

STATE OF MINNESOTA

IN SUPREME COURT

CO-95-1475

OFFICE OF  
APPELLATE COURTS

AUG 27 1997

**FILED**

PROMULGATION OF RULES  
OF GUARDIAN AD LITEM PROCEDURE

ORDER

WHEREAS, the Supreme Court Advisory Task Force on the Guardian Ad Litem System has recommended adoption of the Rules of Guardian Ad Litem Procedure, and

WHEREAS, on March 13, 1997, the Court held a public hearing regarding the Proposed Rules of Guardian Ad Litem Procedure, and

WHEREAS, the Supreme Court is fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached Rules of Guardian Ad Litem Procedure be, and the same hereby are, prescribed and promulgated to be effective on January 1, 1999.
2. The attached Rules shall apply to all actions filed on or after the effective date.
3. The inclusion of Advisory Task Force Comments is made for convenience and does not reflect court approval of the comments made therein.

DATED: August 27, 1997

BY THE COURT:



A.M. Keith  
Chief Justice

# **RULES OF GUARDIAN AD LITEM PROCEDURE**

**EFFECTIVE JANUARY 1, 1999**

## **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" 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 chief judge may establish a panel to assist in the selection of the program coordinator(s). The designation of a program coordinator may be terminated by the judges of the judicial district. A program coordinator may be an individual, other than a judge or referee serving in the judicial district, or an organization. To be eligible to serve as a program coordinator, an individual or, if an organization, the person directly responsible for its operation, must have management experience, must complete the program coordinator orientation, and must satisfy the minimum qualifications set forth in Rule 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 person to whom the responsibilities are delegated has completed the program coordinator orientation and the

delegation must be approved by the chief judge of the judicial district. A person who has concerns regarding the performance of a program coordinator may submit those concerns in writing to the chief judge of the district. The chief judge, or designee, shall take whatever action, if any, the chief judge determines to be appropriate.

#### **Advisory Task Force Comments**

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 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;
  - (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 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 address the minimum qualifications set forth in Rule 2 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.

**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 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 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 role of a guardian ad litem; the specific duties to be performed by the guardian ad litem in the case; establish, to the extent appropriate, deadlines for the completion of the duties set forth; and the duration of the appointment.

**Rule 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. 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;  
REMOVAL FROM PANEL.]**

**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.]** 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. A written record of the completed evaluation shall be maintained in the guardian ad litem's personnel file. The performance of each guardian ad litem shall be evaluated once during the first six months after the guardian ad litem is first appointed as a guardian ad litem and, thereafter, at least annually.

**Subd. 3. [REMOVAL FROM PANEL].** On the basis of the performance evaluation, the program coordinator shall determine whether to retain the guardian ad litem on the panel of approved guardians ad litem maintained pursuant to Rule 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. A guardian ad litem who has been removed from the panel of approved guardians ad litem following an unsatisfactory performance evaluation may submit in writing to the chief judge a request that the chief judge review the decision of the program coordinator.

#### **Advisory Task Force Comments**

A guardian ad litem may receive an unsatisfactory performance evaluation and be removed from the panel of guardians ad litem for failure to comply with a directive of the court, including the provisions of the order appointing the guardian ad litem; failure to comply with the responsibilities set forth in Rule 8, subdivision 1; or for any other reason deemed appropriate by the program coordinator.

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

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

**Subd. 2. [REMOVAL OF GUARDIAN AD LITEM FROM PARTICULAR**

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

**Advisory Task Force Comments**

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

A guardian ad litem may be removed from a particular case by the presiding judge for failure to comply with a directive of the court, including the provisions of the order appointing the guardian ad litem; failure to comply with the responsibilities set forth in Rule 8, subdivision 1; or for any other reason deemed appropriate by the presiding judge.

As an alternative to removal from a specific case, the presiding judge may reprimand the guardian ad litem, place the guardian ad litem on probation, require the guardian ad litem

to complete a mentorship, require the guardian ad litem to attend additional training, remove the guardian ad litem from the panel of approved guardians ad litem, or direct other action deemed appropriate under the circumstances.

**Rule 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.
- (e) The guardian ad litem shall be knowledgeable about community resources for placement, treatment, and other necessary services.
- (f) The guardian ad litem shall maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child.
- (g) The guardian ad litem shall, during service as a guardian ad litem, keep all records, notes, or other information confidential and in safe storage. At the conclusion of service, the guardian ad litem shall keep or destroy the notes and records in accordance with the requirements of the guardian ad litem program.
- (h) The guardian ad litem shall complete continuing education requirements, and seek advice as necessary from the program coordinator or, if the program coordinator is not available, from another guardian ad litem.
- (i) The guardian ad litem shall treat all individuals with dignity and respect while carrying out her or his responsibilities.
- (j) The guardian ad litem shall be knowledgeable about and appreciative of the child's religious background and racial or ethnic heritage, and sensitive to the issues of cultural and socio-economic diversity, and in all cases governed by

the Indian Child Welfare Act or the Minnesota Indian Family Heritage Preservation Act shall apply the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

- (k) The guardian ad litem shall use the guardian ad litem appointment and authority appropriately to advocate for the best interests of the child, avoid any impropriety or appearance of impropriety, and not use the position for personal gain.
- (l) The guardian ad litem shall comply with all state and federal laws regarding the reporting of child abuse and/or neglect.
- (m) The guardian ad litem shall inform individuals contacted in a particular case about the role of the guardian ad litem in the case.
- (n) The guardian ad litem shall ensure that the appropriate appointment and discharge documents are timely filed with the court.

**Subd. 2. [OTHER ROLES DISTINGUISHED.]** 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 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.

#### **Advisory Task Force Comments**

##### **Contact with the Child.**

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

##### **Considering the Child's Wishes.**

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

that are before the court. In that regard, the guardian ad litem, as appropriate to each case, may attempt to ascertain the child's wishes regarding the matters that are before the court.

If the guardian ad litem determines that it is appropriate to ascertain the child's wishes, careful interviewing techniques must be used to elicit those wishes without creating conflicts for the child. Directly asking the child for her or his opinion regarding the matters before the court is not recommended, as doing so may create conflict for the child. For example, directly asking the child for a custody preference is not recommended as it places the child in the position of choosing between two parents for whom the child may care deeply. In addition, if the court implements the child's expressed preference, the child may feel guilty or may feel that the other parent has been betrayed. Instead, questions should be open ended and the guardian ad litem should be prepared to listen carefully.

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

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

**Reports to the Court.**

Written reports required by any statute or rule shall be served and filed in a timely manner. 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 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.

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

**Rule 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.

- (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.

- (c) The guardian ad litem shall have the right to introduce exhibits, subpoena witnesses, conduct direct and cross examination of witnesses, and appeal the decision of the court.
- (d) The guardian ad litem shall have the right to fully participate in the proceedings through oral arguments and submission of written reports.

#### **Advisory Task Force Comments**

Guardians ad litem have certain rights and powers in every family and juvenile court case, and those rights and powers are identified in subdivision 1. 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."

A guardian ad litem appointed pursuant to the Parentage Act, Minnesota Statutes section 257.60, "becomes a party to the action if the child is made a party." Pursuant to the



Comment to Rule 302.04(b), a guardian ad litem who is a party to a paternity determination proceeding "would be entitled to initiate and respond to motions, conduct discovery, call and cross-examine witnesses, make oral or written arguments or reports, and appeal on behalf of the child without the necessity of applying to other court."

### **Juvenile Court Cases.**

While the Minnesota Rules of Juvenile Procedure at Rules 3.03 (juvenile delinquency) and 39.04 (child in need of protection or services) and Minnesota Statutes section 260.155, subdivision 4, establish that a guardian ad litem may under certain circumstances participate in a juvenile court proceeding, neither the rules nor the statute establish the extent of such participation or whether a guardian ad litem may participate as a party. In considering this issue, however, the Minnesota Supreme Court has cited Minnesota Statutes section 260.155, subdivision 4, for the proposition that a guardian ad litem has "standing as a party to protect the interests of the child." In Re the Welfare of Solomon, 291 N.W.2d 364, 369 (Minn. 1980) (child protection and termination of parental rights matter). The Court has cited Minnesota Statutes section 260.155, subdivision 6, for the proposition that the rights accorded to a guardian ad litem who is a party to a juvenile court proceeding are identical to those accorded to other parties, including the right "to be heard, to present evidence material to the case, and to cross-examine witnesses appearing at the hearing."

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

**Subd. 2. [PRE-SERVICE TRAINING REQUIREMENTS FOR EXISTING GUARDIANS AD LITEM.]** 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
- (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.
- (e) Observe a variety of family court proceedings, including, but not limited to, a temporary relief hearing, a child custody hearing, and a domestic abuse hearing.

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

#### **Advisory Task Force Comments**

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

#### **Rule 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.

**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. 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 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.
- (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.