Juvenile Court Cases and provide that in addition to and consistent with the general responsibilities of guardians ad litem set forth in Rule 8, subdivision 1, there are certain specific responsibilities which guardians ad litem appointed in family or juvenile court cases may be assigned to fulfill. These specific responsibilities are cumulative in nature and, although a specific responsibility may be listed under only one section, each specific responsibility shall be deemed continuing in nature and should be repeated as often as necessary throughout the proceeding as appropriate to the case. Each Appendix then proceeds to identify responsibilities for different stages of a proceeding, including the pre-trial, evidentiary, and trial phases in

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family court proceedings, and the pre-adjudicatory, adjudicatory, and dispositional phases in juvenile court proceedings.

Rule 9 addresses the issue of the rights and powers accorded to guardians ad litem in family and juvenile court cases. Subdivision 1 deals with the rights and powers accorded to guardians ad litem in every case and provides that consistent with the responsibilities set forth in Rule 8, subdivision 1, in every case in which a guardian ad litem is appointed pursuant to Rule 4, 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.

Rule 9, subdivision 2 deals with the rights and powers accorded to guardians ad litem who are designated as parties to a proceeding and provides that in addition to the rights and powers set forth in subdivision 1, 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

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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 by way of oral arguments and submission of written reports.

The Comment to Rule 9 summarizes the circumstances under which guardians ad litem are designated as parties to family and juvenile court cases. With respect to family court proceedings, the Comment provides that pursuant to Rule 302.04(b) of the Minnesota 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."

With respect to paternity matters, the Comment to Rule 9 provides that 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."

With respect to juvenile court proceedings, the Comment to Rule 9 provides that 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

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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."

### **6. CONTACT WITH THE CHILD, AND ASCERTAINING AND COMMUNICATING TO THE COURT THE WISHES OF THE CHILD REGARDING MATTERS BEFORE THE COURT**

#### *Findings and Recommendations of Legislative Auditor*

During its investigation, the Legislative Auditor learned that guardians ad litem submit reports to the court for the purpose of making recommendations regarding the best interests of the child.<sup>143</sup> During interviews and through surveys some parents' advocates and lawyers expressed concerns regarding incomplete guardian ad litem reports and regarding recommendations not adequately supported by the facts from an investigation.<sup>144</sup> The Legislative Auditor learned that in juvenile court cases 85 percent of judges, 91 percent of court administrators, and 99 percent of guardians ad litem believe that guardians ad litem have the responsibility to "visit with the child."<sup>145</sup> In family court cases, depending upon whether the guardian ad litem appointment was mandatory or discretionary, an average of 87 percent of judges, 89 percent of court administrators, and 81 percent of guardians ad litem responded that guardians ad litem have the responsibility to "visit with the child."<sup>146</sup> The 1986 Guidelines provide that one of the primary duties of a guardian ad litem is to have "regular contact with the child."<sup>147</sup> The Guidelines further provide that guardians ad litem have the "right to access to

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<sup>143</sup>Report of Legislative Auditor, supra note 11, at 43.

<sup>144</sup>Id.

<sup>145</sup>Id. at 40.

<sup>146</sup>Id.

<sup>147</sup>Guidelines, supra note 31, at 23.

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the child as deemed necessary by the guardian ad litem."<sup>148</sup> The Guidelines suggest that "at least monthly contact" is necessary to keep apprised of the child's situation.<sup>149</sup>

Neither the Report of the Legislative Auditor nor the Guidelines address the issue of whether a guardian ad litem has a responsibility to ascertain the child's wishes as to matters that are before the court.

### ***Task Force Deliberations***

The Task Force determined that 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. The Task Force decided to not establish a standard for whether a guardian ad litem must have contact with the child in every case or a standard regarding the amount of contact. Instead, in the Comment to Rule 8 the Task Force states that a guardian ad litem must have sufficient contact with the child to ascertain the child's best interests, and that 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.

The Task Force determined that in arriving at her or his recommendations as to the child's best interests, one factor that may be considered by the guardian ad litem is the wishes of the child regarding the issues before the court. The Task Force determined that the guardian ad litem may ascertain the child's wishes if it is in the child's best interests to do so. If a guardian ad litem determines that it is appropriate to ascertain the child's wishes, the Task Force believes that this should be done in a manner that does not create conflict for the child. For this reason, in the Comment to Rule 8 the Task Force suggests methods for eliciting the child's wishes so as to not create a conflict for the child.

The Task Force further decided that a guardian ad litem may communicate the child's wishes to the court, and/or to the child's parents, if it is in the best interests of the child to do so. In the Comment to Rule 8, the Task Force sets forth a number of factors to be considered in determining whether it is in the child's best interests to communicate the child's wishes to the court and/or the child's parents. Among the factors to be considered are the child's age, culture, maturity, emotional stability, and ability to reason, communicate, and understand.

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<sup>148</sup>Id. at 26.

<sup>149</sup>Id.

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### *Provisions of Proposed Rules Recommended by Task Force for Resolving Issue*

Rule 8 of the Proposed Minnesota Rules of Guardian Ad Litem Procedure addresses the issues of contact between a guardian ad litem and child and ascertaining the child's wishes. Rule 8, subdivision 1(b), provides that a 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.

With respect to the issue of contact between guardian ad litem and child, the Comment to Rule 8 provides that 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. Similarly, the Guidelines for Family Court Cases and the Guidelines for Juvenile Court Cases, Appendices G and H to the Proposed Rules, provide at section 2(f) that a guardian ad litem is to meet with and/or observe the child in a manner consistent with the child's developmental capabilities and that meeting with the child may be alone at the discretion of the guardian ad litem. In addition, the Guidelines for Juvenile Court cases caution that it is important to prevent any unnecessary interview of the child by the guardian ad litem or any other person and that it is the responsibility of the law enforcement and child protection agencies, not the guardian ad litem, to investigate or substantiate any initial or presenting concerns regarding child abuse.

A separate Comment to Rule 8 addresses the issue of ascertaining the child's wishes and provides that 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.

The Comment further provides that 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,



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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.

The Comment also provides that 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.

In addition, the Comment provides that 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.

### **7. DISTINGUISHING THE ROLES OF GUARDIANS AD LITEM AND CUSTODY EVALUATORS**

#### ***Findings and Recommendations of Legislative Auditor***

During its investigation, the Legislative Auditor learned that "judges across the state assign a variety of duties to guardians."<sup>150</sup> As one example of differing judicial practices, the Legislative Auditor cited the use of guardians ad litem as custody evaluators. The Legislative Auditor reported that "[a]lthough the Guidelines do not define custody investigation as a guardian ad litem duty, over one-half of all judges responding to the survey indicated that 'conducting custody evaluations' should be a guardian ad litem responsibility."<sup>151</sup> In contrast, other courts have formal policies clearly differentiating the roles of guardians ad litem and

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<sup>150</sup>Report of Legislative Auditor, *supra* note 11, at 38.

<sup>151</sup>*Id.*

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custody evaluators.<sup>152</sup> As a result of its investigation, the Legislative Auditor recommended that the roles of guardians ad litem and custody evaluators be clarified by the Supreme Court.<sup>153</sup>

### ***Task Force Deliberations***

As noted in the Comment to Rule 8, the Task Force determined that the roles of guardians ad litem and custody evaluators are not in conflict -- ultimately, each has the responsibility to make recommendations to the court regarding the best interests of the child. The Task Force also determined, however, that because guardians ad litem already have extensive responsibilities, they should not be routinely directed to serve as custody evaluators, especially if there are other professionals in the county normally responsible for conducting such investigations. For that reason, the Task Force established parameters to be followed in determining whether a person should be called upon to serve as both a guardian ad litem and a custody evaluator in the same case.

### ***Provisions of Proposed Rules Recommended by Task Force for Resolving Issue***

Rule 8, subdivision 2, of the Proposed Minnesota Rules of Guardian Ad Litem Procedure addresses the issue of distinguishing the roles of guardians ad litem and custody evaluators and provides that unless specified in the appointment order entered pursuant to Rule 4, 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 or 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.

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<sup>152</sup>Id.

<sup>153</sup>Id. at 41.

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### **8. PROCEDURES FOR GUARDIANS AD LITEM TO WORK WITH FAMILIES WHEN DOMESTIC VIOLENCE IS AN ISSUE**

#### *Findings and Recommendations of Legislative Auditor*

The Legislative Auditor reported that during interviews and in response to surveys, "people have repeatedly expressed concern about the lack of guardian training on issues of family violence."<sup>154</sup> Because CAPTA focused on child abuse and neglect, guardians ad litem receive training regarding child protection issues, but not regarding domestic violence issues.<sup>155</sup> Based upon review of existing training programs, the Legislative Auditor found that "[g]uardians receive little basic or continuing training regarding domestic abuse and its effect on children and victims."<sup>156</sup> The Legislative Auditor further found that one curriculum topic not mentioned in the Guidelines is domestic abuse.<sup>157</sup> As a result of its investigation, "[t]he Legislative Auditor recommended that the guardian ad litem training curriculum should include a component on family violence."<sup>158</sup>

#### *Task Force Deliberations*

The Task Force received comments from a variety of sources, including women who are survivors of abuse and their advocates, that in making their recommendations many guardians ad litem often fail to recognize or fail to take into consideration the impact that domestic violence has on children and the victims of abuse. Given the increased incidence of domestic violence (or at least the increased reporting of it), and the fact that most guardians ad litem are appointed to serve in either family or juvenile court cases, which may involve issues of domestic violence, the Task Force believes it is absolutely necessary for all guardians ad litem to be trained regarding the issue. Specifically, the Task Force believes that training should include information on how domestic violence impacts children and the victims of abuse. The Task Force further believes that guardians ad litem must be trained to properly carry out their duties, especially in cases where domestic violence is present. As a result, the Task Force included in the pre-service training curriculum a component regarding the dynamics of domestic violence, including its impact on children and the victims of abuse. Further, the Task Force established

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<sup>154</sup>Report of Legislative Auditor, supra note 11, at 79.

<sup>155</sup>Id.

<sup>156</sup>Id.

<sup>157</sup>Id.

<sup>158</sup>Id.

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guidelines for ensuring that guardians ad litem carry out their duties in a manner that best protects the safety of children and victims of domestic abuse.

### ***Provisions of Proposed Rules Recommended by Task Force for Resolving Issue***

Rule 12 of the Proposed Minnesota Rules of Guardian Ad Litem Procedure addresses the issues of guardian ad litem training regarding the dynamics of domestic violence and working with families where domestic violence is an issue. Rule 12, subdivision 1, provides that 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. At a minimum, the core curriculum shall address the topics set forth in Appendix I regarding the training of all guardians ad litem, and shall address the topics set forth in Appendix J regarding the training of guardians ad litem who will serve in family or juvenile court cases. The pre-service training curriculum should be reviewed and updated at least every three years.

Appendix I to the Proposed Rules sets forth the topics which must, at a minimum, be included in the core pre-service training curriculum, including the dynamics of domestic violence and its impact upon children and the victims of abuse.

In Appendices G and H to the Proposed Rules (the Guidelines for Family Court Cases and the Guidelines for Juvenile Court Cases, respectively), section 2(m) provides that when appointed in cases in which a finding of domestic abuse has been made, including all cases with orders for protection or harassment restraining orders, the guardian ad litem shall gather and release information in a manner that best protects the safety of the child and victim, and that does not require the parties to have contact.

### **9. REQUIRING JUDGES TO WRITE DETAILED APPOINTMENT ORDERS DEFINING CASE-SPECIFIC GUARDIAN AD LITEM ROLES AND RESPONSIBILITIES**

#### ***Findings and Recommendations of Legislative Auditor***

During its investigation the Legislative Auditor learned that judges believe guardians ad litem "play a crucial role in the judicial system, and that the court 'couldn't operate without them'."<sup>159</sup> The Legislative Auditor stated that "judges play a crucial role in assuring that the

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<sup>159</sup>Report of Legislative Auditor, *supra* note 11, at 37.

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guardian's work is useful and appropriate."<sup>160</sup> Some guardians ad litem, lawyers, and representatives of parents groups stated to the Legislative Auditor that "the lack of clear role definition [in Minnesota's statutes and rules] contributes to inconsistency and confusion about guardians' duties and how they are carried out."<sup>161</sup>

Adding to the confusion is the fact that the presiding judge defines the scope of the guardian ad litem's authority, and many judges have differing practices regarding duties assigned to guardians ad litem as well as differing expectations regarding communication and reporting requirements.<sup>162</sup> In some cases, for example, the person is appointed to serve solely as a guardian ad litem, gathering information from appropriate sources and presenting the information to the court along with recommendations regarding the best interests of the child.<sup>163</sup> In other cases, however, the person is also appointed to serve as a mediator, custody evaluator, or visitation expeditor.<sup>164</sup> The Legislative Auditor suggested that some of the duties involved in those other roles, such as that of mediator, may conflict with the responsibility of advocating for the best interests of the child.<sup>165</sup> The Legislative Auditor also reported numerous examples of other potential guardian ad litem responsibilities for which there appears to be disagreement among judges, court administrators, and guardians ad litem. Included among these potential duties are collecting information, researching issues affecting the child's situation, attending staffings or conferences, and maintaining contact with services providers.<sup>166</sup> The Legislative Auditor stated that parents reported being confused about this multiplicity of roles.<sup>167</sup>

Based upon its investigation, the Legislative Auditor concluded that the difference of opinion among judges, court administrators, and guardians ad litem establishes that not all parties share identical expectations about the role and responsibilities of guardians ad litem.<sup>168</sup>

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<sup>160</sup>Id.

<sup>161</sup>Id. at 36-37.

<sup>162</sup>Id. at 37.

<sup>163</sup>Id. at 38.

<sup>164</sup>Id.

<sup>165</sup>Id.

<sup>166</sup>Id. at 41.

<sup>167</sup>Id.

<sup>168</sup>Id.

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The Legislative Auditor further concluded that "some of these responsibilities are fundamental to the guardian's role," but that "[i]f different persons within the system are operating under different expectations [about whether certain responsibilities should or should not be performed], it could be difficult to provide guardian ad litem services in an appropriate manner."<sup>169</sup> The Legislative Auditor concluded that it is for this reason that "the judge's order of appointment can be instrumental in defining the guardian's duties for a specific case."<sup>170</sup> The Legislative Auditor recommended that "[j]udges should write more detailed appointment orders clearly defining their expectations for guardians' roles and responsibilities in specific cases."<sup>171</sup>

### ***Task Force Deliberations***

The Task Force believes it is essential for judges to prepare detailed appointment orders. A detailed appointment order would serve three functions: (1) establish the judge's expectations as to the case-specific duties of the guardian ad litem, including the time line for filing the report; (2) guide the guardian ad litem as to the specific duties to be carried out in each particular case; and (3) identify for parents and other case participants the parameters of the guardian ad litem's responsibilities and boundaries of the guardian ad litem's authority.

### ***Provisions of Proposed Rules Recommended by Task Force for Resolving Issue***

Rule 4, subdivision 4, of the Proposed Minnesota Rules of Guardian Ad Litem Procedure addresses the issue of appointment orders and provides that a guardian ad litem shall not be appointed or serve except upon written order of the court. The order shall set forth the specific duties to be performed by the guardian ad litem in the case, and establish, to the extent appropriate, deadlines for the completion of the duties set forth.

Appendices C (family court) and D (juvenile court) of the Proposed Rules provide examples of orders which comply with the requirements of Rule 4.

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<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 43.

<sup>171</sup> *Id.*

## **PART IV: TASK FORCE DELIBERATIONS**

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### **10. DESIGNATION, QUALIFICATIONS, TRAINING, AND RESPONSIBILITIES OF GUARDIAN AD LITEM PROGRAM COORDINATORS**

#### *Findings and Recommendations of Legislative Auditor*

During its investigation, the Legislative Auditor found that somewhat less than one-half of Minnesota's guardian ad litem programs have coordinators.<sup>172</sup> The Legislative Auditor stated that a program coordinator "serves an important function in recruiting, facilitating training, and supervising new and experienced guardians."<sup>173</sup> The Legislative Auditor concluded that "[t]he presence of a program coordinator, whether at the county, multi-county, or district level, promotes impartiality and accountability and minimizes the perception of undue influence with the court."<sup>174</sup> Based upon its investigation, the Legislative Auditor recommended that "[k]ey characteristics of the coordinator role should be defined in the guardian guidelines, . . . including selection criteria, responsibilities, and necessary training."<sup>175</sup>

#### *Task Force Deliberations*

There was consensus among Task Force members that standards regarding the qualifications, responsibilities, and training requirements for guardian ad litem program coordinators should be established and followed statewide.

#### *Provisions of Proposed Rules Recommended by Task Force for Resolving Issue*

Various provisions of the Proposed Minnesota Rules of Guardian Ad Litem Procedure address issues relating to program coordinators.

Rule 1 addresses the issue of designating a program coordinator, as well as the purpose and function of a program coordinator. Rule 1, subdivision 2, provides that Rules 1 to 13 shall be implemented in each judicial district on or before the date for implementation prescribed by the Supreme Court in its order adopting Rules 1 to 13. The chief judge of the judicial district shall be responsible for insuring the implementation of Rules 1 to 13. The responsibilities set forth in Rules 3 to 7 shall be carried out in each judicial district at the direction of one or more

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<sup>172</sup>Report of Legislative Auditor, supra at note 11, at 59.

<sup>173</sup>Id.

<sup>174</sup>Id.

<sup>175</sup>Id.

## **PART IV: TASK FORCE DELIBERATIONS**

program coordinators to be designated by the chief judge of the judicial district. 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. An individual or organization may serve in more than one county in a judicial district.

With respect to program coordinator qualifications and training, Rule 1, subdivision 2, provides that 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 and must satisfy the minimum qualifications set forth in Rule 2, clauses (c), (d), (g), and (h).

Rules 3, 4, 5, 6, and 7 set forth the responsibilities of program coordinators. Rule 3 provides that program coordinators are responsible for recruiting guardians ad litem (subdivision 1), receiving guardian ad litem applications (subdivision 2), screening applicants and determining who will be included on the panel of approved guardians ad litem (subdivision 3), and maintaining the list of approved guardians ad litem (subdivision 4.)

Rule 4, subdivision 1, deals with the issue of selecting the appropriate guardian ad litem for each case and provides that upon receipt of a request from a judge, the program coordinator shall promptly recommend a guardian ad litem to the court, applying the factors set forth in subdivision 3. Unless the court determines, in the exercise of judicial discretion and applying the factors set forth in subdivision 3, 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 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.

Rule 5 provides that the program coordinator is responsible for ensuring that guardians ad litem take an oath or make an affirmation, which must be substantially in the form set forth in Appendix E to the Proposed Rules. At the discretion of the program coordinator the oath may be taken or the affirmation made either at the time the guardian ad litem is included on the panel of approved guardians ad litem or at the time the guardian ad litem is appointed to a particular case, or at both times.

Rule 6 provides that program coordinators are responsible for conducting guardian ad litem performance evaluations and determining whether to retain or remove guardians ad litem from the panel of approved guardians ad litem. Rule 7, subdivision 1, provides that program coordinators are responsible for investigating complaints made against guardians ad litem.



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Rule 1, subdivision 2, provides that a program coordinator may delegate the responsibilities set forth in Rules 3 and 4 to a person who has not completed the training requirements set forth in Rule 10, provided that if the person is not under the direct supervision of the program coordinator, the delegation must be approved by the chief judge of the judicial district.

### **11. EDUCATING PARENTS, JUDGES, ATTORNEYS, AND OTHERS ABOUT THE PURPOSE, ROLES, AND RESPONSIBILITIES OF GUARDIANS AD LITEM**

#### *Findings and Recommendations of Legislative Auditor*

During its investigation, the Legislative Auditor learned that parents and lawyers, as well as other case participants, are often confused about the purpose, roles, and responsibilities of guardians ad litem.<sup>176</sup> The Legislative Auditor found that several comments from parents were "clearly based on misinformation or confusion" about guardian ad litem roles and responsibilities.<sup>177</sup> The Legislative Auditor learned that several program coordinators and judges distribute brochures and use seminars to explain to parents the roles and responsibilities of guardians ad litem.<sup>178</sup>

As a result of its investigation, the Legislative Auditor recommended that "the Supreme Court should develop written materials describing the purpose of guardians ad litem and guardian roles and responsibilities, and make them available to parents, lawyers, and other professionals."<sup>179</sup> It was further recommended that individual guardian ad litem programs supplement this general information with "program-specific information, including the name, phone numbers, and hours for the program coordinator or county contact person, and the local complaint process."<sup>180</sup>

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<sup>176</sup>Report of Legislative Auditor, supra note 11, at 45.

<sup>177</sup>Id.

<sup>178</sup>Id.

<sup>179</sup>Id.

<sup>180</sup>Id.

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### ***Task Force Deliberations***

There was consensus on the Task Force that judges, attorneys, parents, and other case participants be educated regarding the purpose, roles, and responsibilities of guardians ad litem. The Task Force also believes it is important to offer information to the general public regarding opportunities to serve as a guardian ad litem. There was agreement that this educational process could be achieved through development of a brochure to be utilized statewide.

### ***Provisions of Proposed Rules Recommended by Task Force for Resolving Issue***

Rule 13 of the Proposed Minnesota Rules of Guardian Ad Litem Procedure addresses the issue of community education and provides that 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.

### **C. ADDITIONAL ISSUES CONSIDERED BY THE TASK FORCE**

Though not specifically directed to do so by the Supreme Court, the Task Force considered a number of issues which it believed to be necessary to the establishment of a successful guardian ad litem system. A discussion of those issues is set forth below.

#### **1. IMPLEMENTATION OF PROPOSED RULES, INCLUDING FUNDING CONSIDERATIONS**

### ***Findings and Recommendations of Legislative Auditor***

Minnesota's 87 counties are organized into ten judicial districts.<sup>181</sup> During its investigation, the Legislative Auditor found that over the course of the 1970s and 1980s guardian ad litem programs developed sporadically throughout Minnesota's counties.<sup>182</sup> The type of guardian ad litem program used in each county "depends on the case volume, local resources,

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<sup>181</sup>Report of Legislative Auditor, supra note 11, at 19.

<sup>182</sup>Id. at 20.

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history, and philosophy of the court."<sup>183</sup> Some counties, such as St. Louis County, have more than one guardian ad litem program, others have only one program, some counties share guardians ad litem, and still others have no formal guardian ad litem programs.<sup>184</sup>

Administration of guardian ad litem programs also varies from county to county. The Legislative Auditor found that court services or the court administrator's office administers the programs in almost three-fourths of the counties.<sup>185</sup> In other counties, guardian ad litem programs are administered by community corrections departments, staff guardians ad litem, program coordinators, judges, or through contracts with external for-profit or non-profit agencies.<sup>186</sup>

Likewise, the type of guardian ad litem used varies from county to county. The Legislative Auditor found that while "[m]ost county guardian programs use paid non-attorney guardians, the majority of guardians in Minnesota are volunteers."<sup>187</sup> Further, although some counties exclusively utilize either volunteer, paid non-attorney, or paid attorney guardians ad litem, some counties use a combination of these individuals.<sup>188</sup> Hennepin County is unique in that it uses paid attorney guardians ad litem for family court cases and volunteer guardians ad litem in juvenile court cases.<sup>189</sup> "Most counties' guardian programs are small, especially outside the Twin Cities' metropolitan area, and more than one-half of the programs use five or fewer guardians ad litem."<sup>190</sup> Some judges and court administrators expressed the opinion that it is "not necessary to maintain a formal guardian program in counties with low numbers of cases," and further stated that they "could always find a lawyer, if needed, to serve as a guardian ad litem."<sup>191</sup>

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<sup>183</sup>Id. at 23.

<sup>184</sup>Id. at 21 and n.11.

<sup>185</sup>Id. at 24.

<sup>186</sup>Id.

<sup>187</sup>Id. at 21.

<sup>188</sup>Id.

<sup>189</sup>Id.

<sup>190</sup>Id. at 25.

<sup>191</sup>Id. at 23.

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With respect to the issue of funding, the Legislative Auditor found that all guardian ad litem programs are county funded, with the exception of the programs in the Eighth Judicial District, which are state funded.<sup>192</sup> While the Legislative Auditor asked each county to provide detailed information regarding the costs for its guardian ad litem program, "most counties were unable to provide detailed data, five counties provided data for only one year, and four provided no data at all."<sup>193</sup> From the data it did receive, the Legislative Auditor learned that "some supervisory and other costs were often commingled with other court functions, and thus were not completely reported."<sup>194</sup> The Legislative Auditor found that in 1993, nearly \$3 million was spent statewide for the services of approximately 850 guardians ad litem.<sup>195</sup> The Legislative Auditor also found that the real cost for providing guardian ad litem services is likely higher than the data reflects, as "many counties record the operating costs of guardian ad litem programs in the budgets of other departments."<sup>196</sup> The Legislative Auditor found that "the hourly rate for paid attorney guardians ad litem was about the same for all types of programs, approximately \$50 to \$55 per hour."<sup>197</sup> Non-attorney rates were more variable, ranging from \$8 to \$40 per hour, but these rates may include the costs of guardian ad litem program operation.<sup>198</sup>

Based upon its investigation, the Legislative Auditor concluded that the needs and resources of each county vary considerably, and "guardian use reflects these differences."<sup>199</sup> The Legislative Auditor made no specific recommendation as to the type of program that should be implemented in Minnesota, but instead cautioned that "[i]t is vital that any type of guardian program fit the community needs and economic constraints of the county or judicial district."<sup>200</sup>

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<sup>192</sup> Id. at 25.

<sup>193</sup> Id. at 23.

<sup>194</sup> Id. at 23-24.

<sup>195</sup> Id. at 24.

<sup>196</sup> Id.

<sup>197</sup> Id. at 25.

<sup>198</sup> Id.

<sup>199</sup> Id. at 31.

<sup>200</sup> Id.

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### ***Task Force Deliberations***

Over the course of the Task Force's deliberations, Task Force members struggled with the tension between the desire to allow the panoply of existing guardian ad litem programs in Minnesota to continue under the Proposed Rules, the clear need for program coordinators to be directly responsible for implementation of the Proposed Rules, and the lack of a stable source of funding to cover the increased costs of operating guardian ad litem programs under the Proposed Rules. The issues of increased cost and uncertainty of funding were likewise identified as concerns by a host of judges, court officials, and others who commented on the Proposed Rules.

While the Task Force did not have the means to resolve this tension, the Task Force recognized that its ultimate recommendations must result in a set of policies which accommodate the wide range of existing guardian ad litem programs. As a result of this policy consideration, the Task Force developed Proposed Rules that are flexible so that each guardian ad litem program may best meet the special needs and circumstances of its local community.

The Task Force also decided that those guardian ad litem programs that are currently in existence should be allowed to continue in operation, and this is permitted pursuant to Rule 1, subdivision 2. However, to establish a statewide standard of accountability, the Task Force decided that each judicial district must establish a guardian ad litem program, and that the chief judge of each district will be responsible for ensuring implementation of the Proposed Rules. The Task Force further decided that each program's responsibilities must be directed by one or more program coordinators, who may be an individual, such as a court administrator, or an existing organization.

### ***Provisions of Proposed Rules Recommended by Task Force for Resolving Issue***

Rule 1, subdivision 2, of the Proposed Rules addresses the issue of implementation of the Proposed Rules and provides that Rules 1 to 13 shall be implemented in each judicial district on or before the date for implementation prescribed by the Supreme Court in its order adopting Rules 1 to 13. The chief judge of the judicial district shall be responsible for insuring the implementation of Rules 1 to 13. The responsibilities set forth in Rules 3 to 7 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 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 and must satisfy the minimum qualifications set forth in Rule 2, 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

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the responsibilities set forth in Rules 3 and 4 to a person who has not completed the training requirements set forth in Rule 10, provided that if the person is not under the direct supervision of the program coordinator, the delegation must be approved by the chief judge of the judicial district.

Because of the unresolved tension regarding implementation of the Proposed Rules and the funding mechanism to do so, the Task Force recommends that the Minnesota Supreme Court should proceed to adopt the Proposed Minnesota Rules of Guardian Ad Litem Procedure, and, based upon a fiscal impact analysis to be prepared by the State Court Administrator, determine appropriate dates for implementation and to what extent, if any, funding considerations should be addressed by the Minnesota Legislature.

### 2. RECRUITMENT OF GUARDIANS AD LITEM

#### *Findings and Recommendations of Legislative Auditor*

During its investigation the Legislative Auditor found that "[h]istorically, judges recruited guardians ad litem as they were needed."<sup>201</sup> Today, however, "programs recruit guardians more systematically, [including] placing ads in newspapers, soliciting volunteers from a variety of community organizations, and other methods."<sup>202</sup> The Legislative Auditor further found that many programs could not recruit enough guardians ad litem for the number of cases requiring appointments.<sup>203</sup> This is especially true in regard to "minority and economically disadvantaged guardians."<sup>204</sup> The reason for the inability to recruit enough guardians ad litem was not made clear to the Legislative Auditor. On the one hand, some advocacy groups suggested that "guardian programs may not really be trying to identify appropriate minority members, or are recruiting inappropriately."<sup>205</sup> On the other hand, however, others suggested

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<sup>201</sup> Report of Legislative Auditor, *supra* note 11, at 48.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.* at 49.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

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that persons from minority populations may be hesitant to become involved in judicial proceedings.<sup>206</sup>

Based upon its investigation, the Legislative Auditor concluded that "the pool from which guardians are selected and trained should be of high quality, although there is no simple way to achieve this."<sup>207</sup> The Legislative Auditor recommended that guardian ad litem programs "must actively recruit guardians ad litem of diverse cultural and economic backgrounds to best meet childrens' needs."<sup>208</sup> The Legislative Auditor further recommended that, "[a]t a minimum, guardians ad litem must be trained to recognize the different cultural needs of children, including handicapped children, and program coordinators could work with district and state resources to more effectively identify potential guardians from minority communities."<sup>209</sup>

### ***Task Force Deliberations***

The Task Force strongly believes that recruitment of well-qualified guardians ad litem is essential to the success of Minnesota's guardian ad litem programs and to ensure effective advocacy for the best interests of Minnesota's culturally-diverse children. While not specifically directed to do so by the Supreme Court, it is for this reason that the Task Force addressed the issue of recruitment of guardians ad litem.

The Task Force determined that the policies and procedures for recruiting, selecting, appointing, and training guardians ad litem, as well as the minimum qualifications and responsibilities of guardians ad litem, should incorporate the concept that guardians ad litem be knowledgeable about and appreciative of the racial, ethnic, and socio-economic backgrounds of the children for whom they will be advocating.

### ***Provisions of Proposed Rules Recommended by Task Force for Resolving Issue***

Various provisions of the Proposed Minnesota Rules of Guardian Ad Litem Procedure address the issues of guardian ad litem recruitment and cultural competency.

Rule 3, subdivision 1, provides that 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

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<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

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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.

Rule 2(d) provides that among the minimum qualifications a person must satisfy to be selected as a guardian ad litem is knowledge and an appreciation of the ethnic, cultural, and socio-economic backgrounds of the population to be served.

Rule 4, subdivision 3, provides that 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. Rule 4, subdivision 3, also provides that 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.

Rule 8, subdivision 1(j), provides that in every case it is the responsibility of the guardian ad litem to 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 Preservation Act, it is the responsibility of the guardian ad litem to 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.

Rule 12 provides that a core pre-service training curriculum be developed by the State Court Administrator, through the Office of Continuing Education, incorporating training regarding relevant laws, rules, and regulations, including the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act, and the Minnesota Heritage Preservation Act.



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### **3. DISTINGUISHING THE ROLES OF GUARDIANS AD LITEM AND MEDIATORS OR VISITATION EXPEDITORS**

#### ***Task Force Deliberations***

The Task Force was directed to distinguish between the roles of guardians ad litem and custody evaluators. Its recommendations regarding this issue are set forth above in section B(7). Because guardians ad litem have occasionally been assigned the additional role of mediator or visitation expeditor, the Task Force chose to also address the question of whether a person may serve on one case as both a guardian ad litem and a mediator, as that role is prescribed in Minnesota Statutes section 518.619 and Rule 310 of the Minnesota Rules of Family Court Procedure, or visitation expeditor, as that role is prescribed in Minnesota Statutes sections 518.1751.

As noted in the Comment to Rule 8, the Task Force determined that there is an inherent conflict of interest between the responsibilities of guardians ad litem and persons appointed to serve as mediators or visitation expeditors. Specifically, the responsibilities of mediators or visitation expeditors to facilitate or conduct negotiations, effect settlements, and/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. Because of this conflict of interest, the Task Force determined that no court should order a person to, and no person should serve in a particular case as both a guardian ad litem and mediator or visitation expeditor, as those roles are prescribed in the statutes and rules.

While the Task Force consensus was to not allow guardians ad litem to serve as mediators or visitation expeditors, some members of the Task Force felt strongly that guardians ad litem should be allowed to also serve as visitation expeditors if ordered to do so. Appendix B to Part VII of this Report sets forth alternative language to Rule 8, subdivision 2, proposing that guardians ad litem be permitted to serve as visitation expeditors. Appendix B also sets forth the reasoning behind the alternative language, which was drafted by Task Force member Judge Baland.

#### ***Provisions of Proposed Rules Recommended by Task Force for Resolving Issue***

Rule 8, subdivision 2, of the Proposed Minnesota Rules of Guardian Ad Litem Procedure addresses the issue of serving in one case as both a guardian ad litem and custody evaluator and provides that in a case in which a guardian ad litem is serving pursuant to Rule 4, 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 the Minnesota

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Rules of Family Court Procedure, or visitation expeditor, as that role is prescribed in Minnesota Statutes section 518.1751.

The Comment to Rule 8 provides that while subdivision 2 precludes serving as both a guardian ad litem and a mediator or visitation expeditor, it does not preclude a guardian ad litem from facilitating visitation, or from negotiating or mediating on an informal basis.

### **4. SELECTION OF GUARDIAN AD LITEM BY PERSON OTHER THAN APPOINTING JUDGE**

#### *Findings and Recommendations of Legislative Auditor*

During its investigation the Legislative Auditor found that guardians ad litem are appointed to cases pursuant to a written order.<sup>210</sup> In approximately 40 percent of the programs, judges directly appointed the guardians ad litem without referring to a pool or list of guardians ad litem; in about 14 percent of the programs, the coordinator selected the guardian ad litem; and in another 40 percent of the programs, judges made the selection from a list of available guardians ad litem.<sup>211</sup> Among the questions raised during the Legislative Auditor's investigation were whether "guardians ad litem feel they have obligations to those who select them or whether judges feel obligated to support [the recommendations of] a guardian ad litem they personally selected."<sup>212</sup>

Based upon its investigation, the Legislative Auditor concluded that "the perception of parents and others of the independence of judge and guardian is important, and judges should try to limit their involvement in the selection of a specific guardian for a case."<sup>213</sup> The Legislative Auditor further concluded that "[t]he method used to assign a guardian to a specific case could affect the independence of [the guardian's] judgment."<sup>214</sup> As a result, the

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<sup>210</sup>Report of Legislative Auditor, *supra* note 11, at 52.

<sup>211</sup>*Id.*

<sup>212</sup>*Id.*

<sup>213</sup>*Id.*

<sup>214</sup>*Id.*

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Legislative Auditor recommended that "[w]here possible, guardians should be assigned to cases by guardian program coordinators rather than judges."<sup>215</sup>

### ***Task Force Deliberations***

The Task Force was unable to achieve consensus regarding the issue of who should select the guardian ad litem for appointment to a particular case. On the one hand, many members of the Task Force believe that a person other than the appointing judge should select the guardian ad litem for each particular case. This belief is based upon problems identified in the Report of the Legislative Auditor, the experiences of several Task Force members, and comments received by the Task Force from several members of the public. Those Task Force members expressed the view that, in many cases, the parties believe that because the appointing judge selected the guardian ad litem, the guardian ad litem would be beholden to the judge and the judge would be inclined to "rubberstamp" the recommendations of the guardian ad litem. To remove this perception of the lack of an independent relationship between the guardian ad litem and the appointing judge, those Task Force members suggested that the program coordinator should recommend to the appointing judge the guardian ad litem to be appointed in each particular case. Rule 4, subdivisions 1 and 2, of the Proposed Rules incorporates the position that, except in exigent circumstances, the guardian ad litem ultimately appointed must be recommended by the program coordinator.

On the other hand, Judge Baland, and several other judges who commented on the Proposed Rules, took the position that selection of the person to be appointed to serve as guardian ad litem in a particular case ought to be left to the sound discretion of the appointing judge. Generally, the reasoning underlying this position is that the appointing judge is ultimately responsible for the performance of the guardian ad litem, the appointing judge is in the best position to ascertain the strengths of guardians ad litem as they apply to each particular case, and in some cases an immediate appointment may be in the child's best interests. Judge Baland offered alternative language to Rule 4, subdivisions 1 and 2, proposing direct selection of the guardian ad litem by the appointing judge. Both the alternative language and Judge Baland's reasoning are set forth in Appendix C to Part VII of this Report.

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<sup>215</sup>Id.

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### 5. COMMUNICATION BETWEEN GUARDIANS AD LITEM AND JUDGES

#### *Findings and Recommendations of Legislative Auditor*

During its investigation the Legislative Auditor reviewed the 1986 Guidelines which "explicitly state that 'to maintain the objectivity necessary in a judicial proceeding, the guardian ad litem should not initiate ex parte contact with the judge regarding case information'."<sup>216</sup> The Legislative Auditor found that the term "ex parte" is defined in Black's Law Dictionary as meaning "one side only."<sup>217</sup> The Legislative Auditor stated that ex parte "is a legal expression applied to a proceeding or communication in which only one side of the case is present, and the opposing side is absent. There is a presumption of partisan testimony in an ex parte proceeding or communication."<sup>218</sup>

The Legislative Auditor reported that judges "often call guardians 'the eyes and ears of the court' and treat them as extensions of the judge."<sup>219</sup> Among the complaints most often expressed by parents and attorneys, however, was that "guardians have too much power, and that they are too close to the judge."<sup>220</sup> Additionally, attorneys complained that because of the "special relationship" between guardians ad litem and judges, "guardians ad litem held inappropriate, ex parte communications with judges, giving the appearance that guardians ad litem had special status and undue influence in the courtroom."<sup>221</sup> The Legislative Auditor reported that while judges they interviewed agreed that ex parte contact with guardians ad litem should never occur, "both judges and guardians acknowledged that such communications and contacts do take place."<sup>222</sup>

As a result of its investigation, the Legislative Auditor recommended that "training materials should address the issue of how to properly communicate with judges."<sup>223</sup>

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<sup>216</sup>Report of Legislative Auditor, supra note 11, at 42.

<sup>217</sup>Id. at 42 n.14.

<sup>218</sup>Id. at 42.

<sup>219</sup>Id.

<sup>220</sup>Id.

<sup>221</sup>Id.

<sup>222</sup>Id.

<sup>223</sup>Id. at 43.

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### ***Task Force Deliberations***

There was consensus that the Task Force should attempt to eliminate the perceived impropriety caused by improper communication between judges and guardians ad litem. The Task Force agreed that ex parte communication between judges and guardians ad litem should be limited to procedural matters not affecting the merits of a case. All other communications between the guardian ad litem and judge must include the parties.

### ***Provisions of Proposed Rules Recommended by Task Force for Resolving Issue***

Rule 8, subdivision 3, of the Proposed Minnesota Rules of Guardian Ad Litem Procedure addresses the issue of communication between judges and guardians ad litem and provides that 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.

## **PART V: RECOMMENDATIONS**

As charged by the Supreme Court in its Order dated July 26, 1995, and for consideration by the State Court Administrator in the preparation of the report to the Chairs of the Judiciary Committees of the Senate and House of Representatives, the Advisory Task Force on the Guardian Ad Litem System makes the following recommendations:

1. The Minnesota Supreme Court should proceed to adopt the Proposed Minnesota Rules of Guardian Ad Litem Procedure, and, based upon a fiscal impact analysis to be prepared by the State Court Administrator, determine appropriate dates for implementation and to what extent, if any, funding considerations should be addressed by the Minnesota Legislature.

2. In the rule-adoption process, the Minnesota Supreme Court should establish an effective date for implementation of the Proposed Rules that allows for the continuation of guardian ad litem services pending full implementation by judicial districts and guardian ad litem programs.

3. The Proposed Rules are intended to be consistent with and to conform to the requirements of Minnesota's existing law and procedure. To the extent that there are conflicts with existing statutes or rules, all inconsistent statutes or rules should be re-evaluated and amended in light of and with reference to the Proposed Rules.

4. The State Court Administrator, through the Office of Continuing Education in consultation with the Task Force, should immediately begin to develop the pre-service training and continuing education curricula and a program for the certification of persons to coordinate the delivery of training, as prescribed in Rule 12 of the Proposed Rules.

5. The State Court Administrator, through the Office of Continuing Education in consultation with the Task Force, should provide for the training of judges regarding the purpose, roles, and responsibilities of guardians ad litem, and application of the Proposed Rules.

6. The State Court Administrator, in consultation with the Task Force, should prepare a brochure, the purpose of which should be to educate judges, attorneys, parents, case participants, and others regarding the purpose, roles, and responsibilities of guardians ad litem and regarding opportunities to serve as a guardian ad litem.

7. Because the majority of cases in which guardians ad litem are appointed to serve are in family and juvenile court, the Task Force limited itself to developing Proposed Rules regarding these two areas. The Minnesota Supreme Court should consider the need for adoption of rules to guide those involved in probate and civil commitment proceedings.

8. Included among the appendices to the Proposed Rules is a Guardian Ad Litem Application (Appendix A to the Proposed Rules) and a model for Screening Process Topics and

## **PART V: RECOMMENDATIONS**

Interview Questions (Appendix B to the Proposed Rules). While the Task Force generally agreed upon the content of these to appendices, they have not been reviewed in regard to their compliance with Title VII, the Minnesota Human Rights Act, the Americans with Disabilities Act, or any other state or federal statutes. As part of the rule-adoption process, the Guardian Ad Litem Application and the Screening Process Topics and Interview Questions should be reviewed for compliance with federal and state statutes.

9. The Minnesota Supreme Court should charge the Task Force with the continuing responsibility of advising the Court in its implementation of paragraphs 1 to 8.

Dated: February 16, 1996

Respectfully Submitted,

MINNESOTA SUPREME COURT  
ADVISORY TASK FORCE ON THE  
GUARDIAN AD LITEM SYSTEM

**PROPOSED MINNESOTA RULES OF  
GUARDIAN AD LITEM PROCEDURE**



## **PART VI: PROPOSED RULES**

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### **PROPOSED MINNESOTA RULES OF GUARDIAN AD LITEM PROCEDURE**

#### **Rule 1. [PURPOSE STATEMENT; IMPLEMENTATION.]**

**Subdivision 1. [PURPOSE STATEMENT.]** The purpose of Rules 2 to 13 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 2 to 13:

- (a) The phrase "family court" case refers to the types of proceedings set forth in the Comment to Rule 301 of the Minnesota Rules of Family Court Procedure, 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"

## **PART VI: PROPOSED RULES**

case also refers to the juvenile delinquency proceedings set forth in Rule 1.01 of the Minnesota Rules of Juvenile Procedure.

**Subd. 2. [IMPLEMENTATION.]** Rules 1 to 13 shall be implemented in each judicial district on or before the date for implementation prescribed by the Supreme Court in its order adopting Rules 1 to 13. The chief judge of the judicial district shall be responsible for insuring the implementation of Rules 1 to 13. The responsibilities set forth in Rules 3 to 7 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 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 and must satisfy the minimum qualifications set forth in Rule 2, 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 3 and 4 to a person who has not completed the training requirements set forth in Rule 10, provided that if the person is not under the direct supervision of the program coordinator, the delegation must be approved by the chief judge of the judicial district.

### **COMMENT**

Subdivision 2 is designed to allow judicial districts flexibility in the implementation of Rules 2 to 13. Both single-county and multi-county judicial districts have used a variety of

## **PART VI: PROPOSED RULES**

guardian ad litem programs within a district. Subdivision 2 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 2. [MINIMUM QUALIFICATIONS.]**

Before a person may be recommended for service as a guardian ad litem pursuant to Rule 4, 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;

## **PART VI: PROPOSED RULES**

- (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 6, subdivision 2; and
- (h) have satisfactorily completed the pre-service training requirements set forth in Rule 10, and demonstrated a comprehension of the responsibilities of guardians ad litem as set forth in Rule 8, subdivision 1.

### **Rule 3. [SELECTION OF GUARDIANS AD LITEM.]**

**Subdivision 1. [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

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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.]** Any person who desires to become a guardian ad litem shall be required to submit a completed written application. The application shall contain, at a minimum, the questions set forth in Appendix A, 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.]** Before an applicant is approved by the program coordinator for inclusion on a panel of guardians ad litem maintained pursuant to subdivision 4, (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. A suggested Screening Process Topics and Interview Questions model is set forth in Appendix B.

**Subd. 4. [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 2.

### **Rule 4. [APPOINTMENT OF GUARDIANS AD LITEM.]**

**Subdivision 1. [REQUEST BY COURT; RECOMMENDATION OF GUARDIAN AD LITEM FOR APPOINTMENT.]** Except as provided in subdivision 2, when the court

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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. Unless the court determines, in the exercise of judicial discretion and applying the factors set forth in subdivision 3, 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 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.]** 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 is not practical, the court may select a guardian ad litem for appointment, applying the factors set forth in subdivision 3. The court shall enter an order pursuant to subdivision 4 appointing the guardian ad litem.

**Subd. 3. [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

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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, a guardian ad litem must meet the minimum qualifications set forth in Rule 2, 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 3, 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.]** A guardian ad litem shall not be appointed or serve except upon written order of the court. The order shall set forth the specific duties to be performed by the guardian ad litem in the case, and establish, to the extent appropriate, deadlines for the completion of the duties set forth. The order may be in the form set forth in Appendix C (juvenile court cases) or Appendix D (family court cases).

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### **Rule 5. [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, which shall be substantially in the form set forth in Appendix E. 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 3, subdivision 4, or at the time the guardian ad litem is appointed to a particular case pursuant to Rule 4, subdivision 4, or at both times.

### **Rule 6. [SUPERVISION AND EVALUATION OF GUARDIANS AD LITEM.]**

**Subdivision 1. [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; REMOVAL FROM PANEL.]** 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 11; 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 2, 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, which may be in the form set forth in Appendix F. A



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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. On the basis of the 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 3, 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.

### **Rule 7. [COMPLAINT PROCEDURE; REMOVAL OF GUARDIAN AD LITEM FROM PARTICULAR CASE.]**

**Subdivision 1. [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

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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. 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.]**

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.

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### **Rule 8. [GENERAL RESPONSIBILITIES OF GUARDIANS AD LITEM; OTHER ROLES DISTINGUISHED; CONTACT WITH COURT.]**

#### **Subdivision 1. [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 4, 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.

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- (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. If no document retention policy has been established, the guardian ad litem should exercise reasonable discretion.
- (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

## **PART VI: PROPOSED RULES**

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.]** In a case in which a guardian ad litem is serving pursuant to Rule 4, 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 the 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 4, 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

## **PART VI: PROPOSED RULES**

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.]** 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.

### **COMMENT**

#### **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.

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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

## **PART VI: PROPOSED RULES**

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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. 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 the Minnesota Rules of Family Court Procedure, or



## **PART VI: PROPOSED RULES**

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 the Minnesota Rules of Family Court Procedure, or visitation expeditor, as that role is prescribed in Minnesota Statutes section 518.1751. Rule 8, 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.

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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 8, subdivision 1, sets forth the general responsibilities of guardians ad litem in every family and juvenile court case. In addition to these general responsibilities, Appendices G and H set forth 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 appendices 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 appendices 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.

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### **Rule 9. [RIGHTS AND POWERS OF GUARDIANS AD LITEM.]**

**Subdivision 1. [RIGHTS AND POWERS OF GUARDIANS AD LITEM IN EVERY CASE.]** Consistent with the responsibilities set forth in Rule 8, subdivision 1, in every case in which a guardian ad litem is appointed pursuant to Rule 4, 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.

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- (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.]** In addition to the rights and powers set forth in subdivision 1, 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.

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- (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.

### **COMMENT**

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. 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.

#### **Family Court Cases.**

Pursuant to Rule 302.04(b) of the Minnesota 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."

## **PART VI: PROPOSED RULES**

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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."

## **PART VI: PROPOSED RULES**

### **Rule 10. [PRE-SERVICE TRAINING REQUIREMENTS.]**

**Subdivision 1. [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 3, subdivision 4, each person, except those persons who meet the criteria set forth in subdivision 2, 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 set forth in Appendix I;
- (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 set forth in Appendix J 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 set forth in Appendix J relating to juvenile law matters.

**Subd. 2. [PRE-SERVICE TRAINING REQUIREMENTS FOR EXISTING GUARDIANS AD LITEM.]** To be listed on a panel of approved guardians ad litem maintained pursuant to Rule 3, subdivision 4, each person appointed to serve as a guardian ad litem prior to the effective date of Rules 1 to 13 shall either:

- (a) satisfy the pre-service training requirements set forth in subdivision 1; or

## **PART VI: PROPOSED RULES**

(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. 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.]** In addition to satisfying the pre-service training requirements set forth in either subdivision 1 or 2, 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.



## **PART VI: PROPOSED RULES**

- (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.

### **COMMENT**

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 11. [CONTINUING EDUCATION REQUIREMENTS.]**

Once a guardian ad litem is listed on a panel of approved guardians ad litem maintained pursuant to Rule 3, 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.

## **PART VI: PROPOSED RULES**

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### **Rule 12. [TRAINING CURRICULA; CERTIFICATION OF TRAINERS.]**

**Subdivision 1. [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. At a minimum, the core curriculum shall address the topics set forth in Appendix I regarding the training of all guardians ad litem, and shall address the topics set forth in Appendix J regarding the training of guardians ad litem who will serve in family and juvenile court cases. The pre-service training curriculum should be reviewed and updated at least every three years.

**Subd. 2. [CONTINUING EDUCATION CURRICULUM.]** The continuing education curriculum shall include developments in the topics set forth in Appendices I and J, and other relevant guardian ad litem, family court, or juvenile court topics.

**Subd. 3. [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 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.

## **PART VI: PROPOSED RULES**

- (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 13. [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.

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**PART VI: PROPOSED RULES**

**GUARDIAN AD LITEM APPLICATION**

JUDICIAL DISTRICT: \_\_\_\_\_

DATE: \_\_\_\_\_

COUNTY: \_\_\_\_\_

State and Federal law prohibit discrimination based upon race, color, national origin, creed, gender, sexual orientation, religion, mental or physical disabilities, age, financial status, or marital status. Questions of this nature (designated by an "\*") are asked only for purposes of general background -- you are not obligated to supply this information. A decision to not answer those questions marked with an "\*" will not adversely affect the consideration given to your application. The Guardian Ad Litem Program is an Equal Opportunity, Affirmative Action program. Applications are encouraged from persons representing communities reflecting ethnic, cultural, and socio-economic diversity.

**GENERAL INFORMATION**

Full Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Home Telephone: \_\_\_\_\_ Work Telephone: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_

\*Gender:  Male  Female

\*Race/Ethnic Background: \_\_\_\_\_

\*Marital Status:  Married  Single  Divorced  Widowed

**PART VI: PROPOSED RULES**

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How did you learn of this guardian ad litem program:  Friend  Brochure  
 Television  Newspaper  Radio  Agency(\_\_\_\_\_) )  
 Other (\_\_\_\_\_)

**EMPLOYMENT**

Are you currently employed?  YES  NO

If NO, have you been employed during the past five years?  YES  NO

**EDUCATION**

Highest level of education completed? \_\_\_\_\_

Are you presently attending school?  YES  NO

**SPECIAL SKILLS**

Have you ever served as an advocate for any person or group?  YES  NO

List any special skills, interests, committee work, community work, volunteer experience, or other experience that may assist you in carrying out the responsibilities of a guardian ad litem:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PART VI: PROPOSED RULES**

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**GUARDIAN AD LITEM EXPERIENCE**

Have you ever served before as a guardian ad litem?  YES  NO

If YES:

Please list the state and county(s) in which you served: \_\_\_\_\_

Have you ever been removed from a pending case during service as a guardian ad litem?

YES  NO If YES, what county? \_\_\_\_\_

Have you ever been involuntarily discharged or terminated from a guardian ad litem

program?  YES  NO If YES, what county? \_\_\_\_\_

**TRAINING INFORMATION**

Are you available to complete 40 hours of pre-service training?  YES  NO

Are you available to annually complete 8 hours of continuing education?  YES  NO

Are you able to serve as a guardian ad litem for the next 18 months?  YES  NO

Are there any days of the week or times during the day when you will be unavailable to serve

as a guardian ad litem?  YES  NO If YES, please explain:

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**BACKGROUND CHECKS**

Do you consent to a thorough background check on you, including investigation of criminal and

driving records?  YES  NO

**PART VI: PROPOSED RULES**

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\*Social Security Number: \_\_\_\_\_

\*Driver's License Number and State of issuance: \_\_\_\_\_

Has your driver's license ever been suspended or revoked?  YES  NO

If YES, please identify the date, county, and state in which it was suspended or revoked:

\_\_\_\_\_

Have you ever been charged with or convicted of a crime, other than a minor traffic violation?

YES  NO If YES, please identify the crime with which you were charged or convicted, and list the date, county, and state: \_\_\_\_\_

\_\_\_\_\_

Have you been a resident of Minnesota for the past ten years?  YES  NO

If NO, list all other states in which you have resided: \_\_\_\_\_

Have you or your family ever been involved in a juvenile court proceeding (neglect, child protection, abuse, delinquency)?  YES  NO

Have you or your family ever been involved in a family court proceeding (divorce, custody, visitation, paternity)?  YES  NO

Have you or your family ever been involved in a domestic abuse or harassment proceeding (assault, order for protection, harassment restraining order)?  YES  NO

Have you or your family ever been involved in any proceeding where a guardian ad litem was appointed?  YES  NO If YES, type of case: \_\_\_\_\_

\_\_\_\_\_





**PART VI: PROPOSED RULES**

**GUARDIAN AD LITEM APPLICANT MUST READ AND SIGN**

I submit that the statements made and the data provided in this Application are true and complete to my best knowledge. I understand that intentional falsification or omission of information on this application may disqualify me from being considered for service as a guardian ad litem or may result in my future dismissal from the guardian ad litem program.

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

**This Application will not be considered complete and will not be processed unless and until such time as the attached Authorizations for Release of Information are signed and returned to the Program Coordinator.**

**PART VI: PROPOSED RULES**

**GUARDIAN AD LITEM**  
**SCREENING PROCESS TOPICS AND INTERVIEW QUESTIONS**

Applicant: \_\_\_\_\_

County: \_\_\_\_\_

Interviewer: \_\_\_\_\_

Date: \_\_\_\_\_

State and Federal law prohibit discrimination based upon race, color, national origin, creed, gender, sexual orientation, religion, mental or physical disabilities, age, financial status, or marital status. Questions of this nature (designated by an "\*\*") are asked only for purposes of general background -- you are not obligated to supply this information. A decision to not answer those questions marked with an "\*\*" will not adversely affect the consideration given to your application.

**EMPLOYMENT**

1. If you are presently employed, or if you have been employed during the past five years:
  - a. What is/was the name of your employer and employment position?
  - b. If you have had more than one job during past five years, what was the reason for change in employment (voluntary or involuntary termination)?

**EDUCATION**

1. If you are attending school now, will you receive academic credit for your volunteer work? Name of school?
  
2. Have you attended or are you attending college?  YES  NO  
If YES, degree received?  YES  NO Year: \_\_\_\_\_  
Degree: \_\_\_\_\_ Major: \_\_\_\_\_

## **PART VI: PROPOSED RULES**

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### **SPECIAL TRAINING OR SKILLS**

1. Are you presently, or have you ever been, a member of any clubs or organizations? If YES, which ones?
  
2. Have you ever served as a volunteer? If YES, when and what type of volunteer?
  
3. If you have served before as an advocate, please describe the circumstances.
  
4. Have you undergone any special training (business school, vo-tech, sign language, training in other languages)?

### **FAMILY INFORMATION**

1. Do you have any children? If YES:
  - a. what are their ages?
  - b. describe your past and present relationship with your children?
  - c. how do/did you discipline your children?
  
2. As you were growing up, how did your family express feelings toward one another? Has this changed over the years?
  
3. \*Do you have any health problems or disabilities that would prevent you from serving as a guardian ad litem? If YES, please explain.

## **PART VI: PROPOSED RULES**

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### **GUARDIAN AD LITEM EXPERIENCE**

1. If you have ever been removed from service as a guardian ad litem on a pending case, please describe the circumstances surrounding your removal.
2. If you have every been involuntarily discharged or terminated from a guardian ad litem program, please describe the circumstances surrounding your involuntary departure.

### **PERCEPTIONS OF GUARDIAN AD LITEM ROLE**

1. What is your understanding of the role and responsibilities of a guardian ad litem?
2. What interests you about becoming a guardian ad litem?
3. What strengths or qualifications would make you a good guardian ad litem?
4. Describe any potential problems or weaknesses you may have in regard to serving as a guardian ad litem?
5. Describe any reservations you may have about serving as a guardian ad litem?
6. What do you hope to gain from serving as a guardian ad litem?

## **PART VI: PROPOSED RULES**

7. What preferences or concerns do you have in regard to working with children in the following categories?
  - a. any age preference or concern?
  - b. any gender preference or concern?
  - c. any race/ethnic heritage preference or concern?
  - d. any preference or concern about working with a child who is developmentally challenged?
  - e. any preference or concern about working with a child who is emotionally challenged?
  - f. any preference or concern about working with a child who has been sexually or physically abused?
  - g. any preference or concern about working with a child who has AIDS?

### **SKILLS RELATING TO GUARDIAN AD LITEM RESPONSIBILITIES**

1. What involvement, if any, have you had with courtroom proceedings?
2. How comfortable are you with putting your thoughts in writing? What experience, if any, have you had in preparing detailed written reports?
3. How comfortable are you speaking in a public forum? In a courtroom? What experience, if any, have you had in making oral presentations?
4. Are you a good listener? Why or why not?

## **PART VI: PROPOSED RULES**

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5. What experience, if any, have you had in interviewing adults? Children?
6. How comfortable would you be in meeting with a family in their home?
7. How do you process conflicting information, make a decision, or reach a conclusion about an issue when two different versions of "the facts" are being told to you?

### **LIFE EXPERIENCES**

1. Have you, or has anyone in your family, ever been involved with the social services system?
2. What experience, if any, have you had working with persons of other races, cultures, or ethnic or socio-economic backgrounds?
3. What experience, if any, have you had with neglect or physical, sexual or emotional child abuse?
4. What experience, if any, have you had with chemical dependency issues?
5. Are you presently, or within the past twelve months have you been, involved in a chemical dependency inpatient or outpatient treatment program? If YES, please state:
  - a. the location of the program?
  - b. the dates of attendance?
  - c. did you successfully complete the treatment program?

## **PART VI: PROPOSED RULES**

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6. What, if any, is your current frequency and volume of alcohol and/or drug use?
  
7. What experience, if any, have you had with therapeutic, psychological, or psychiatric issues?
  
8. \*Are you currently seeing, or have you ever seen, a therapist, counselor, psychologist, or psychiatrist? If YES, please state when, where, and the circumstances.
  
9. Are you currently facing any significant life situation (family changes, job changes, school, family illness)? How are you dealing with this?

### **PERCEPTIONS REGARDING ISSUES ADDRESSED BY GUARDIANS AD LITEM**

1. What are your thoughts concerning:
  - a. divorce?
  - b. custody or visitation "battles"?
  
2. What are your thoughts concerning:
  - a. domestic violence?
  - b. harassment proceedings?
  - c. the victims, perpetrators, and children involved in domestic violence?



## **PART VI: PROPOSED RULES**

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3. What are your thoughts concerning:
  - a. child neglect or abuse?
  - b. abusive or neglectful parents?
  - c. juvenile delinquency and its cause(s)?
  
4. What are your thoughts regarding:
  - a. out of home placements?
  - b. the parents of children who are placed in foster homes?
  - c. foster care providers?
  
5. What are your thoughts about:
  - a. adults who have chemical dependency problems?
  - b. children who have chemical dependency problems?
  
6. What are your thoughts about individual or family counseling or therapy?
  
7. What are your thoughts about the parenting abilities of persons with alternative lifestyles?

### **ACCOUNTABILITY**

1. What type of support do you expect from the guardian ad litem program?

## **PART VI: PROPOSED RULES**

2. What style of supervision benefits you the most?
3. How willing are you to accept supervision over your guardian ad litem work?

### **STRESS MANAGEMENT**

1. How do you handle a difficult or stressful situation?
2. How do you take care of yourself when you are under stress?
3. How do you respond to criticism?
4. What makes you vulnerable? What can someone do or say to get an emotional or spontaneous (irrational) reaction from you?
5. How would you handle a situation where you have been ordered to interview a parent, the parent is not a willing participant, and the parent begins yelling at you and telling you that you don't know anything about her/him or her/his family situation?

### **QUESTIONS BY APPLICANT**

1. Do you have any questions regarding the guardian ad litem program or serving as a guardian ad litem?
2. Any other questions?

**PART VI: PROPOSED RULES**

**ORDER APPOINTING GUARDIAN AD LITEM IN JUVENILE COURT MATTER**

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

JUVENILE COURT DIVISION

COURT FILE NO.: \_\_\_\_\_

IN THE MATTER OF THE WELFARE OF:

\_\_\_\_\_  
\_\_\_\_\_

**ORDER APPOINTING  
GUARDIAN AD LITEM**

Child(ren).

The above-captioned matter came on for hearing before the undersigned Judge of Juvenile Court on \_\_\_\_\_, 19\_\_\_\_. Appearances were made by:

- \_\_\_\_\_ Child(ren) \_\_\_\_\_
- \_\_\_\_\_ Attorney for Child(ren) \_\_\_\_\_
- \_\_\_\_\_ Mother \_\_\_\_\_
- \_\_\_\_\_ Attorney for Mother \_\_\_\_\_
- \_\_\_\_\_ Father \_\_\_\_\_
- \_\_\_\_\_ Attorney for Father \_\_\_\_\_
- \_\_\_\_\_ County Attorney \_\_\_\_\_
- \_\_\_\_\_ Social Worker \_\_\_\_\_
- \_\_\_\_\_ Probation Officer \_\_\_\_\_
- \_\_\_\_\_ Other \_\_\_\_\_

**PART VI: PROPOSED RULES**

Based upon the content of the court file, the record, and all proceedings, and having heard and considered the views expressed at the hearing, the Court has determined that appointment of a guardian ad litem is either required by statute or rule or is in the best interests of the child(ren). Accordingly, the Court makes the following:

**ORDER**

IT IS HEREBY ORDERED:

1. \_\_\_\_\_ is appointed as guardian ad litem to advocate for the best interests of the minor child(ren) identified in the caption of this Order.

2. The guardian ad litem is directed to conduct an independent investigation and to submit to the Court, with copies to the parties or, if represented, to their counsel, by \_\_\_\_\_ a written report (including conclusions and recommendations and the facts upon which they are based) regarding all matters relating to the best interests of the child(ren), specifically including the following issue(s):

(a) INTERIM ISSUES

- \_\_\_\_\_ Temporary placement of the child(ren)
- \_\_\_\_\_ Visitation
- \_\_\_\_\_ Evaluation needs of the child(ren)
- \_\_\_\_\_ Evaluation needs of the parents
- \_\_\_\_\_ Service needs of the child(ren)
- \_\_\_\_\_ Service needs of the parents
- \_\_\_\_\_ Other \_\_\_\_\_
- \_\_\_\_\_ Other \_\_\_\_\_

**PART VI: PROPOSED RULES**

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(b) **LONGER-TERM ISSUES**

- Placement of the child(ren)
- Permanency needs of the child(ren)
- Evaluation needs of the child(ren)
- Evaluation needs of the parents
- Service needs of the child(ren)
- Service needs of the parents
- Other \_\_\_\_\_
- Other \_\_\_\_\_

(c) **ADDITIONAL ISSUES (Specify in detail)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. In carrying out the duties set forth in Paragraph 2, and in addition to the responsibilities set forth in the Statutes and Rules of Court, the attention of the guardian ad litem is directed to:

- Attachment A (Guardian Ad Litem Guidelines in Juvenile Court Cases)
- Attachment B ( \_\_\_\_\_ )
- Attachment C ( \_\_\_\_\_ )

4. If the duties of the guardian ad litem as set forth in Paragraph 2 include making recommendations regarding visitation, those recommendations shall address the location, duration, and frequency of the visits; whether the visits should be supervised or unsupervised; and the transportation arrangements necessary to facilitate the visits.

5. The parties shall fully cooperate with the guardian ad litem. The parties shall allow the guardian ad litem access to the child(ren) and shall sign all authorizations for release of information relevant to this proceeding as requested by the guardian ad litem. No claim of

## **PART VI: PROPOSED RULES**

legal privilege or other claimed right to confidentiality may be asserted to prevent the guardian ad litem from obtaining information relevant to this proceeding. The guardian ad litem shall have access to all information and records relevant to this proceeding, whether written or oral, which are in the possession of any person, corporation, political subdivision, organization, agency, or other entity. Nothing in the Federal Regulations, Minnesota Government Data Practices Act, Rules of Public Access to the Records of the Judicial Branch, or any other statutory provision shall prevent disclosure to the guardian ad litem of information relevant to this proceeding. This Order authorizes and directs that the guardian ad litem be given access to and be furnished with copies of all records relevant to this proceeding, including, but not limited to: social services records; corrections department records; medical, counseling, therapy, treatment, and mental health records; academic records; psychological, psychiatric, and chemical dependency evaluations; and all other relevant records.

6. Any person who files a document with the Court or serves another party with a document in this case shall simultaneously furnish the guardian ad litem with a copy of that document if the document contains information which relates in any way to the issue(s) being investigated by the guardian ad litem or to the best interests of the child(ren).

7. Any person who schedules a court hearing, administrative review, staffing, investigation, disposition, or other proceeding concerning the case shall timely notify the guardian ad litem if the hearing or proceeding relates in any way to the issue(s) being investigated by the guardian ad litem or to the best interests of the child(ren).

**PART VI: PROPOSED RULES**

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8. Any proposed stipulation for resolving an issue or the case that relates in any way to the issue(s) being investigated by the guardian ad litem or to the best interests of the child(ren) shall be submitted to and reviewed by the guardian ad litem before it is filed with the Court.

9. The fees and costs of the guardian ad litem shall be paid as follows:

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10. The guardian ad litem shall continue to advocate for the best interests of the child(ren) until further Order of the Court discharging the guardian ad litem.

11. A photocopy of this Order shall be as valid as the original.

DATED: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
Judge of Juvenile Court

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**PART VI: PROPOSED RULES**

**ORDER APPOINTING GUARDIAN AD LITEM IN FAMILY COURT MATTER**

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

FAMILY COURT DIVISION

COURT FILE NO.: \_\_\_\_\_

IN RE THE MARRIAGE OF:

\_\_\_\_\_

Petitioner,

and

\_\_\_\_\_

Respondent.

**ORDER APPOINTING  
GUARDIAN AD LITEM**

The above-captioned matter came on for hearing before the undersigned Judge of District Court on \_\_\_\_\_, 19\_\_\_\_. Appearances were made by:

- \_\_\_\_\_ Petitioner
- \_\_\_\_\_ Attorney for Petitioner \_\_\_\_\_
- \_\_\_\_\_ Respondent
- \_\_\_\_\_ Attorney for Respondent \_\_\_\_\_
- \_\_\_\_\_ Other \_\_\_\_\_

**PART VI: PROPOSED RULES**

Based upon the content of the court file, the record, and all proceedings, and having heard and considered the views expressed at the hearing, the Court has determined that appointment of a guardian ad litem is either required by statute or rule or is in the best interests of the child(ren). Accordingly, the Court makes the following:

**ORDER**

IT IS HEREBY ORDERED:

1. \_\_\_\_\_ is appointed as guardian ad litem to advocate for the best interests of the following minor child(ren):

CHILD	DATE OF BIRTH	AGE
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. The guardian ad litem is directed to conduct an independent investigation and to submit to the Court, with copies to the parties or, if represented, to their counsel, by \_\_\_\_\_ a written report (including conclusions and recommendations and the facts upon which they are based) regarding all matters relating to the best interests of the child(ren), specifically including the following issue(s):

- (a) INTERIM ISSUES
  - \_\_\_\_\_ Temporary legal custody of the child(ren)
  - \_\_\_\_\_ Temporary physical custody of the child(ren)
  - \_\_\_\_\_ Temporary visitation
  - \_\_\_\_\_ Other \_\_\_\_\_
  - \_\_\_\_\_ Other \_\_\_\_\_

**PART VI: PROPOSED RULES**

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- (b) LONGER-TERM ISSUES
  - Permanent legal custody of the child(ren)
  - Permanent physical custody of the child(ren)
  - Long-range visitation
  - Other \_\_\_\_\_
  - Other \_\_\_\_\_

- (c) ADDITIONAL ISSUES (Specify in detail)
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_

3. In carrying out the duties set forth in Paragraph 2, and in addition to the responsibilities set forth in the Statutes and Rules of Court, the attention of the guardian ad litem is directed to:

- Attachment A (Guardian Ad Litem Guidelines in Family Court Cases)
- Attachment B (Statutory best interest factors in custody determinations)
- Attachment C ( \_\_\_\_\_ )

4. If the duties of the guardian ad litem as set forth in Paragraph 2 include making recommendations regarding visitation, those recommendations shall address the location, duration, and frequency of the visits; whether the visits should be supervised or unsupervised; and the transportation arrangements necessary to facilitate the visits.

5. The parties shall fully cooperate with the guardian ad litem. The parties shall allow the guardian ad litem access to the child(ren) and shall sign all authorizations for release of information relevant to this proceeding as requested by the guardian ad litem. No claim of legal privilege or other claimed right to confidentiality may be asserted to prevent the guardian

## **PART VI: PROPOSED RULES**

ad litem from obtaining information relevant to this proceeding. The guardian ad litem shall have access to all information and records relevant to this proceeding, whether written or oral, which are in the possession of any person, corporation, political subdivision, organization, agency, or other entity. Nothing in the Federal Regulations, Minnesota Government Data Practices Act, Rules of Public Access to the Records of the Judicial Branch, or any other statutory provision shall prevent disclosure to the guardian ad litem of information relevant to this proceeding. This Order authorizes and directs that the guardian ad litem be given access to and be furnished with copies of all records relevant to this proceeding, including, but not limited to: social services records; corrections department records; medical, counseling, therapy, treatment, and mental health records; academic records; psychological, psychiatric, and chemical dependency evaluations; and all other relevant records.

6. Any person who files a document with the Court or serves another party with a document in this case shall simultaneously furnish the guardian ad litem with a copy of that document if the document contains information which relates in any way to the issue(s) being investigated by the guardian ad litem or to the best interests of the child(ren).

7. Any person who schedules a court hearing or other proceeding shall timely notify the guardian ad litem if the hearing or proceeding relates in any way to the issue(s) being investigated by the guardian ad litem or to the best interests of the child(ren).

8. Any proposed stipulation or martial termination agreement that in any way affects the best interests or welfare of the child(ren) or relates to the issue of custody, visitation, or

**PART VI: PROPOSED RULES**

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child support shall be submitted to and reviewed by the guardian ad litem before it is filed with the court.

9. The fees and costs of the Guardian Ad Litem shall be paid as follows:

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10. The guardian ad litem shall continue to advocate for the best interests of the child(ren) until further Order of the Court discharging the guardian ad litem.

11. A photocopy of this Order shall be as valid as the original.

DATED: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
Judge of District Court

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**PART VI: PROPOSED RULES**

**GUARDIAN AD LITEM OATH OR AFFIRMATION**

STATE OF MINNESOTA        )  
  ) SS  
COUNTY OF \_\_\_\_\_ )

I do [swear] [affirm under the penalties of perjury] that I am currently listed on a panel of approved guardians ad litem maintained by the Program Coordinator and that to the best of my ability I will faithfully and justly perform all the duties of the office of guardian ad litem.

\_\_\_\_\_  
Guardian Ad Litem

Subscribed and [sworn to] [affirmed] before me this

\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

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**PART VI: PROPOSED RULES**

**GUARDIAN AD LITEM PERFORMANCE EVALUATION**

Guardian Ad Litem: \_\_\_\_\_

County: \_\_\_\_\_

Evaluator: \_\_\_\_\_

Date: \_\_\_\_\_

1. Date pre-service training completed? \_\_\_\_\_
2. Date listed on panel of approved guardians ad litem? \_\_\_\_\_
3. Date of last performance evaluation? \_\_\_\_\_
4. Number of cases assigned since listed on panel of guardians ad litem? \_\_\_\_\_
5. Number of cases assigned since last evaluation? \_\_\_\_\_
6. Complied with annual continuing education requirements?     YES     NO
7. Any complaints filed against guardian ad litem since last evaluation?     YES     NO
8. Removed from any cases since last evaluation?     YES     NO
9. Any circumstances warranting follow-up check on background?     YES     NO
10. Evaluator has reviewed cases assigned since last evaluation?     YES     NO
11. Evaluator has made inquiries to judges presiding over cases to which guardian ad litem was assigned since last evaluation?     YES     NO

**EVALUATION ITEM**

**RATING**

**COMMENTS**

**ROLES AND RESPONSIBILITIES:**

- |   |              |  |
|---|--------------|--|
| 1. Clearly understands the role and responsibilities of guardians ad litem? | 0    5    10 |  |
|---|--------------|--|

## PART VI: PROPOSED RULES

<u>EVALUATION ITEM</u>	<u>RATING</u>	<u>COMMENTS</u>
2. Carries out responsibilities and appropriately functions in role (advocating, information gathering, reporting, monitoring)?	<u>0    5    10</u>	_____ _____ _____
<b>APPOINTMENT:</b>		
1. Timely initial involvement in cases upon appointment?	<u>0    5    10</u>	_____ _____ _____
2. Completes work in a timely manner?	<u>0    5    10</u>	_____ _____ _____
<b>ACCESS TO INFORMATION:</b>		
1. Information gathering is done using appropriate methods?	<u>0    5    10</u>	_____ _____ _____
2. Information sharing is done in an appropriate manner?	<u>0    5    10</u>	_____ _____ _____
3. Maintains confidentiality about case information?	<u>0    5    10</u>	_____ _____ _____
<b>REPORTS:</b>		
1. Written and oral reports to the court effectively communicate the necessary information, including conclusions, recommendations, and facts upon which they are based?	<u>0    5    10</u>	_____ _____ _____
2. Written reports are prepared and distributed in a timely manner?	<u>0    5    10</u>	_____ _____ _____

**PART VI: PROPOSED RULES**

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<u>EVALUATION ITEM</u>	<u>RATING</u>	<u>COMMENTS</u>
<b>COURT APPEARANCES:</b>		
1. Appears at all court hearings?	<u>0 5 10</u>	_____ _____ _____
2. Adequately prepared for all court hearings?	<u>0 5 10</u>	_____ _____ _____
3. Fully participates in all court hearings?	<u>0 5 10</u>	_____ _____ _____
4. Demeanor and attire are appropriate for court?	<u>0 5 10</u>	_____ _____ _____
<b>ADVOCACY:</b>		
1. Actively and adequately advocates for the best interests of the child?	<u>0 5 10</u>	_____ _____ _____
2. Advocates for timely resolution of the case?	<u>0 5 10</u>	_____ _____ _____
3. Monitors delivery of services to the child and family while case is pending?	<u>0 5 10</u>	_____ _____ _____
<b>INVESTIGATION AND MONITORING:</b>		
1. Exercises independent judgment and conducts independent investigations?	<u>0 5 10</u>	_____ _____ _____
2. Has appropriate contact with the child?	<u>0 5 10</u>	_____ _____ _____

## **PART VI: PROPOSED RULES**

<b><u>EVALUATION ITEM</u></b>	<b><u>RATING</u></b>	<b><u>COMMENTS</u></b>
3. Has appropriate contact with the parties?	<u>0 5 10</u>	_____ _____ _____
4. Gathers pertinent information about the case?	<u>0 5 10</u>	_____ _____ _____
5. Is knowledgeable about community resources for placement, treatment, and other necessary services?	<u>0 5 10</u>	_____ _____ _____
5. Remains open to new information?	<u>0 5 10</u>	_____ _____ _____
6. Participates in pertinent meetings, staffings, conferences, etc.?	<u>0 5 10</u>	_____ _____ _____
7. Is objective and non-judgmental?	<u>0 5 10</u>	_____ _____ _____
<b>PROFESSIONAL RELATIONSHIPS:</b>		
1. Maintains professional relationship with court administrator and staff?	<u>0 5 10</u>	_____ _____ _____
2. Maintains professional relationship with judge and law clerk?	<u>0 5 10</u>	_____ _____ _____
3. Maintains professional relationship with attorney for child?	<u>0 5 10</u>	_____ _____ _____

**PART VI: PROPOSED RULES**

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<u>EVALUATION ITEM</u>	<u>RATING</u>	<u>COMMENTS</u>
4. Maintains professional relationship with attorney for parent?	0    5    10	_____ _____ _____
5. Maintains professional relationship with attorney for guardian ad litem?	0    5    10	_____ _____ _____
6. Maintains professional relationship with county attorney?	0    5    10	_____ _____ _____
7. Maintains professional relationship with social worker?	0    5    10	_____ _____ _____
8. Maintains professional relationship with mental health worker?	0    5    10	_____ _____ _____
9. Is able to work effectively in cross-cultural settings?	0    5    10	_____ _____ _____
10. Conducts himself/herself in a professional manner?	0    5    10	_____ _____ _____
11. Treats children, family members, and others involved in case with respect?	0    5    10	_____ _____ _____
<b>WORKING WITH GAL PROGRAM:</b>		
1. Appropriately uses supervision and consultation?	0    5    10	_____ _____ _____

**PART VI: PROPOSED RULES**

<u>EVALUATION ITEM</u>	<u>RATING</u>	<u>COMMENTS</u>
2. Accepts direction and supervision?	<u>0    5    10</u>	_____ _____ _____
3. Participates in continuing education as required?	<u>0    5    10</u>	_____ _____ _____
4. Follows procedures to request legal representation or to consult with an attorney as needed?	<u>0    5    10</u>	_____ _____ _____
5. Timely submits reimbursement and activity records?	<u>0    5    10</u>	_____ _____ _____
6. Follows document retention policy?	<u>0    5    10</u>	_____ _____

**SPECIFIC COMMENTS OF EVALUATOR:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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**PART VI: PROPOSED RULES**

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**SPECIFIC COMMENTS OF GUARDIAN AD LITEM:**

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**GUARDIAN AD LITEM'S PERFORMANCE IS SATISFACTORY TO REMAIN ON PANEL OF APPROVED GUARDIANS AD LITEM?     YES     NO**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
GUARDIAN AD LITEM

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
EVALUATOR

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## **PART VI: PROPOSED RULES**

### **GUIDELINES IN FAMILY COURT CASES**

#### **Section 1. [APPLICABILITY.]**

In addition to and consistent with the general responsibilities of guardians ad litem set forth in Rule 8, subdivision 1, there are certain specific responsibilities which guardians ad litem appointed in family court cases may be assigned to fulfill. These specific responsibilities are cumulative in nature and, although a specific responsibility may be listed under only one section, each specific responsibility shall be deemed continuing in nature and should be repeated as often as necessary throughout the proceeding as appropriate to the case.

#### **Sec. 2. [PRETRIAL PHASE.]**

During the pretrial phase of every family court case the specific responsibilities of a guardian ad litem are to:

- (a) become as familiar as possible with the child's/family's history and present situation by reviewing and/or obtaining copies of the court file, as well as other relevant files (for example, social services, court services, and corrections); reviewing and/or obtaining copies of all relevant records and reports, including custody and visitation evaluations, or medical, law enforcement, psychological, psychiatric, or educational records or reports; and researching information about any related criminal and/or child protection proceedings, investigations, or allegations.
- (b) obtain from appropriate persons authorizations for release of information.

## **PART VI: PROPOSED RULES**

- (c) when appropriate, interview social workers, probation officers, and court services personnel to obtain background and current information regarding the child and family.
- (d) when appropriate, interview service providers (for example, teachers, psychologists, psychiatrists, doctors, and nurses) and others (for example, neighbors) who are knowledgeable about the child's/family's past and present situation.
- (e) meet with and interview the child's parents or custodians, siblings, persons with whom the child resides or may reside, and other persons who are significant in the child's daily life (for example, grandparents and parent's significant other).
- (f) meet with and/or observe the child in a manner consistent with the child's developmental capabilities. Meetings with the child may be alone at the discretion of the guardian ad litem.
- (g) when appropriate, observe parent-child interaction.
- (h) when appropriate, communicate on a regular basis with the parties and service providers.
- (i) make oral and/or written reports to the court regarding the child's best interests, including conclusions and recommendations and the facts upon which they are based.

## **PART VI: PROPOSED RULES**

- (j) when appropriate, recommend psychological evaluations, psychiatric evaluations, physical evaluations, parenting evaluations, chemical dependency evaluations, or other evaluations.
- (k) bring to the attention of appropriate authorities, and to the court if necessary, situations detrimental to the child (for example, harassment or pressuring of the child).
- (l) bring urgent treatment needs of the child to the attention of the court (for example, medical or mental health issues).
- (m) when appointed in cases in which a finding of domestic abuse has been made, including all cases with orders for protection or harassment restraining orders, gather and release information in a manner that best protects the safety of the child and victim, and that does not require the parties to have contact.
- (n) when appointed in the case of an Indian child, as defined in Minnesota Statutes section 257.351, subdivision 6, interview tribal social services employees, maintain contact with the tribal representative, and otherwise comply with the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

### **Sec. 3. [CONTESTED/EVIDENTIARY/TEMPORARY HEARING PHASE.]**

In addition to the responsibilities set forth above, during the contested/evidentiary/temporary hearing phase of every family court case the specific responsibilities of a guardian ad litem are to:

- (a) request appointment of legal counsel, if necessary.

## **PART VI: PROPOSED RULES**

- (b) attend, participate in, and advocate for the child's best interest at court hearings and other proceedings.
- (c) participate in negotiations in an attempt to resolve the matter prior to the hearing in a manner consistent with the best interests of the child.
- (d) advocate for the child's presence or absence in court, whichever is in the child's best interests.
- (e) as appropriate to the child's age and maturity, assist the child in understanding the court proceedings.
- (f) when authorized, subpoena witnesses, present evidence, conduct direct and cross examination of witnesses, and provide testimony relative to the issues involved in the case and the best interests of the child.
- (g) if the child is required to testify in the family court proceeding or in any other concurrent judicial proceeding, take steps to ensure that this is done in a manner best suited to the child's emotional well-being, needs, and abilities.
- (h) keep the court informed about other legal proceedings that may be occurring concurrently with the family court proceeding.

### **Sec. 4. [POST-DECREE PHASE.]**

In addition to the specific responsibilities set forth above, during the post-decree phase of every family court case the specific responsibilities of a guardian ad litem are to:

- (a) keep apprised of the child's/family's situation and bring appropriate matters to the attention of the court.

**PART VI: PROPOSED RULES**

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- (b) maintain contact with persons knowledgeable about the child's/family's situation.
- (c) if appropriate, monitor and observe custody and/or visitation arrangements.
- (d) when requested by the court, make oral and/or written reports to the court regarding the child's best interests, including conclusions and recommendations and the facts upon which they are based.

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## **PART VI: PROPOSED RULES**

### **GUIDELINES IN JUVENILE COURT CASES**

#### **Section 1. [APPLICABILITY.]**

In addition to the general responsibilities of guardians ad litem set forth in Rule 8, subdivision 1, there are certain specific responsibilities which guardians ad litem assigned to juvenile court cases are to fulfill. These specific responsibilities are cumulative in nature and, although a specific responsibility may be listed under only one section, each specific responsibility shall be deemed continuing in nature and should be repeated as often as necessary throughout the proceeding as appropriate to the case.

#### **Sec. 2. [INITIAL OR PRE-ADJUDICATORY PHASE.]**

During the initial or pre-adjudicatory phase of every juvenile court case the specific responsibilities of the guardian ad litem are to:

- (a) become as familiar as possible with the child's/family's history and present situation by reviewing and/or obtaining copies of the court file, social services file, court services/corrections file, and other pertinent files; reviewing and/or obtaining copies of all relevant records and reports, including, but not limited to, medical, law enforcement, psychological, psychiatric, or educational reports and records; and researching information about any concurrent criminal or family court proceedings, investigations, or allegations.
- (b) obtain from appropriate persons authorizations for release of information.

## **PART VI: PROPOSED RULES**

- (c) when appropriate, interview social workers, court services personnel, probation officers, and other court-related personnel to obtain background and current information regarding the child and family.
- (d) when appropriate, interview service providers (for example, foster parents, teachers, psychologists, psychiatrists, doctors, and nurses) and others (for example, neighbors) who are knowledgeable about the child's/family's past and present situation.
- (e) interview the child's parents, siblings, persons with whom the child resides or may reside, and other persons who are significant in the child's daily life (for example, grandparents and parent's significant other).
- (f) meet with and/or observe the child in a manner consistent with the child's developmental capabilities. Meetings with the child may be alone at the discretion of the guardian ad litem. It is important to prevent any unnecessary interview of the child by the guardian ad litem or any other person. It is the responsibility of the law enforcement and child protection agencies, not the guardian ad litem, to investigate or substantiate any initial or presenting concerns regarding child abuse.
- (g) when appropriate, observe parent-child interaction.
- (h) as appropriate, communicate on a regular basis with the parties and service providers.



## **PART VI: PROPOSED RULES**

- (i) attend, participate in, and advocate for the child's best interest at court hearings, staffings, administrative hearings, and other proceedings. The guardian ad litem should sign the administrative review document and/or case plan indicating areas of disagreement, if any.
- (j) when appropriate, recommend psychological evaluations, psychiatric evaluations, physical evaluations, parenting evaluations, chemical dependency evaluations, or other evaluations.
- (k) recommend placement and/or visitation arrangements that are in the child's best interests.
- (l) bring to the attention of appropriate authorities, and to the court if necessary, situations detrimental to the child (for example, harassment or pressuring of the child).
- (m) bring to the attention of the court urgent treatment needs of the child (for example, medical or mental health issues).
- (n) when appointed in cases in which a finding of domestic abuse has been made, including all cases with orders for protection or harassment restraining orders, gather and release information in a manner that best protects the safety of the child and victim, and that does not require the parties to have contact.
- (o) request appointment of legal counsel, if necessary.
- (p) when appointed in the case of an Indian child, as defined in Minnesota Statutes section 257.351, subdivision 6, interview tribal social services employees,

## **PART VI: PROPOSED RULES**

maintain contact with the tribal representative, and otherwise comply with the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

### **Sec. 3. [CONTESTED HEARING AND/OR ADJUDICATORY PHASES.]**

In addition to the specific responsibilities set forth above, during the contested hearing and/or adjudicatory phases of every juvenile court case the specific responsibilities of a guardian ad litem are to:

- (a) participate in negotiations in an attempt to arrive at a case plan and/or resolve the matter in a manner consistent with the best interests of the child.
- (b) advocate for the child's presence or absence in court, whichever is in the child's best interest.
- (c) as appropriate to the age and maturity of the child, assist the child in understanding the court proceedings.
- (d) keep apprised of the child's/family's situation by communicating on a regular basis with the parties and service providers.
- (e) when authorized, subpoena witnesses, present evidence, conduct direct and cross examination of witnesses, and provide testimony relative to the issues involved in the case and the best interests of the child.
- (f) if the child is required to testify in the juvenile court or other judicial proceeding, take steps to ensure that this is done in a manner best suited to the child's emotional well-being, needs, and abilities.

## **PART VI: PROPOSED RULES**

- (g) keep the court informed about other legal proceedings that may be occurring concurrently with the juvenile court proceeding.
- (h) as appropriate to the case, make oral and/or written reports to the court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based.

### **Sec. 4. [DISPOSITIONAL PHASE.]**

In addition to the responsibilities set forth above, during the dispositional phase of every juvenile court case the specific responsibilities of a guardian ad litem are to:

- (a) advocate for timely review hearings.
- (b) monitor the case to ensure compliance with court orders and to bring to the court's attention any change in the circumstances that may require a modification of the order.
- (c) maintain regular contact with the child and meet with and/or observe the child in a manner consistent with the child's developmental capabilities. Meetings with the child may be alone at the discretion of the guardian ad litem.
- (d) monitor placement and/or visitation arrangements and, when appropriate, periodically observe placement and/or visitation.
- (e) keep apprised of the child's/family's situation and bring appropriate matters to the attention of the court.
- (f) as appropriate to the case, include in the reports to the court information regarding the best interests of the child, including conclusions and

**PART VI: PROPOSED RULES**

recommendations and the facts upon which they are based, that address the dispositional issues and options before the court.

## **PART VI: PROPOSED RULES**

### **CORE PRE-SERVICE TRAINING CURRICULUM**

At a minimum, the core pre-service training curriculum should address the following topics:

- (a) Roles and responsibilities of guardians ad litem;
- (b) Roles and responsibilities of other case participants;
- (c) Relevant laws, rules, and regulations, including the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act, and the Minnesota Heritage Preservation Act;
- (d) Stages of court proceedings and court procedures, including oral presentations, written reports, and development and presentation of recommendations;
- (e) Information gathering and communication skills, especially for children of varying ages, abilities, and cultures;
- (f) Confidentiality and ethics;
- (g) Cultural competency;
- (h) Stages of child development
- (i) Special needs of children and parents with developmental disabilities;
- (j) Attachment and separation;
- (k) Visitation issues, including safety planning;
- (l) Permanency planning;
- (m) Dynamics of child abuse and neglect;
- (n) Dynamics of domestic violence, including impact upon children and victim;

**PART VI: PROPOSED RULES**

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- (o) Dynamics of chemical health issues, including impact on children;
- (p) Dynamics of mental health issues, including impact on children;
- (q) Services and resources available in the community;
- (r) Negotiation and settlement processes; and
- (s) Guardian ad litem personal safety.

## **PART VI: PROPOSED RULES**

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### **ADDITIONAL JUVENILE COURT PRE-SERVICE CURRICULUM**

At a minimum, the juvenile court pre-service training curriculum should address the following topics:

- (a) Safety concerns regarding the child and the community (delinquency proceedings);
- (b) Juvenile correctional placements (delinquency proceedings); and
- (c) Transitional services to assist in reunification (child in need of protection or services and delinquency proceedings).

### **ADDITIONAL FAMILY COURT PRE-SERVICE CURRICULUM**

At a minimum, the family court pre-service training curriculum should address the dynamics of divorce.

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**APPENDICES**

## **PART VII: APPENDICES**

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### **APPENDIX A**

#### **ALTERNATIVE LANGUAGE TO RULE 7, SUBDIVISION 2, PROPOSING REMOVAL OF A GUARDIAN AD LITEM WITHOUT CAUSE FROM A PENDING CASE**

Hugh McLeod proposes that parties to a particular case should have the right to remove a guardian ad litem without cause from a pending case, and proposes the following language:

#### **RULE 7. [COMPLAINT PROCEDURE; REMOVAL OF GUARDIAN AD LITEM FROM PARTICULAR CASE.]**

\* \* \* \* \*

**Subd. 2. [REMOVAL OF GUARDIANS AD LITEM.]** A guardian ad litem appointed to a particular case pursuant to Rule 4, subdivision 4, may be removed from the case in the following manner. Any party or attorney may make and serve on all parties and file with the court a notice to remove. The notice shall be served and filed within two working days after the party receives notice of which guardian ad litem is to be appointed to the case, but no later than the commencement of the trial or hearing. Once a party has disqualified a guardian ad litem as a matter of right, that party may disqualify the substitute guardian ad litem only by a motion for cause before the presiding court. A motion to remove for cause shall be upon notice to the guardian ad litem and the parties, and shall be made in compliance with the applicable rules of court. At the time a notice or motion to remove is served under this subdivision, a copy of the notice or motion shall be provided to the guardian ad litem and the program coordinator.

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**PART VII: APPENDICES**

**APPENDIX B**

**ALTERNATIVE LANGUAGE TO RULE 8, SUBDIVISION 2, PROPOSING  
THAT GUARDIANS AD LITEM BE PERMITTED TO SERVE AS  
VISITATION EXPEDITORS, AND REASONS FOR PROPOSAL**

Judge Baland urges elimination of the language prohibiting guardians ad litem from serving in one case as both a guardian ad litem and a visitation expeditor, and, instead, proposes the following language:

**RULE 8. [GENERAL RESPONSIBILITIES OF GUARDIANS AD LITEM; OTHER  
ROLES DISTINGUISHED; CONTACT WITH THE COURT.]**

\* \* \* \* \*

**Subd. 2. [OTHER ROLES DISTINGUISHED.]** In a case in which a guardian ad litem is serving pursuant to Rule 4, subdivision 4, the guardian ad litem may not be ordered to, and may not perform the role of a mediator, as that role is prescribed in Minnesota Statutes sections 518.619 and Rule 310 of the Minnesota Rules of Family Court Procedure. Unless specified in the appointment order entered pursuant to Rule 4, 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 and 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

## **PART VII: APPENDICES**

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.

**REASONING:** Minnesota Statutes section 518.1751 seeks to promote the prompt resolution of ongoing visitation disputes. The prompt resolution of a visitation dispute in any particular case is obviously in the best interests of the child or children affected by the dispute. By statute, a guardian ad litem is expected to "advocate for" the best interests of children. Since any decision made by a visitation expeditor would necessarily be intended to promote and further the best interests of the children who are the subjects of a visitation dispute, and since a guardian ad litem is statutorily required to "advocate for" those same best interests, I fail to see how we can categorically conclude that there is an "inherent" conflict of interest between the roles of visitation expeditor and guardian ad litem in every case. Is it not possible that it might be appropriate in some instances to have one person serve in both roles? And shouldn't that determination be left to the discretion of the court? After all, a guardian ad litem will often be more knowledgeable about the children, parents, and dynamics of a particular case than anyone else. I fail to see how the best interests of the children are served by a rule which makes it impossible for the court to ever put the guardian's knowledge and insight to good use for the sake of the children by deputizing the guardian to simultaneously serve as visitation expeditor. Bear in mind that an expeditor can only be appointed "upon agreement of all parties." See Minn. Stat. § 518.1751, subd. 1. If the parents and the guardian ad litem agree that it makes sense to have the judge name the guardian ad litem to also serve as visitation expeditor, why

**PART VII: APPENDICES**

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prohibit that from happening? How do the children benefit from a rule which makes it impossible to use a guardian ad litem as visitation expeditor even when everyone involved in the case agrees that it's the right thing to do?

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## **PART VII: APPENDICES**

### **APPENDIX C**

#### **ALTERNATIVE LANGUAGE TO RULE 4, SUBDIVISIONS 1 AND 2, PROPOSING DIRECT SELECTION OF GUARDIAN AD LITEM BY APPOINTING JUDGE, AND REASONS FOR PROPOSAL**

Judge Baland urges elimination of the language prohibiting judges from selecting the guardian ad litem for each particular case, and, instead, proposes the following language:

#### **Rule 4. [APPOINTMENT OF GUARDIAN AD LITEM.]**

**Subdivision 1. [DIRECT SELECTION BY THE COURT.]** When the Court determines that the appointment of a guardian ad litem is appropriate in a particular case, the court shall select a guardian ad litem for appointment from the panel of approved guardians ad litem after applying the factors set forth in subdivision 3. To confirm the appointment, the court shall enter an order in accordance with subdivision 4.

**Subd. 2. [ALTERNATIVE METHOD OF SELECTION.]** When utilization of the selection process described in this subdivision will not result in delay that is adverse to the best interests of the child, the court may request that the program coordinator or the coordinator's designee recommend a guardian ad litem for appointment. Upon receipt of such a request, the program coordinator or the coordinator's designee shall promptly recommend a guardian ad litem for appointment from the panel of approved guardians ad litem after applying the factors set forth in subdivision 3. Unless the court determines, in the exercise of judicial discretion and applying the factors set forth in subdivision 3, that the guardian ad litem recommended is not appropriate for appointment, and communicates the reasons for that determination to the program coordinator or designee, the court shall then confirm the appointment of the recommended



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guardian ad litem by written order issued in accordance with subdivision 4. If the court decides not to appoint the guardian ad litem initially recommended, the program coordinator or the coordinator's designee, if requested to do so by the court, shall promptly recommend another guardian ad litem for appointment. Alternatively, the court may instead appoint a guardian ad litem pursuant to subdivision 1.

**REASONING:** In the following paragraphs Judge Baland identifies and discusses some of the specific reasons why he believes Rule 4, subdivision 1, as proposed by the Task Force, should not be adopted by the Supreme Court:

(a) The proposal calling for selection of the guardian ad litem to be made by the program coordinator received the greatest number of critical written comments from the public.

(b) Rule 4, subdivision 1, is the only Proposed Rule which received three or more critical comments where changes were not made in response to those comments.

(c) The notion that a program coordinator can do a better job than a judge of selecting a guardian ad litem is untried, untested, unproved. Why mandate such a procedure, especially when it is so strongly opposed?

(d) Upon determination that appointment of a guardian ad litem is appropriate, the judge will be aware of the facts of the case and the issues to be investigated by a guardian ad litem. The program coordinator will be ignorant of the facts and issues, unless or until someone explains them, or until the program coordinator reviews the court file. The requirement that the decision regarding selection of the guardian ad litem be referred to the program coordinator involves unnecessary, duplicative transmission of knowledge and information.

(e) Why turn the selection decision over to someone who initially knows nothing about the requirements of the case, and who will somehow (the means is not specified) have to become familiar with the facts of the case to be able to make an intelligent recommendation? How does the child to be served by the guardian ad litem benefit from this cumbersome process?

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(f) The Rule as proposed by the Task Force assumes that the program coordinator will be readily available to be contacted, and will then promptly be able to make a recommendation. Neither assumption is necessarily valid. In out-state districts where judges serve in more than one county, or where a program coordinator serves two or more counties, one can easily envisage routine delays of several days between a determination by the court that appointment of a guardian ad litem is appropriate, and the actual selection of an individual guardian (with further delay before the guardian ad litem actually begins work on the case). How does the child benefit from such delay?

(g) The Rule proposed by the Task Force assumes that a program coordinator is in a better position than the court to be informed regarding the individual situations of guardians ad litem (case load, expertise, availability, etc.). While this may be true in counties with a large roster of guardians ad litem, it is not true in counties served by fewer than eight to ten guardians ad litem, where judges or court administrators already possess that kind of information.

(h) Complaints about the court's alleged misuse of power of appointment in selecting guardians ad litem appear to involve only a handful of counties. The Task Force has heard primarily about appointment-selection problems in family court cases in Hennepin County and CHIPS cases in Beltrami County. Little, if any, evidence was presented regarding "selection" problems in other counties. Why are we imposing a statewide solution in an attempt to correct a problem that does not exist in most locations?

(i) Before we impose such a major change in the way guardians ad litem are selected, shouldn't we first survey guardians ad litem, lawyers, and judges in all 87 counties to determine whether such a major change is actually needed?

(j) If other states have given program coordinators the power of selection, shouldn't we consider their experience and any problems they have encountered before finalizing a recommendation for Minnesota? Aren't we rushing to judgment on this issue?

(k) The notion that we need a "firewall" between the judge and the guardian ad litem in the appointment and selection process has not been proved. Parental complaints about the outcomes of their cases do not establish a need for a firewall. In contested family court cases, one parent will almost always be dissatisfied with the work or recommendations of the guardian ad litem. To establish the existence of a need for a firewall, proponents of such a concept must demonstrate the way in which the child to be served by the guardian ad litem would benefit from the firewall and how the firewall is in the best interest of the child. That has not been done.

(l) The Rule proposed by the Task Force creates an "emergency situation" loophole, without really attempting to define what might constitute an emergency. Judicial disaffection

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with the firewall concept will lead to widespread invocation of the "emergency situation" provision; the exception will swallow the main rule.

(m) The firewall concept doesn't really address the underlying problems sought to be corrected by having the program coordinator select the guardian ad litem. If the appointing judge has already made up his or her mind about the outcome of the case (one of the complaints we have heard), giving the power of selection to the program coordinator won't change that.

(n) We have also heard complaints that certain judges just appoint their friends, or that certain judges always appoint "patsy" guardians who bring back recommendations which conform to the judge's expectations. But so long as such individuals remain on the approved list, nothing in Rule 4 makes it impossible for similar appointments to be made in the future.

(o) If an attorney or party believes that a judge has pre-judged the case, or cannot be fair, or if an attorney or party has a problem with a particular judge's guardian ad litem appointment practices, the solution is to remove the judge. There are already two ways to do that. If the attorney or party lacks the foresight or fortitude to remove a particular judge, it is hard to understand why we should attempt to solve that problem by depriving conscientious judges of the power to select the guardian ad litem.

(p) Problems with guardians ad litem who exceed their mandate or who are uninformed about or insensitive to the culture backgrounds or needs of certain minority groups or battered women or Native Americans won't be solved in any meaningful way by having the program coordinator select the guardian ad litem. The solution to these kinds of problems will be found in improved screening, better training, more detailed appointment orders, regular evaluations, and established procedures for the submission of complaints about guardian ad litem performance. All these things are provided for by the rules proposed by the Task Force; depriving judges of the authority to select a guardian ad litem is an exercise in rulemaking overkill.

(q) To endorse and approve the firewall concept embodied in the Proposed Rules, one must assume one of two things: (1) that the appointing judge's decision regarding selection of an individual guardian ad litem is improperly motivated; or (2) that the guardian ad litem selected directly by the judge will be incompetent, ill-informed, uncaring, or uncontrolled. My experience does not allow me to make either assumption. Therefore, I oppose the firewall solution.