

1 **PROPOSED AMENDMENTS TO**
2 **RULES OF GUARDIAN AD LITEM PROCEDURE**
3 **and**
4 **RELATED GUARDIAN AD LITEM RULES**

5
6 **Proposed Amendments to the Rules of Guardian Ad Litem Procedure and Related**
7 **Guardian Ad Litem Rules are denoted by underline and strikeout.**
8

9 **RULES OF GUARDIAN AD LITEM PROCEDURE**

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11 **RULE 901. SCOPE OF RULES; IMPLEMENTATION**

12 **Rule 901.01. Scope of Rules**

13 These Rules govern the appointment, responsibilities, and removal of guardians ad litem
14 appointed to advocate for the best interests of the child, minor parent, or incompetent adult in
15 family and juvenile court cases. These Rules do not govern the appointment of a guardian ad
16 litem under Minnesota Rules of Civil Procedure 17.02 in child support and paternity matters.
17 These Rules also do not govern guardians ad litem appointed pursuant to Minn. Stat. sections
18 245.487-245.4888, 253B, 256B.77, ~~257.60(1)~~, 494.01-494.05, 501B.19, 501B.50, 508.18, 524.1-
19 403, 540.08, ~~and when the person appointed as a guardian ad litem for a minor parent in a~~
20 ~~paternity action pursuant to Minnesota Rules of Civil Procedure 17.02 is the minor parent's~~
21 ~~parent or adult relative.~~
22

23 ***2004 Advisory Committee Comment (Amended 2005)***

24 The previous Rules of Guardian Ad Litem Procedure also addressed the
25 qualifications, recruitment, screening, training, selection, supervision, and
26 evaluation of guardians ad litem. The administration and oversight of these issues
27 is now the responsibility of the Office of the State Court Administrator. The
28 issues are now to be included in a standards manual. It is the responsibility of the
29 Office of the State Court Administrator to prepare that manual, with the advice
30 and consent of the ~~Conference of Chief Judges~~ Judicial Council. The minimum
31 standards set forth in the previous rules are to be maintained in the manual,
32 together with the procedures governing complaints about the performance of a
33 guardian ad litem. Also to be included in the manual are standards regarding
34 knowledge and appreciation of the prevailing social and cultural standards of the
35 Indian and other minority communities. The manual is to be published in both
36 print and electronic forms and is to be available to the public.
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39 **RULE 902. MINIMUM QUALIFICATIONS**

40 Before a person may be recommended for service as a guardian ad litem pursuant to Rule
41 903, the person must satisfy the minimum qualifications set forth in the Guardian Ad Litem
42 Program Standards and Procedures Manual as established by the Office of the State Court
43 Administrator with the advice and consent of the Judicial Council. ~~following minimum~~
44 ~~qualifications:~~

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

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

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

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

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

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

14 (g) ~~not have been removed from a panel of approved guardians ad litem following an~~
15 ~~unsatisfactory performance evaluation; and~~

16 (h) ~~have satisfactorily completed the pre-service training requirements and~~
17 ~~demonstrated a comprehension of the responsibilities of guardians ad litem as set forth in Rule~~
18 ~~905.~~

19
20 Additional qualifications for a guardian ad litem appointed pursuant to these Rules may
21 be established by the Office of the State Court Administrator, with the advice and consent of the
22 Conference of Chief Judges. Any additional qualifications shall be published in a standards
23 manual. The standards manual shall be published in print and electronic forms and be available
24 to the public.

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27 **RULE 903. APPOINTMENT OF A GUARDIAN AD LITEM**

28 **Rule 903.02. Juvenile Court Appointment**

29 **Subd. 1. Generally.** A guardian ad litem shall not be appointed or serve except upon
30 written order of the court. The order shall set forth:

31 (a) the statute or rule providing for the appointment of the guardian ad litem;

32 (b) the provisions for parental fee collection as applicable under Minn. Stat. sections
33 260B.331 subd. 6 (a) and 260C.331 subd. 6 (a) and as established by the ~~Conference of Chief~~
34 ~~Judges~~ Judicial Council, and

35 (c) in an adoption proceeding ~~or a juvenile court case in which adoption is the~~
36 ~~intended permanency plan for the child~~, authorization for the guardian to review and receive a
37 copy of the home studies adoption study report under Rule 35 of the Rules of Adoption
38 Procedure and the post-placement assessment report under Rule 36 of the Rules Adoption
39 Procedure as permitted under Minn. Stat. § 259.53, subd. 3.

40
41 **Subd. 2. Guardian Ad Litem Shall Not Also Serve on Same Case as Petitioner.**

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

1 2005 Advisory Committee Comment

2 If paragraph (c) in Rule 903.02 is not included in the initial order
3 appointing the guardian ad litem in a juvenile protection matter, and the matter
4 proceeds to adoption, the succeeding guardian ad litem appointment order in the
5 adoption matter should include paragraph (c).
6

7 **Rule 903.03. Family Court Appointment**

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

- 10 (a) the statute or rule providing for the appointment of the guardian ad litem;
11 (b) the specific duties to be performed by the guardian ad litem in the case;
12 (c) to the extent appropriate, deadlines for the completion of the duties set forth;
13 (d) to the extent appropriate; the duration of the appointment; and
14 (e) the provisions for parental fee collection as applicable under Minn. Stat. sections
15 257.69 subd. 2 (a) and 518.165 subd. 3 (a), and as established by the ~~Conference of Chief Judges~~
16 Judicial Council.
17

18 **Rule 903.04. Other Roles Precluded**

19 Subd. 1. Generally. A guardian ad litem under the supervision of the Office of the State
20 Court Administrator shall not be ordered to, and shall not perform, the following roles in a case
21 in which the person serves ~~they serve~~ as a guardian ad litem:

- 22 (a) custody evaluator pursuant to Minn. Stat. § 518.167; or
23 (b) parenting time evaluator; or
24 (c) parenting time consultant; or
25 (d) family group decision making facilitator; or
26 (e) early neutral evaluator; or
27 ~~(f)~~ mediator, as that role is prescribed in Minn. Stat. § 518.619 and Rule 310 of the
28 Minnesota Rules of Family Court Procedure; or
29 ~~(g)~~ arbitrator or individual authorized to decide disputes between parties; or
30 ~~(h)~~ parenting time expeditor, as that role is prescribed in Minn. Stat. § 518.619 and §
31 518.1751; or
32 ~~(i)~~ substitute decision-maker under Minn. Stat. § 253B.092; or
33 ~~(j)~~ evaluator charged with conducting a home study under Minn. Stat. § 245A.035 or
34 § 259.41; or
35 ~~(k)~~ attorney for the child.
36

37 Nothing in this rule shall prevent a properly qualified person who also serves in other
38 cases as a guardian ad litem from serving in the above roles on a privately-paid basis.
39

40 Subd. 2. Roles Distinguished. A guardian ad litem under the supervision of the Office
41 of the State Court Administrator is not the same as a mediator, arbitrator, facilitator, custody
42 evaluator, or neutral as those titles and roles are described in Rule 114 of the Minnesota Rules of
43 General Practice for the District Courts.
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1 **RULE 904. COMPLAINT PROCEDURE; REMOVAL OR SUSPENSION OF**
2 **GUARDIAN AD LITEM FROM PARTICULAR CASE**

3 **Rule 904.01. Complaint Procedure**

4 Complaints about the performance of a guardian ad litem shall be governed by
5 procedures and policies set forth in the Guardian Ad Litem Program Standards and Procedures
6 Manual established by the Office of the State Court Administrator with the advice and consent of
7 the ~~Conference of Chief Judges~~ Judicial Council. Unless offered into evidence by the guardian
8 ad litem or authorized by written order following an *in camera* review by the court, the
9 complaints and complaint investigation reports shall not be received as evidence or used in any
10 manner in any proceeding governed by these Rules.
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13 **RULE 905. GENERAL RESPONSIBILITIES OF GUARDIANS AD LITEM**

14 In every family court and juvenile court case as defined in Rule 901.01 in which a
15 guardian ad litem is appointed ~~and in every paternity action in which a guardian ad litem has~~
16 ~~been appointed for a child who has been made a party pursuant to Minn. Stat. sections 257.60 (2)~~
17 ~~and (3)~~, the guardian ad litem shall:

18 (a) conduct an independent investigation to determine the facts relevant to the
19 situation of the child or incompetent adult and the child's parent, legal custodian, or other
20 household or family member family, which must include, unless specifically excluded by the
21 court:

22 (i) reviewing relevant documents, which in the case of an adoption shall
23 include the adoption study report and the post-placement assessment report ~~home studies~~ upon
24 order of the court pursuant to Minn. Stat. § 259.53 subd. 3(b);

25 (ii) meeting with and observing the child in the home setting and considering
26 the child's or incompetent adult's wishes, as appropriate; and

27 (iii) interviewing parents, caregivers, and others relevant to the case;

28 (b) advocate for the best interests of the child or incompetent adult by participating in
29 appropriate aspects of the case and advocating for appropriate community services when
30 necessary;

31 (c) maintain the confidentiality of information related to a case, with the exception of
32 sharing information, including written reports and supporting documentation, as permitted by
33 law to promote cooperative solutions that are in the best interests of the child or incompetent
34 adult;

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

37 (e) present written reports and supporting documentation on the best interests of the
38 child or incompetent adult that include conclusions and recommendations, and the facts upon
39 which they are based.
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42 **RULE 907. RIGHTS OF GUARDIAN AD LITEM**

43 **Rule 907.01. Rights in Every Case**

44 Subd. 1. Generally. In every case in which a guardian ad litem is appointed pursuant to
45 Rule 903, the guardian ad litem shall have the rights set forth in clauses (a) to (d).

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

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

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

13 (d) The guardian ad litem shall have the right to participate in all proceedings through
14 submission of written and oral reports, and may initiate and respond to motions.

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16 **Subd. 2. Not Unauthorized Practice of Law.** The exercise of the rights listed in
17 subdivision 1 by a guardian ad litem shall not constitute the unauthorized practice of law.
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20 **RELATED GUARDIAN AD LITEM RULES**

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22 **MINNESOTA RULE OF CIVIL PROCEDURE**

23 **Rule 17.02. Infants or Incompetent Persons**

24 Whenever a party to an action is an infant or is incompetent and has a representative duly
25 appointed under the laws of this state or the laws of a foreign state or country, the representative
26 may sue or defend on behalf of such party. A party who is an infant or is incompetent and is not
27 so represented shall be represented by a guardian ad litem appointed by the court in which the
28 action is pending or is to be brought. The guardian ad litem shall be a resident of this state, shall
29 file a consent and oath with the court administrator, and shall give such bond as the court may
30 require. A guardian ad litem appointed under this Rule is not a guardian ad litem within the
31 meaning of the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court and is not
32 governed by those Rules ~~except when appointed in a paternity action.~~
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34 Any person, including an infant party over the age of 14 years and under no other legal
35 disability, may apply under oath for the appointment of a guardian ad litem. The application of
36 the party or the party's spouse or parents or testamentary or other guardian shall have priority
37 over other applications. If no such appointment is made on behalf of a defendant party before
38 answer or default, the adverse party or a party's attorney may apply for such appointment, and in
39 such case the court shall allow the guardian ad litem a reasonable time to respond to the
40 complaint.
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42 The application for appointment shall show (1) the name, age and address of the party,
43 (2) if the party is a minor, the names and addresses of the parents, and, in the event of their death
44 or the abandonment of the minor, the name and address of the party's custodian or testamentary
45 or other guardian, if any, (3) the name and address of the party's spouse, if any, and (4) the name,
46 age, address, and occupation of the person whose appointment is sought.

1 If the appointment is applied for by the party or by a spouse, parent, custodian or
2 testamentary or other guardian of the party, the court may hear the application with or without
3 notice. In all other cases written notice of the hearing on the application shall be given at such
4 time as the court shall prescribe, and shall be served upon the party, the party's spouse, parent,
5 custodian and testamentary or other guardian, if any, and if the party is an inmate of a public
6 institution, the chief executive officer thereof. If the party is a nonresident or, after diligent
7 search, cannot be found within the state, notice shall be given to such persons and in such
8 manner as the court may direct.
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10 **MINNESOTA RULES OF GENERAL PRACTICE**

11 **RULE 108. GUARDIAN AD LITEM**

12 **Rule 108.02. Other Guardian Ad Litem Roles Distinguished**

13 ~~A guardian ad litem appointed under this Rule is not a guardian ad litem within the~~
14 ~~meaning of the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court and is not~~
15 ~~governed by those Rules except when appointed in a paternity action.~~
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19 **EXPEDITED CHILD SUPPORT PROCESS**

20 **RULE 357. LEGAL REPRESENTATION AND APPOINTMENT**
21 **OF GUARDIAN AD LITEM**

22 **Rule 357.04 Appointment of Guardian Ad Litem**

23 ~~Subdivision 1. Applicability of Rules of Guardian Ad Litem Procedure. Child~~
24 ~~support magistrates shall appoint guardians ad litem to advocate for the best interests of children~~
25 ~~when required under Minn. Stat. § 518.165 (2000) or any other applicable statute. When a child~~
26 ~~support magistrate determines that the appointment of a guardian ad litem is necessary, that~~
27 ~~appointment shall be made according to the Minnesota General Rules of Practice 901-913.~~
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31 A child support magistrate may appoint a guardian ad litem for a child or minor parent
32 who is a party in any proceeding commenced in the expedited child support process solely for
33 purposes of having the guardian ad litem serve as a representative of that person as authorized
34 under Rule 17.02 of the Minnesota Rules of Civil Procedure. The appointment shall be made
35 pursuant to Rule 17.02 of the Minnesota Rules of Civil Procedure.