

OCT - 4 2004

FILED

STATE OF MINNESOTA

IN SUPREME COURT

C1-01-927

Promulgation of Amendments to the
Minnesota Rules of Guardian Ad Litem Procedure
and Guardian Ad Litem-Related Rules of Procedure

ORDER

WHEREAS, in its Final Report dated February 6, 2004, the Supreme Court Juvenile Protection Rules Committee recommended certain amendments to the Minnesota Rules of Guardian Ad Litem Procedure, the Minnesota Rules of Civil Procedure, the Minnesota General Rules of Practice—Rules Governing Civil Actions, the Minnesota General Rules of Practice—Rules of Family Court Procedure, the Minnesota Juvenile Delinquency Rules, and the Minnesota Rules of Juvenile Protection Procedure; and

WHEREAS, by order dated April 20, 2004, this Court invited public comments on the Committee's recommendations by June 7, 2004, and set a public hearing date of June 15, 2004; and

WHEREAS, the Court held a public hearing on June 15, 2004, regarding the Committee's Final Report and proposed amendments; and

WHEREAS, the Court reviewed the proposed amendments and all public comments received, and is fully advised in the premises.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Minnesota Rules of Guardian Ad Litem Procedure shall henceforth be referred to as the Minnesota Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

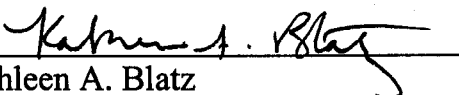
2. The attached amendments to the Minnesota Rules of Guardian Ad Litem Procedure in Juvenile and Family Court, the Minnesota Rules of Civil Procedure, the Minnesota General Rules of Practice—Rules Governing Civil Actions, the Minnesota General Rules of Practice—Rules of Family Court Procedure, the Minnesota Juvenile Delinquency Rules, and the Minnesota Rules of Juvenile Protection Procedure are prescribed and promulgated for the regulation of practice and procedure in the appointment of guardians ad litem in juvenile and family courts in the State of Minnesota.

3. The attached amendments shall govern all actions in which a guardian ad litem is appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.

4. The inclusion and amendment of Committee comments is made for convenience and does not reflect Court approval of the comments made therein.

DATED: September 30, 2004

BY THE COURT:


Kathleen A. Blatz
Chief Justice

MINNESOTA RULES OF GUARDIAN AD LITEM PROCEDURE IN JUVENILE AND FAMILY COURT

Table of Contents

	Page
Rule 901 Purpose Statement<u>Scope of Rules</u>; Implementation	3
Rule 901.01 Purpose <u>Scope of Rules</u>	3
Rule 901.02 Implementation	4
Rule 902 Minimum Qualifications	5
Rule 903 — Selection of Guardians Ad Litem	5
Rule 903.01 Recruitment	5
Rule 903.02 Application Process	5
Rule 903.03 Screening Process	6
Rule 903.04 Panel of Approved Guardians Ad Litem	6
Rule 904<u>3</u> Appointment of Guardian Ad Litem	6
Rule 904 <u>3</u> .01 <u>Request Order</u> by Court; Recommendation of Guardian Ad Litem for Appointment.....	6
Rule 904 <u>3</u> .02 <u>Direct Selection by Court</u> <u>Juvenile Court Appointment</u>	7
Rule 904 <u>3</u> .03 <u>Factors to Be Considered in Selection</u> <u>Family Court Appointment</u>	7
Rule 904 <u>3</u> .04 <u>Appointment Order; Specification of Duties</u> <u>Other Roles Precluded</u>	8
Rule 905 — Oath or Affirmation	8
Rule 906 — Supervision and Evaluation of Guardians Ad Litem; Removal from Panel.	8
Rule 906.01 Support, Advice, and Supervision.....	8
Rule 906.02 Performance Evaluation	8
Rule 906.03 Removal from Panel.....	9
Rule 907<u>4</u> Complaint Procedure; <u>Removal or Suspension</u> of Guardian Ad Litem from Particular Case	9
Rule 907 <u>4</u> .01 Complaint Procedure.....	9
Rule 907 <u>4</u> .02 <u>Removal or Suspension</u> of Guardian Ad Litem from Particular Case	10
Rule 908<u>5</u> General Responsibilities of Guardians Ad Litem; <u>Other Roles Distinguished;</u> <u>Contact with Court</u>.....	11
Rule 908.01 General Responsibilities of Guardians Ad Litem	11
Rule 908.02 Other Roles Distinguished	13
Rule 908.03 Contact with Court	13
<u>Rule 906 Ex Parte Contact Prohibited</u>	16
Rule 909<u>7</u> Rights and Powers of Guardians Ad Litem	16

Rule 9097.01 Rights and Powers of Guardians Ad Litem in Every Case	16
Rule 9097.02 Rights and Powers as a Party	16
Rule 910 — Pre-Service Training Requirements	18
Rule 910.01 Pre-Service Training Requirements for New Guardians Ad Litem	18
Rule 910.02 Pre-Service Training Requirements for Existing Guardians Ad Litem	18
Rule 910.03 Internship Requirements	19
Rule 911 — Continuing Education Requirements	19
Rule 912 — Training Curricula; Certification of Trainers	19
Rule 912.01 Pre-Service Training Curriculum	20
Rule 912.02 Continuing Education Curriculum	20
Rule 912.03 Certification of Trainers	20
Rule 913 — Community Education	20

RULE 901. PURPOSE STATEMENTS SCOPE OF RULES; IMPLEMENTATION

Rule 901.01. Purpose Scope of Rules

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

These Rules govern the appointment, responsibilities, and removal of guardians ad litem appointed to advocate for the best interests of the child, minor parent, or incompetent adult in family and juvenile court cases. These Rules do not govern guardians ad litem appointed pursuant to Minn. Stat. sections 245.487-245.4888, 253B, 256B.77, 257.60(1), 494.01-494.05, 501B.19, 501B.50, 508.18, 524.1-403, 540.08, and when the person appointed as a guardian ad litem for a minor parent in a paternity action pursuant to Minnesota Rules of Civil Procedure 17.02 is the minor parent's parent or adult relative.

For purposes of Rules 902 to 907:

(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 ~~372.01(k)~~ of the Minnesota Rules of Juvenile Protection Procedure, including all of the following matters: 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.

2004 Advisory Committee Comment

The previous Rules of Guardian Ad Litem Procedure also addressed the qualifications, recruitment, screening, training, selection, supervision, and evaluation of guardians ad litem. The administration and oversight of these issues is now the responsibility of the Office of the State Court Administrator. The issues are now to be included in a standards manual. It is the responsibility of the Office of the State Court Administrator to prepare that manual, with the advice and consent of the Conference of Chief Judges. The minimum standards set forth in the previous rules are to be maintained in the manual, together with the procedures governing complaints about the performance of a guardian ad litem. Also to be included in the manual are standards regarding knowledge and appreciation of the prevailing social and cultural standards of the Indian and other minority communities. The manual is to be published in both print and electronic forms and is to be available to the public.

Rule 901.02. Implementation

~~Rules 901 to 913 shall be implemented in each judicial district on or before the date for implementation prescribed by the Supreme Court in its order adopting Rules 901 to 913. The chief judge of the judicial district shall be responsible for insuring the implementation of Rules 901 to 913, the Rules of Guardian ad Litem of Procedure. The responsibilities set forth in Rules 903 to 907 the Rules of Guardian ad Litem of Procedure 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 judicial district administrator. The chief judge may establish a panel to assist in the selection of the program coordinator(s). The designation of a program coordinator may be terminated by the judges of the judicial district. A program coordinator may be an individual, other than a judge or referee serving in the judicial district, or an organization. To be eligible to serve as a program coordinator, an individual or, if an organization, the person directly responsible for its operation, must have management experience, must complete the program coordinator orientation, and must satisfy the minimum qualifications set forth in Rule 902, clauses (e), (d), (g), and (h). An individual or organization may serve in more than one county in a judicial district. A program coordinator may delegate the responsibilities set forth in Rules 903 and 904 to a person who has not completed the training requirements set forth in Rule 910, provided that if the person is not under the direct supervision of the program coordinator, the person to whom the responsibilities are delegated has completed the program coordinator orientation and the delegation must be approved by the chief judge of the judicial district. A person who has concerns regarding the performance of a program coordinator may submit those concerns in writing to the chief judge of the district. The chief judge, or designee, shall take whatever action, if any, the chief judge determines to be appropriate.~~

Advisory Task Force Comments—1997

~~Rule 901.02 is designed to allow judicial districts flexibility in the implementation of Rules 902 to 913. Both single county and multi county judicial districts have used a variety of guardian ad litem programs within a district. Rule 901.02 allows that practice to continue. For example, the chief judge of a single county judicial district could designate one or more individuals or organizations to act in the capacity of program coordinator. Likewise, the chief judge of a multi county judicial district could designate one individual or organization to act in the capacity of program coordinator for all counties in the judicial district or could designate more than one individual or organization to act in that capacity for one or more of the counties in the district. A program coordinator could be a district court or county court administrator or a member of an administrator's staff, or could be an organization providing guardian ad litem services. Likewise, a program coordinator could delegate the responsibilities set forth in Rules 903 and 904 to a member of the program coordinator's staff or, for example, to the director of court services if the delegation is approved by the chief judge of the judicial district.~~

RULE 902. MINIMUM QUALIFICATIONS

Before a person may be recommended for service as a guardian ad litem pursuant to Rule 904~~3~~, the person must satisfy the following minimum qualifications:

- (a) have an abiding interest in children and their rights and needs;
- (b) have sufficient listening, speaking, and writing skills in the person's primary language to successfully conduct interviews, prepare written reports, and make oral presentations;
- (c) not have been involved in any conduct or activity that would interfere with the person's ability to discharge the duties assigned by the court;
- (d) have knowledge and an appreciation of the ethnic, cultural, and socio-economic backgrounds of the population to be served;
- (e) be available for at least 18 months and have sufficient time, including evenings and weekends, to gather information, make court appearances, and otherwise discharge the duties assigned by the court;
- (f) have the ability to (1) relate to a child, family members, and professionals in a careful and confidential manner; (2) exercise sound judgment and good common sense; and (3) successfully discharge the duties assigned by the court;
- (g) not have been removed from a panel of approved guardians ad litem following an unsatisfactory performance evaluation ~~pursuant to Rule 906.03~~; and
- (h) have satisfactorily completed the pre-service training requirements ~~set forth in Rule 910~~, and demonstrated a comprehension of the responsibilities of guardians ad litem as set forth in Rule 908.04~~5~~.

Additional qualifications for a guardian ad litem appointed pursuant to these Rules may be established by the Office of the State Court Administrator, with the advice and consent of the Conference of Chief Judges. Any additional qualifications shall be published in a standards manual. The standards manual shall be published in print and electronic forms and be available to the public.

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

~~Rule 903.01. Recruitment~~

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

~~Rule 903.02. Application Process~~

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

release of information authorization sufficient to enable the program coordinator to independently verify the facts set forth in the application and freely check into the applicant's background and qualifications.

Rule 903.03. Screening Process

Before an applicant is approved by the program coordinator for inclusion on a panel of guardians ad litem maintained pursuant to 903.04, (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.

Rule 903.04. Panel of Approved Guardians Ad Litem

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

RULE 9043. APPOINTMENT OF GUARDIAN AD LITEM

Rule 9043.01. Request Order by Court; Recommendation of Guardian Ad Litem for Appointment

Except as provided in Rule 904.02, When the court determines orders that the appointment of a guardian ad litem is appropriate in a particular case, the court shall request that the program coordinator the district guardian ad litem manager or the manager's designee shall promptly 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 Rule 904.03. Unless If in the exercise of judicial discretion the court determines, in the exercise of judicial discretion and applying the factors set forth in Rule 904.03, that the guardian ad litem recommended is not appropriate for appointment, and communicates the reasons for that determination to the program coordinator district guardian ad litem manager or the manager's designee, the court shall enter a written order pursuant to Rule 904.04 appointing the guardian ad litem recommended. If the court communicates a determination to not appoint the guardian ad litem recommended, the program coordinator district guardian ad litem manager or the manager's designee shall promptly recommend another guardian ad litem for appointment. No guardian ad litem shall be appointed unless recommended by the district guardian ad litem manager or manager's designee.

Rule 904.02. Direct Selection by Court

When the court determines that an emergency exists which requires the appointment of a guardian ad litem with such immediacy that completion of the process set forth in Rule 904.01 is not practical, the court may select a guardian ad litem for appointment, applying the factors set forth in Rule 904.03. The court shall enter an order pursuant to Rule 904.04 appointing the guardian ad litem.

Rule 904.03. Factors to be Considered in Selection

All pertinent factors shall be considered in the identification and selection of the guardian ad litem to be appointed, including the age, gender, race, cultural heritage, and needs of the child; the cultural heritage, understanding of ethnic and cultural differences, background, and

~~expertise of each available guardian ad litem, as those factors relate to the needs of the child; the caseload of each available guardian ad litem; and such other circumstances as may reasonably bear upon the matter. In every case, the goal is the prompt appointment of an independent guardian ad litem to advocate for the best interests of the child. To be appointed pursuant to 904.04, a guardian ad litem must meet the minimum qualifications set forth in Rule 902, must have no conflict of interest regarding the case, and must be listed on a panel of approved guardians ad litem maintained pursuant to Rule 903.04. 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.~~

Rule 903.02. Juvenile Court Appointment

A guardian ad litem shall not be appointed or serve except upon written order of the court. The order shall set forth:

- (a) the statute or rule providing for the appointment of the guardian ad litem;
- (b) the provisions for parental fee collection as applicable under Minn. Stat. sections 260B.331 subd. 6 (a) and 260C.331 subd. 6 (a) and as established by the Conference of Chief Judges, and
- (c) in an adoption proceeding or a juvenile court case in which adoption is the intended permanency plan for the child, authorization for the guardian to review the home studies.

When a guardian ad litem is appointed pursuant to Minn. Stat. section 260C.163 subd. 5 (a), the court shall not appoint as guardian ad litem an individual who is the party, or an agent of the party, who has already filed a petition in the case pursuant to Minn. Stat. section 260C.141.

2004 Advisory Committee Comment

Rule 903.02 prohibits appointment as a guardian ad litem in a juvenile court case any individual, or the individual's agent, who has filed the initial petition in the case. The Rule is also intended to prohibit an individual serving as a guardian ad litem in both a family court matter and a juvenile court matter involving the same child, if the family court guardian ad litem has filed the initial petition in the juvenile court matter. The Rule does not prohibit a guardian ad litem already serving in a juvenile court matter from continuing to serve if, in the course of the case, the guardian ad litem files a petition or other pleadings.

Rule 9043.0403. Family Court 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:

- (a) the statute or rule providing for the appointment of the guardian ad litem; ~~role of a guardian ad litem;~~

(b) the specific duties to be performed by the guardian ad litem in the case;
(c) establish, to the extent appropriate, deadlines for the completion of the duties set forth; and
(d) to the extent appropriate; the duration of the appointment; and
(e) the provisions for parental fee collection as applicable under Minn. Stat. sections 257.69 subd. 2 (a) and 518.165 subd. 3 (a), and as established by the Conference of Chief Judges.

Rule 903.04. Other Roles Precluded

A guardian ad litem under the supervision of the Office of the State Court Administrator shall not be ordered to, and shall not perform the following roles in a case in which they serve as a guardian ad litem:

- (a) custody evaluator pursuant to Minn. Stat. section 518.167; or
- (b) parenting time evaluator; or
- (c) mediator, as that role is prescribed in Minn. Stat. section 518.619 and Rule 310 of the Minnesota Rules of Family Court Procedure; or
- (d) arbitrator or individual authorized to decide disputes between parties; or
- (e) parenting time expeditor, as that role is prescribed in Minn. Stat. sections 518.619 and 518.1751; or
- (f) substitute decision-maker under Minn. Stat. section 253B.092; or
- (g) evaluator charged with conducting a home study under Minn. Stat. sections 245A.035 or 259.41; or
- (h) attorney for the child.

Nothing in this rule shall prevent a properly qualified person who also serves in other cases as a guardian ad litem from serving in the above roles on a privately-paid basis.

RULE 905. OATH OR AFFIRMATION

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

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

Rule 906.01. Support, Advice, and Supervision

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

Rule 906.02. Performance Evaluation

~~— The program coordinator(s) shall provide for the periodic evaluation of the performance of guardians ad litem serving in the judicial district. The evaluation shall be objective in nature and shall include a review of the cases assigned to the guardian ad litem; a review of the guardian ad litem's compliance with the continuing education requirements set forth in Rule 911; inquiries to judges presiding over cases in which the guardian ad litem was appointed; a review of complaints filed against the guardian ad litem, if any; follow-up checks pursuant to Rule~~

902(c), 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.

Rule 906.03. Removal from Panel

On the basis of the performance evaluation, the program coordinator shall determine whether to retain the guardian ad litem on the panel of approved guardians ad litem maintained pursuant to Rule 903.04. 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 — 1997 Comments

A guardian ad litem may receive an unsatisfactory performance evaluation and be removed from the panel of guardians ad litem for failure to comply with a directive of the court, including the provisions of the order appointing the guardian ad litem; failure to comply with the responsibilities set forth in Rule 908.01; 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 9074. COMPLAINT PROCEDURE; REMOVAL OR SUSPENSION OF GUARDIAN AD LITEM FROM PARTICULAR CASE

Rule 9074.01. Complaint Procedure

A person who has concerns regarding the performance of a guardian ad litem may present those concerns to the program coordinator. Complaints about the performance of a guardian ad litem shall be governed by procedures established by the Office of the State Court Administrator with the advice and consent of the Conference of Chief Judges. 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 offered into evidence by the guardian ad litem or Unless authorized by written order following an in camera review by the court, neither the complaints and complaint investigation reports nor the subject matter of the report shall not be introduced received as evidence or used in any manner in any proceeding governed by these Rules ease in which the guardian ad litem is serving, has served, or may serve in the future.~~

Rule 9074.02. Removal or Suspension of Guardian Ad Litem From Particular Case

Subd. 1. A guardian ad litem appointed to serve in a particular case may be removed or suspended from the case only by order of the presiding judge. Removal or suspension may be upon initiation of the presiding judge or after hearing upon the motion of a party pursuant to subd. 2 of this Rule.

Subd. 2. A party to the case who wishes to seek the removal or suspension of a guardian ad litem for cause must proceed by written motion before the judge presiding over the case. A motion to remove or suspend 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~~ district guardian ad litem manager 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.~~

Subd. 3. The presiding judge shall remove a guardian ad litem from a particular case:

(a) when it is shown by written communication from the district guardian ad litem manager or the manager's designee that the individual is a contract guardian ad litem who does not have a current contract with the state of Minnesota, or the guardian ad litem has been removed from the state program for cause; or

(b) upon notice of any felony, gross misdemeanor, or misdemeanor conviction of the guardian ad litem of an offense involving children or domestic assault; or

(c) upon notice of a finding by the Minnesota Department of Human Services of maltreatment of a child by the guardian ad litem.

Subd. 4. The presiding judge may remove or suspend a guardian ad litem from a particular case:

(a) for failure to comply with a directive of the court, including provisions of the order appointing the guardian ad litem; or

(b) for failure to comply with the responsibilities set forth in these Rules; or

(c) upon notice of formal sanction of the guardian ad litem by any professional or occupational licensing board; or

(d) upon formal request from the district guardian ad litem program for good cause; or

(e) for other good cause shown.

As an alternative to removal or suspension from a specific case, the presiding judge may ask the district guardian ad litem manager to provide appropriate remedial action for the guardian ad litem.

Advisory Task Force Comments—1997 Comments

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

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

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

RULE 908.5. GENERAL RESPONSIBILITIES OF GUARDIANS AD LITEM; OTHER ROLES DISTINGUISHED; CONTACT WITH COURT

Rule 908.01. General Responsibilities of Guardians Ad Litem

~~Consistent with the responsibilities set forth in Minnesota Statutes section 260.155, subdivision 4(b), and section 518.165, subdivision 2a, other applicable statutes and rules of court, and the appointment order entered pursuant to Rule 904.04, in every family court and juvenile court case in which a guardian ad litem is appointed, and in every paternity action in which a guardian ad litem has been appointed for a child who has been made a party pursuant to Minn. Stat. sections 257.60 (2) and (3), the guardian ad litem shall: perform the responsibilities set forth in clauses (a) to (n).~~

~~(a) conduct an independent investigation to determine the facts relevant to the situation of the child or incompetent adult and the family, which must include, unless specifically excluded by the court: reviewing relevant documents, which in the case of an adoption shall include the home studies upon order of the court pursuant to Minn. Stat. section 259.53 subd. 3(b); meeting with and observing the child in the home setting and considering the child's or incompetent adult's wishes, as appropriate; and interviewing parents, caregivers, and others relevant to the case;~~

~~(b) advocate for the best interests of the child or incompetent adult 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 or incompetent adult;

(d) monitor the best interests of the child or incompetent adult throughout the judicial proceeding; and

(e) present written reports on the best interests of the child or incompetent adult that include conclusions and recommendations, and the facts upon which they are based.

~~— (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.~~

~~Rule 908.02. Other Roles Distinguished~~

~~In a case in which a guardian ad litem is serving pursuant to Rule 904.04, 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 904.04, 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.~~

~~Rule 908.03. Contact with Court~~

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

~~Advisory Task Force Comments – 1997 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.~~

Inappropriate Guardian Ad Litem Responsibilities:

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

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

Specific Responsibilities of Guardians Ad Litem:

~~Rule 908.01 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 906. EX PARTE CONTACT PROHIBITED

Ex parte communication with the court by a guardian ad litem is prohibited, except as to procedural matters not affecting the merits of the case.

RULE 9097. RIGHTS AND POWERS OF GUARDIANS AD LITEM

Rule 9097.01. Rights and Powers of Guardians Ad Litem in Every Case

~~Consistent with the responsibilities set forth in Rule 908.01, in every case in which a guardian ad litem is appointed pursuant to Rule 9043.04, the guardian ad litem shall have the rights and powers set forth in clauses (a) to (de).~~

~~(a) The guardian ad litem shall have access to the child or incompetent adult including meeting with the child alone as deemed appropriate by the guardian ad litem; and shall have access to all information relevant to the child's or incompetent adult's and family's situation which is accessible under applicable state and federal laws. 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, and may initiate and respond to motions.~~

~~(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 9097.02. Rights and Powers as a Party

~~In addition to the rights and powers set forth in Rule 9097.01 and any other rights set forth in statute, court order, or Rule, in every case in which a guardian ad litem is designated, by statute, rule, or order of the court, as a party to the case, the guardian ad litem shall have the rights and powers to: set forth in clauses (a) to (nd). The exercise of these rights and powers shall not constitute the unauthorized practice of law.~~

~~(a) legal representation;~~

~~(b) be present at all hearings;~~

~~(c) conduct discovery;~~

~~(d) bring motions before the court;~~

- (e) participate in settlement agreements;
- (f) subpoena witnesses;
- (g) make argument in support of or against the petition;
- (h) present evidence;
- (i) cross-examine witnesses;
- (j) request review of the referee's findings and recommended order;
- (k) request review of the court's disposition upon a showing of a substantial change of circumstances or that the previous disposition was inappropriate;
- (l) bring post-trial motions; and
- (m) appeal from orders of the court.

The exercise of these rights 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 — 1997 Comments~~

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

~~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 910. PRE-SERVICE TRAINING REQUIREMENTS~~

~~Rule 910.01. Pre-Service Training Requirements for New Guardians Ad Litem~~

~~The purpose of pre-service training is to equip guardians ad litem with the skills, techniques, knowledge, and understanding necessary to effectively advocate for the best interests of children. To be listed on a panel of approved guardians ad litem maintained pursuant to Rule 903.04, each person, except those persons who meet the criteria set forth in 910.02 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.~~

~~Rule 910.02. Pre-Service Training Requirements for Existing Guardians Ad Litem~~

~~To be listed on a panel of approved guardians ad litem maintained pursuant to Rule 904.04, each person appointed to serve as a guardian ad litem prior to the effective date of Rules 901 to 913 shall either:~~

- ~~(a) — satisfy the pre-service training requirements set forth in Rule 910.01; 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 Rule 910.01. 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 910.03. Internship Requirements

~~In addition to satisfying the pre service training requirements set forth in either Rule 910.01 or Rule 910.02, 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 – 1997 Comments

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

RULE 911. CONTINUING EDUCATION REQUIREMENTS

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

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

~~Rule 912.01. Pre-Service Training Curriculum~~

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

~~Rule 912.02. Continuing Education Curriculum~~

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

~~Rule 912.03. Certification of Trainers~~

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

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

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

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

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

~~RULE 913. COMMUNITY EDUCATION~~

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

GUARDIAN AD LITEM-RELATED RULES OF PROCEDURE

Table of Contents

	Page
Rules of Civil Procedure	23
17.02 – Infants or Incompetent Persons	23
General Rules of Practice – Rules Governing Civil Actions	25
108.01 – Role of Guardian Ad Litem.....	25
108.02 – Other Guardian Ad Litem Roles Distinguished	25
108.023 – Guardian <u>Ad Litem</u> Not Lawyer for Party	25
General Rules of Practice – Rules of Family Court Procedure	26
302.04 – Designation of Parties	26
357 – Legal Representation and Appointment of Guardian Ad Litem	27
357.01 – Right to Representation	27
357.02 – Certificate of Representation	27
357.03 – Appointment of Attorney at Public Expense.....	28
357.04 – Appointment of Guardian Ad Litem	28
367.04 – Conflict of Interest	29
Rules of Juvenile Delinquency Procedure	30
2.01 – Right to Attend Hearing	30
2.02 – Exclusion of Persons Who Have Right to Attend Hearings.....	30
2.04 – Right to Participate.....	30
3.07 – Right of Parent(s), Legal Guardian (s), Legal Custodian(s) and Guardian ad Litem to Counsel.....	31
24 – Guardian Ad Litem.....	32
<u>24.01</u> – Appointment.....	32
<u>24.02</u> – General Responsibilities of Guardian Ad Litem	32

24.03 – Guardians Ad Litem not Counsel for Child	33
30.02 – Availability of Juvenile Court Records.....	33
Rules of Juvenile Protection Procedure	35
26 – Guardian Ad Litem.....	35
26.01 – Appointment for Child	35
26.02 – Discretionary Appointment for Child’s Parent or Legal Custodian.....	37

RULES OF CIVIL PROCEDURE

Rule 17.02. Infants or Incompetent Persons

Whenever a party to an action is an infant or is incompetent and has a representative duly appointed under the laws of this state or the laws of a foreign state or country, the representative may sue or defend on behalf of such party. A party who is an infant or is incompetent and is not so represented shall be represented by a guardian ad litem appointed by the court in which the action is pending or is to be brought. The guardian ad litem shall be a resident of this state, shall file a consent and oath with the court administrator, and shall give such bond as the court may require. A guardian ad litem appointed under this Rule is not a guardian ad litem within the meaning of the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court and is not governed by those Rules except when appointed in a paternity action.

Any person, including an infant party over the age of 14 years and under no other legal disability, may apply under oath for the appointment of a guardian ad litem. The application of the party or the party's spouse or parents or testamentary or other guardian shall have priority over other applications. If no such appointment is made on behalf of a defendant party before answer or default, the adverse party or a party's attorney may apply for such appointment, and in such case the court shall allow the guardian ad litem a reasonable time to respond to the complaint.

The application for appointment shall show (1) the name, age and address of the party, (2) if the party is a minor, the names and addresses of the parents, and, in the event of their death or the abandonment of the minor, the name and address of the party's custodian or testamentary or other guardian, if any, (3) the name and address of the party's spouse, if any, and (4) the name, age, address, and occupation of the person whose appointment is sought.

If the appointment is applied for by the party or by a spouse, parent, custodian or testamentary or other guardian of the party, the court may hear the application with or without notice. In all other cases written notice of the hearing on the application shall be given at such time as the court shall prescribe, and shall be served upon the party, the party's spouse, parent,

1 custodian and testamentary or other guardian, if any, and if the party is an inmate of a public
2 institution, the chief executive officer thereof. If the party is a nonresident or, after diligent
3 search, cannot be found within the state, notice shall be given to such persons and in such
4 manner as the court may direct.

1 **GENERAL RULES OF PRACTICE – RULES GOVERNING CIVIL ACTIONS**

2
3 **RULE 108. GUARDIAN AD LITEM**

4 **Rule 108.01. Role of Guardian Ad Litem**

5 Whenever the court appoints a guardian ad litem, the guardian ad litem shall be furnished
6 copies of all pleadings, documents and reports by the party or agency which served or submitted
7 them. A party or agency submitting, providing or serving reports and documents to or on a party
8 or the court, shall provide copies promptly thereafter to the guardian ad litem.

9
10 Upon motion, the court may extend the guardian ad litem’s powers as it deems necessary.
11 Except upon a showing of exigent circumstance, the guardian ad litem shall submit any
12 recommendations, in writing, to the parties and to the court at least 10 days prior to any hearing
13 at which such recommendations shall be made. For purposes of all oral communications
14 between a guardian ad litem and the court, the guardian ad litem shall be treated as a party.

15
16 **Rule 108.02. Other Guardian Ad Litem Roles Distinguished**

17 A guardian ad litem appointed under this Rule is not a guardian ad litem within the
18 meaning of the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court and is not
19 governed by those rules except when appointed in a paternity action.

20
21 **Rule 108.023. Guardian Ad Litem Not Lawyer for Any Party**

22 The guardian ad litem shall not be a lawyer for any party to the action.

23
24 ***Task Force Comment – 1991 Adoption***

25 This rule requires all discussions with a guardian ad litem regarding a case to be made as
26 if the guardian ad litem were a party. It does not prohibit general discussions or briefing of
27 guardians ad litem or potential guardians ad litem from taking place ex parte.

28
29 In personal injury actions, neither the lawyer nor any member of the lawyer’s firm should
30 be guardian. For the same reason, such a lawyer should not accept a referral fee with respect to
31 the guardianship.

1 **GENERAL RULES OF PRACTICE – RULES OF FAMILY COURT PROCEDURE**

2
3 **RULE 302.04. DESIGNATION OF PARTIES**

4 (a) **Petitioner and Respondent.** Parties to dissolution, legal separation, annulment,
5 custody, domestic abuse, U.C.C.J.A., and R.U.R.E.S.A. proceedings shall be designated as
6 petitioner (joint petitioners) and respondent. Parties to parentage and Minnesota Statutes, section
7 256.87 reimbursement actions shall be designated as plaintiff and defendant. After so
8 designating the parties, it is permissible to refer to them as husband and wife by inserting the
9 following in any petition, order, decree, etc.:

10 *Petitioner is hereinafter referred to as (wife/husband), and respondent as*
11 *(husband/wife).*

12 (b) **Guardians Ad Litem.** Appointment of a guardian ad litem is governed by ~~Minn.~~
13 ~~Gen. R. Prac. 108.~~ the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.
14 The guardian ad litem shall carry out the responsibilities set forth in the Rules of Guardian Ad
15 Litem Procedure in Juvenile and Family Court. The guardian ad litem shall have the rights set
16 forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

17 A guardian ad litem for minor children may be designated a party to the proceedings in the order
18 of appointment. If the child is made a party to the proceeding, then the child’s guardian ad litem
19 shall also be made a party.

20
21 ***Family Court Rules Advisory Committee Commentary****

22 A guardian appointed pursuant to Minnesota Statutes, section 257.60 becomes a party to
23 the action if the child is made a party. The guardian then would be entitled to initiate and
24 respond to motions, conduct discovery, call and cross-examine witnesses, make oral or written
25 arguments or reports and appeal on behalf of a child without the necessity of applying to the
26 court.

27
28 A guardian appointed under Minnesota Statutes, section 518.165 is not a party to the
29 proceeding and may only initiate and respond to motions and make oral statements and written
30 reports on behalf of the child.

1 A party has the right to cross-examine as an adverse witness the author of any report or
2 recommendation on custody and visitation of a minor child. *Thompson v. Thompson*, 288 Minn.
3 41, 55 N.W. 329 (1952) and *Scheibe v. Scheibe*, 308 Minn. 449, 241 N.W.2d 100 (1976).

4
5 Practice among the courts may vary with respect to appointments. Some courts maintain
6 panels of lay guardians while other courts maintain panels of attorney guardians. If a lay
7 guardian is appointed, an attorney for the guardian may also be appointed. Guardians may
8 volunteer or be paid for their services. An attorney requesting appointment of a guardian should
9 inquire into local practice.

10
11 **Original Advisory Committee Comment--Not kept current.*

12 *Task Force Comment--1991 Adoption*

13 Subdivision (a) of this rule is derived from existing Second District R. 1.07. Subdivision
14 (b) of this rule is derived from Rule 1.02 of the Uniform Rules of Family Court Procedure. The
15 first sentence of the subdivision is new and is intended to make it clear that practice involving
16 guardians ad litem is also governed by another rule provision.

17
18
19
20 **RULE 357. LEGAL REPRESENTATION AND APPOINTMENT OF GUARDIAN AD LITEM**

21 **Rule 357.01. Right to Representation**

22 Each party appearing in the expedited process has a right to be represented by an
23 attorney. A party, however, does not necessarily have the right to appointment of an attorney at
24 public expense as provided in Rule 357.03.

25
26 **Rule 357.02. Certificate of Representation**

27 An attorney representing a party in the expedited process, other than a public defender or
28 county attorney, shall on or before the attorney's first appearance file with the court a certificate
29 of representation.

1 **Rule 357.03. Appointment of Attorney at Public Expense**

2 Unless a party voluntarily waives the right to counsel, the child support magistrate shall
3 appoint an attorney at public expense for a party who requests an attorney and who cannot afford
4 to retain an attorney when the case involves:

- 5 (a) establishment of parentage; or
- 6 (b) contempt proceedings in which incarceration of the party is a possible outcome of
7 the proceeding.

8
9 Pursuant to Minn. Stat. § 257.69 (2000), a court-appointed attorney shall represent a
10 party with respect to all issues necessary for the initial establishment of parentage, including
11 child support, custody, parenting time, and name of the child.

12
13 ***Advisory Committee Comment***

14 Parentage. The Minnesota Parentage Act, codified as Minn. Stat. §§ 257.51 – .74 (2000),
15 provides that “the court shall appoint counsel for a party who is unable to pay timely for counsel
16 in proceedings under sections 257.51 to 257.74.” Minn. Stat. § 257.69, subd. 1 (2000). A party
17 has a right to appointed counsel for all matters brought under the Parentage Act. See *M.T.L. v.*
18 *Dempsey*, 504 N.W.2d 529, 531 (Minn. App. 1993).

19
20 Contempt. In *Cox v. Slama*, 355 N.W.2d 401, 403 (Minn. 1984), the court established
21 the right to counsel for persons facing civil contempt for failure to pay child support when
22 incarceration is a real possibility.

23
24 **Rule 357.04. Appointment of Guardian Ad Litem**

25 **Subdivision 1. Applicability of Rules of Guardian Ad Litem Procedure in Juvenile**
26 **and Family Court.** Child support magistrates shall appoint guardians ad litem to advocate for
27 the best interests of children when required under Minn. Stat. § 518.165-~~(2000) or any other~~
28 ~~applicable statute.~~ When a child support magistrate determines that the appointment of a
29 guardian ad litem is necessary, that appointment shall be made according to the Minnesota
30 General Rules of Practice 901-913. Rules of Guardian Ad Litem Procedure in Juvenile and
31 Family Court.

1 ~~**Subd. 2. Exception.** The Minnesota Rules of Guardian Ad Litem Procedure to not~~
2 ~~apply when the person for whom the guardian ad litem is being appointed is a minor parent.~~

3
4 **RULE 367.04. CONFLICT OF INTEREST**

5 **Subdivision 1. Generally.** A child support magistrate shall not serve as:

6 (a) an attorney in any family law matter within any county in which the person serves
7 as a child support magistrate; or

8 (b) a guardian ad litem in any family law matter, ~~as defined in the comment to Minn.~~
9 ~~Gen. R. Prac. 901.01~~, in any county district in which the person serves as a child support
10 magistrate.

11
12 **Subd. 2. Disqualification.** The disqualifications listed in subdivision 1 shall not be
13 imputed to other members of a child support magistrate's law firm.

RULES OF JUVENILE DELINQUENCY PROCEDURE

Rule 2.01. Right to Attend Hearing

Juvenile court proceedings are closed to the public except as provided by law. Only the following may attend hearings:

- (A) the child, guardian ad litem appointed in the delinquency proceeding and counsel for the child;
- (B) parent(s), legal guardian, or legal custodian of the child and their counsel;
- (C) the spouse of the child;
- (D) the prosecuting attorney;
- (E) other persons requested by the parties listed in (A) through (D) and approved by the court;
- (F) persons authorized by the court, including a guardian ad litem appointed for the child in another matter, under such conditions as the court may approve;
- (G) persons authorized by statute, under such conditions as the court may approve; and
- (H) any person who is entitled to receive a summons or notice under these rules.

Rule 2.02. Exclusion of Persons Who Have A Right To Attend Hearings

The court may temporarily exclude any person, except counsel and the guardian ad litem, when it is in the best interests of the child to do so. The court shall note on the record the reasons a person is excluded. Counsel for the person excluded has the right to remain and participate if the person excluded had the right to participate in the proceeding. An unrepresented child cannot be excluded on the grounds that it is in the best interests of the child to do so.

Rule 2.04. Right to Participate

Subd. 1. Child and Prosecuting Attorney. The child and prosecuting attorney have the right to participate in all hearings.

Subd. 2. Guardian ad Litem. The guardian ad litem appointed in the delinquency proceeding has a right to participate and advocate for the best interests of the child at all hearings.

Subd. 3. Parent(s), Legal Guardian, or Legal Custodian. Except in their role as guardian ad litem for the child, the parent(s), legal guardian, or legal custodian may not participate separately at hearings until the dispositional stage of the proceedings and the court shall advise them of this right. A parent, legal guardian, or legal custodian for the child is not subject to the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. A parent, legal guardian, or legal custodian shall not participate as counsel for the child unless licensed to practice law.

Subd. 4. Generally. Persons represented by counsel, who have a right to participate, shall participate through their counsel. Unrepresented persons may participate on their own behalf.

Rule 3.07. Right of Parent(s), Legal Guardian(s), Legal Custodian(s) and Guardian ad Litem to Counsel

Subd. 1. Right of Parent(s), Legal Guardian(s) or Legal Custodian(s). The parent(s), legal guardian or legal custodian of a child who is the subject of a delinquency proceeding have the right to assistance of counsel after the court has found that the allegations of the petition have been proved. The court has discretion to appoint an attorney to represent the parent(s), legal guardian or legal custodian at public expense if they are financially unable to obtain counsel in any other case in which the court finds such appointment is desirable.

Subd. 2. Right of Guardian Ad Litem to Counsel. In the event of a conflict between the child and the guardian ad litem, the court may appoint separate counsel to represent the guardian ad litem appointed in the delinquency proceeding.

Rule 24. Guardian ad Litem

Rule 24.01. Appointment

(A) Except as provided in Rule 24.01 (B), ~~t~~The court shall appoint a guardian ad litem, ~~except as provided in Minnesota Rules of Juvenile Procedure 24.01(B)~~ to act in place of a parent, legal guardian or legal custodian to protect the best interest of the child when it appears, at any stage of the proceedings, that the child is without a parent, legal guardian or legal custodian. If the parent, legal guardian or legal custodian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the child's best interests, a guardian ad litem shall be appointed.

(B) The court may determine not to appoint a guardian ad litem when:

- (1) counsel has been appointed or is otherwise retained for the child, and
- (2) the court finds that the best interests of the child are otherwise protected.

(C) The court may appoint a guardian ad litem on its own motion or on the motion of the child's counsel or the prosecuting attorney when the court determines that an appointment is in the best interests of the child.

Rule 24.02. General Responsibilities of Guardians Ad Litem

In every juvenile delinquency court case in which a guardian ad litem is appointed, the guardian ad litem shall:

- (1) 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; and interviewing parents, caregivers, and others relevant to the case;
- (2) advocate for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;
- (3) 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;

- (4) monitor the child's best interests throughout the judicial proceeding; and
- (5) present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.

Rule 24.03. Guardian ad Litem not Counsel for Child

When the court appoints a guardian ad litem, the guardian ad litem shall not be the child's counsel.

Rule 30.02. Availability of Juvenile Court Records

Subd. 1. By Statute or Rule. Juvenile Court records shall be available for inspection, copying and release as required by statute or these rules.

Subd. 2. No Order Required.

(A) Court and Court Personnel. Juvenile court records shall be available to the court and court personnel without a court order.

(B) Juvenile court records of the child shall be available for inspection, copying and release to the following without court order:

- (1) the child's counsel and guardian ad litem appointed in the delinquency proceeding;
- (2) counsel for the child's parent(s), legal guardian or legal custodian.

(C) Prosecuting Attorney. Juvenile court records shall be available for inspection, copying or release to the prosecuting attorney. However, if the matter has not had court action taken on it for over one (1) year, the court may require an ex-parte showing by the prosecuting attorney that inspection or copying of the court records is necessary and in the best interest of the child, public safety, or the functioning of the juvenile court system,

(D) **Other.** The juvenile court shall forward data to agencies and others as required by Minnesota Statute.

RULES OF JUVENILE PROTECTION PROCEDURE

RULE 26. GUARDIAN AD LITEM

Rule 26.01. Appointment for Child

Subd. 1. Mandatory Appointment Generally Required. The court shall appoint a guardian ad litem to advocate for the best interests of the child in all cases where such appointment is mandated by Minnesota Statutes section 260C.163, subd. 5.

Subd. 2. Discretionary Appointment. Except as provided in subdivision 1, in all other cases the court may appoint a guardian ad litem to advocate for the best interests of the child as permitted by Minnesota Statutes section 260C.163, subd. 5.

Subd. 3. Timing; Method of Appointment. Appointment of a guardian ad litem shall occur prior to the Emergency Protective Care Hearing or the Admit-Deny Hearing, whichever occurs first. The court may appoint a person to serve as guardian ad litem for more than one child in a proceeding. The appointment of a guardian ad litem shall be made pursuant to ~~Rule 904~~ of the Rules of Guardian ad Litem Procedure in Juvenile and Family Court.

Subd. 4. Responsibilities; Rights. The guardian ad litem shall carry out the responsibilities set forth in ~~Rule 908~~ of the Rules of Guardian ad Litem Procedure in Juvenile and Family Court. The guardian ad litem shall have the rights ~~and powers~~ set forth in ~~Rule 909~~ of the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

Subd. 5. Guardian Ad Litem Not Also Attorney for Child. Counsel for the child shall not also serve as the child's guardian ad litem or as legal counsel for the guardian ad litem.

1999 Advisory Committee Comment

Rule 26.01 is consistent with Minnesota Statutes § 260C.163, subd. 5, which provides in part:

(a) The court shall appoint a guardian ad litem to protect the interests of the minor 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 under Minnesota Statutes § 260C.007, subd. 4.

With respect to the appointment of guardians ad litem, Minnesota Statutes § 260C.163, subd. 5, complies with the federal Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. § 5106a(b)(2)(A). CAPTA mandates that for a state to qualify to receive federal grants for child protection prevention and treatment services, the state must have in place:

[P]rovisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate (or both), shall be appointed to represent the child in such proceedings –

- (I) to obtain first-hand, a clear understanding of the situation and needs of the child; and
- (II) to make recommendations to the court concerning the best interests of the child. . . .

42 U.S.C. § 5106a(b)(2)(A)(xiii) (2002).

The types of cases to which guardians ad litem must be appointed are much more expansive under Minnesota's statutes than under federal statutes. Minnesota requires the appointment of a guardian ad litem not only in cases where the act of an adult places the child in need of protection or services, but also in cases where the child's act or status places the child in need of protection or services. Minn. Stat. § 260C.163, subd. 5.

Rule 26.02. Discretionary Appointment for Child's Parent or Legal Custodian

The court may sua sponte or upon the written or on-the-record request of a party or participant appoint a guardian ad litem for a parent who is a party or the legal custodian if the court determines that the parent or legal custodian:

(a) is incompetent to assist counsel in the matter or understand the nature of the proceedings; or

(b) it appears at any stage of the proceedings that the parent is under eighteen (18) years of age and is without a parent or legal custodian, or that considered in the context of the matter the minor parent's parent or legal custodian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the interests of the minor parent.

Appointment of a guardian ad litem for a parent shall not result in discharge of counsel for the parent.

(c) in every appointment under this rule, the guardian ad litem shall perform the following responsibilities:

(1) conduct an investigation to determine the facts relevant to the situation of the minor parent or incompetent adult and the family, which must include, unless specifically excluded by the court: reviewing relevant documents; meeting with and observing the minor parent or incompetent adult in the home setting and considering the minor parent's, or incompetent adult's wishes, as appropriate; and interviewing parents, caregivers, and others relevant to the case;

(2) advocate for the minor parent's or incompetent adult's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;

- (3) 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 minor parent or incompetent adult;
- (4) monitor the minor parent's or incompetent adult's best interests throughout the judicial proceeding; and
- (5) present written reports on the minor parent's or incompetent adult's best interests that include conclusions and recommendations and the facts upon which they are based.

2004 Advisory Committee Comment

If the minor parent or incompetent adult is unable to admit or deny the petition, the court may choose to appoint a substitute decisionmaker or legal guardian to admit or deny the petition.