

STATE OF MINNESOTA

IN SUPREME COURT

C1-01-927

**ORDER FOR HEARING TO CONSIDER PROPOSED  
AMENDMENTS TO THE MINNESOTA RULES OF  
GUARDIAN AD LITEM PROCEDURE AND GUARDIAN  
AD LITEM-RELATED RULES OF PROCEDURE**

IT IS HEREBY ORDERED that a hearing be had before this court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on June 15, 2004 at 2:30 p.m., to consider the report filed on February 6, 2004, by the Minnesota Supreme Court Juvenile Protection Rules Committee Guardian ad Litem Rules Subcommittee. The Committee has proposed amending the Rules of Guardian ad Litem Procedure and other guardian ad litem-related rules of procedure.. A copy of the report is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155, on or before June 7, 2004, and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before June 7, 2004.

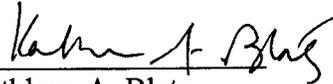
Dated: April 19, 2004

BY THE COURT:

OFFICE OF  
APPELLATE COURTS

APR 19 2004

**FILED**

  
Kathleen A. Blatz  
Chief Justice

**State of Minnesota  
in Supreme Court  
C1-01-927**

**MINNESOTA SUPREME COURT  
JUVENILE PROTECTION RULES COMMITTEE  
GUARDIAN AD LITEM RULES SUBCOMMITTEE**

**FINAL REPORT AND PROPOSED AMENDMENTS  
TO THE MINNESOTA RULES OF GUARDIAN AD  
LITEM PROCEDURE AND GUARDIAN AD  
LITEM- RELATED RULES OF PROCEDURE**

**February 6, 2004**

**Minnesota Supreme Court  
State Court Administration  
105 Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155  
651-297-7587**

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## **ACKNOWLEDGEMENTS**

The Juvenile Protection Rules Committee, the Guardian Ad Litem (GAL) Rules Subcommittee, and state court administration staff wish to thank the many individuals and groups who contributed to the effort of reviewing and critiquing the existing and proposed revisions to the Rules of Guardian Ad Litem Procedure and Guardian Ad Litem-Related Rules of Procedures. Numerous, thoughtful comments were received and carefully considered by the GAL Rules Subcommittee and the Juvenile Protection Rules Committee. This report is the culmination of intensive effort by the GAL Rules Subcommittee and the Juvenile Protection Rules Committee to propose relevant amendments to the rules. The questions, suggestions, and comments received from judges, guardians ad litem, attorneys, litigants, court and state court administration staff, advocacy groups and others helped the Subcommittee and full Committee significantly. The Committee, Subcommittee, and state court administration staff also wish to thank the state court administration staff who helped with the logistics management of the groups' many meetings over the past ten months.

## COMMITTEE AND SUBCOMMITTEE MEMBERSHIP

### **Chair for Committee and Subcommittee:**

Hon. Timothy Bloomquist, District Court Judge, Tenth Judicial District, Kanabec County

### **Supreme Court Liaison for Committee and Subcommittee:**

Hon. Helen Meyer, Associate Justice, Minnesota Supreme Court

### **Juvenile Protection Rules Committee Members:**

Ann Stiehm Ahlstrom, Staff Attorney, Minnesota Supreme Court

Richard Coleman, Manager, Ramsey County Social Services Child Protection Unit

Gary Debele, Attorney, Walling, Berg, & Debele, P.A.

James Dorsey, Attorney, Fredrikson & Byron, P.A.

Heidi Drobnick, Director, Indian Child Welfare Center

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Peter Gorman, Assistant Public Defender, Fourth Judicial District

Jane Gustafson, Assistant County Attorney, Todd County Attorney's Office

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Elaine Hutton, Child Protection Worker, Washington County Social Services

Hon. Thomas Kalitowski, Associate Judge, Minnesota Court of Appeals

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Shireen Lee, Coordinator, Sixth Judicial District GAL Program, Range and Carlton County

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### **Guardian Ad Litem (GAL) Rules Subcommittee Members:**

Jane Glander, Manager, Third Judicial District GAL Program

Penny Helgerson, Manager, Fifth Judicial District GAL Program

Mary Helf, District Administrator, Sixth Judicial District

Cindy Houle, Guardian ad Litem, First Judicial District

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Greg King, Manager, Tenth Judicial District

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### **Staff:**

Resa Gilats, Court Operations Analyst, Minnesota Supreme Court

Jackie Geiger, Administrative Assistant, Minnesota Supreme Court

## **COMMITTEE AND SUBCOMMITTEE PURPOSE AND PROCESS**

In accordance with action taken in the 2001 legislative session, on July 1, 2001, the Minnesota Judicial Branch assumed full funding of the state's guardian ad litem (GAL) system. This transition provided an impetus for review of the Rules of GAL Procedure, which have been in effect since January 1, 1999.

In January 2003, the Minnesota Supreme Court organized a Subcommittee of the Juvenile Protection Rules Committee (the full Committee) to review and propose revisions to the Minnesota Rules of GAL Procedure and GAL-Related Rules of Procedure. The Subcommittee included some members from the full Committee and others with expertise as a GAL, GAL manager or supervisor, judicial district administrator, and judicial branch labor relations manager.

In March 2003, comments regarding the existing GAL Rules of Procedure were solicited from over 1,000 stakeholders. A Notice of Opportunity to Comment on Existing Rules of GAL Procedure and Other GAL-Related Rules was sent to judges, court administrators, attorneys, social services staff and directors, advocacy groups, and others. The GAL Rules Subcommittee met frequently from May through October 2003. The Subcommittee reviewed the written comments received, as well as other relevant research, statutes, rules, and policies of the Minnesota Conference of Chief Judges. The Subcommittee presented its proposed revisions to the full Committee in November 2003. The full Committee refined the revisions, and on December 22, 2003, the proposed amendments to the Rules of GAL Procedure and GAL-Related Rules were distributed for public comment. The distribution list was similar to that used in the first solicitation for comments and included over 1,000 stakeholders. The written comment period closed on January 14, 2004. Written comments were received from 23 individuals and groups, and filled 45 pages. The full Committee and the Subcommittee held three, day-long meetings to review the written comments received and finalize the proposed amendments.

The Subcommittee and Committee made decisions by consensus, and if consensus could not be reached, the Chair called for a hand vote. Consensus was reached on all decisions except three; in these situations, a majority vote determined the final decision.

## BACKGROUND

In 1994, the Minnesota Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate GAL services in Minnesota and elsewhere, and to make recommendations for improving the state's GAL system. The Legislative Auditor issued a report in February 1995, which included numerous recommendations for improving GAL services in Minnesota. Based upon these recommendations, in 1995 the Minnesota Legislature amended existing GAL statutes to clarify the responsibilities of guardians ad litem in juvenile and family court. In addition, the Legislature directed the State Court Administrator to report to the Chairs of the Judiciary Committees of the House of Representatives and Senate by February 15, 1996, regarding the adoption of rules and guidelines to deal with the specific recommendations set forth in the Legislative Auditor's report. To accomplish this directive, the State Court Administrator requested that the Minnesota Supreme Court establish an advisory committee to assist with the development of rules and guidelines. The Minnesota Supreme Court established the Advisory Task Force on the Guardian Ad Litem System on July 26, 1995, by court order.

In 1995, GAL services were provided through 53 individual, local programs in Minnesota's 87 counties. Standards and procedures for guardians ad litem were not uniform throughout the state. Consequently, the charge to the Task Force included creating rules and guidelines to establish uniform standards and procedures for guardian ad litem selection, training, evaluation, removal, complaint procedures, and other structural and procedural matters. At the time, the counties provided funding for GAL services. The Task Force submitted its Final Report and Proposed Rules on February 16, 1996. The existing Rules were promulgated by the Minnesota Supreme Court on August 27, 1997. Counties and GAL service providers were given several months to prepare for the adoption of the new Rules. The Rules became effective on January 1, 1999, and have not been reviewed or amended since then.

As part of Minnesota's transition to a state-funded court system, the Minnesota Legislature in its 2001 session enacted Minn. Stat. Section 480.183 Subd. 4. This statute required the Minnesota Judicial Branch to assume full funding of the guardian ad litem system on July 1, 2001. In order to implement this requirement, State Court Administration began in early 2002 to work with the Minnesota Conference of Chief Judges (CCJ) to establish a state GAL program structure and policies regarding the selection, recruitment, training, supervision, and evaluation of guardians ad litem, as well as complaint procedures and quality assurance practices. In light of these significant developments, the Minnesota Supreme Court organized the GAL Rules Subcommittee and charged it and the Juvenile Protection Rules Committee with reviewing and proposing amendments to the GAL Rules of Procedure and GAL-Related Rules of Procedure. The adoption of the state GAL program structure and CCJ policies have led the GAL Rules Subcommittee and the Juvenile Protection Rules Committee to recommend striking certain rules regarding matters now addressed in policies adopted by the CCJ.

The remainder of this report includes four sections: Summary of Technical Amendments, Summary of Substantive Amendments, Proposed Revisions to the GAL Rules of Procedure, and Proposed Revisions to GAL-Related Rules of Procedure.

## **SUMMARY OF TECHNICAL AMENDMENTS**

The Committee proposes the following technical amendments:

1. The name of the Rules should be changed to Minnesota Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.
2. All references to particular numbers within the Rules be changed to refer to the Rules generally, i.e., “the Rules of Guardian Ad Litem Procedure.”
3. All uses of the word guardian in the GAL-Related Rules should be changed to guardian ad litem when the reference is to a guardian ad litem rather than a guardian.
4. Citations to Advisory Committee Comment have been revised to reflect the year the comment was made.
5. All statute and rule citations were checked for accuracy and updated where appropriate.
6. Citations to rules of procedures and Minnesota statutes were made uniform.
7. Punctuation has been added or deleted as appropriate.

## SUMMARY OF SUBSTANTIVE AMENDMENTS

### RULES OF GUARDIAN AD LITEM PROCEDURE

#### Rule 901 Scope of Rules; Implementation

A significant proposed revision to the Rules of GAL Procedure is the elimination from the Rules of specific standards governing qualifications, recruitment, screening, training, selection, supervision and evaluation of guardians ad litem. This change is reflected in the proposed revision to Rule 901.01. All of these functions have now been assumed by the state-funded Guardian ad litem Program through the Office of the State Court Administrator. The Advisory Committee Comment to Rule 901 indicates that all of the minimum standards for qualifications, recruitment, screening, training, selection, supervision and evaluation will be established in the standards manual of the GAL Program, which will be published in print and electronic forms and will be available to the public. **The Committee strongly recommends that these minimum standards be maintained. The Committee further recommends that the Minnesota Supreme Court form a multidisciplinary advisory group for the purpose of addressing future revisions of these standards.**

The proposed revisions to Rule 901.01 also include a new statement clarifying the scope of the Rules. The proposed revised Rules govern the appointment, responsibilities, and removal of guardians ad litem appointed to advocate for the best interests of a child, minor parent, or incompetent adult in family and juvenile court cases. The original Rules governed only a guardian ad litem appointed to advocate for the best interests of children in such proceedings. The additions of minor parent and incompetent adult represent current practice. The impetus for these additions came from the new Juvenile Protection Rule 26.02 Discretionary Appointment for Child's Parent or Legal Custodian, and a desire to address the needs of the court in family proceedings.

Additionally, the proposed revisions to Rule 901 list specific statutory appointments of guardians ad litem to which the proposed revised Rules do not apply. These include appointments under:

- Minn. Stat. Section 245.487 et seq. Minnesota Comprehensive Children's Mental Health Act
- Minn. Stat. Section 253B.01 et seq. Civil Commitment
- Minn. Stat. Section 256B.77 Coordinated Service Delivery System for People with Disabilities
- Minn. Stat. Section 257.60(1) Parties, Parentage Act (Subdivision 1 addresses situations where the child is a minor and the case involves a compromise under section 257.64, subdivision 1, or a lump sum payment under section 257.66, subdivision 4.)
- Minn. Stat. Section 494.01 et seq. Community Dispute Resolution Program
- Minn. Stat. Section 501B.19 Representation of Persons Who Are Unborn, Unascertained, Unknown, or Minors or Incapacitated Persons, Trusts, Court Proceedings
- Minn. Stat. Section 501B.50 Representation of Persons Who Are Unborn, Unascertained, Unknown, or Minors or Incapacitated Persons, Trusts, Sales and Leases of Real Property
- Minn. Stat. Section 508.18 Guardian Ad Litem; When Appointed, Registration, Torrens

- Minn. Stat. Section 524.1-403 Pleadings; When Parties Bound By Others; Notice, Uniform Probate Code, Notice, Parties and Representation in Estate Litigation and Other Matters
- Minn. Stat. Section 540.08 Injury to Child or Ward; Suit by Parent or Guardian, Judicial Procedure, District Court, Parties to Actions

In Rule 901.02, responsibility for implementation of the Rules of Guardian Ad Litem Procedure is retained by the chief judge of the judicial district. Specific details regarding administration of guardian ad litem services within the district are stricken. The proposed rule provides that the judicial district administrator carries out the specific responsibilities set forth in the Rules.

### **Rule 902 Qualifications**

The proposed revision to Rule 902 eliminates from the Rules specific details addressing minimum qualifications of guardians ad litem. It also references the transfer of these minimum qualifications to the standards manual to be developed by the Office of the State Court Administrator, with the advice and consent of the Conference of Chief Judges.

### **Rule 903 Appointment of Guardian Ad Litem**

Old Rule 903 regarding Selection of Guardians Ad Litem and old Rules 904.02 Direct Selection by Court and 904.03 Factors to be Considered in Selection are eliminated from the Rules. These provisions will be transferred to the standards manual, are administrative in nature and are thought to be more appropriately addressed in the manual. Direct selection of a GAL by the presiding judge is not permitted under the proposed revisions to the Rules.

The proposed new Rule 903 Appointment of Guardian Ad Litem sets forth the proper procedure for the court to follow when making the appointment of a guardian ad litem. When the court orders the appointment of a GAL in a particular case, the district GAL manager or the manager's designee shall promptly recommend a GAL for appointment. If in the exercise of judicial discretion, the court determines that the GAL recommended is not appropriate for appointment, and communicates the reasons for that determination to the district GAL manager or the manager's designee, the district GAL manager or the manager's designee shall promptly recommend another GAL for appointment. The proposed revision also provides that no GAL shall be appointed unless recommended by the district GAL manager or the manager's designee. These revisions are proposed to protect the credibility of the court and ensure public trust and confidence. Rule 903.02 addresses the appointment of a guardian ad litem in juvenile court. Rule 903.03 addresses the appointment of guardian ad litem in family court. Both Rules require that a guardian ad litem shall not be appointed or serve except upon written order of the court. The Rules identify specific requirements for the court order, provisions that were not included in the original Rules.

Proposed Rule 903.04 identifies roles a guardian ad litem shall not be ordered to and shall not perform. Some of these preclusions were included in the original Rules as part of the Advisory Committee Comment to old Rule 908. Some of these preclusions are based in statute and, where appropriate, those statutory cites have been provided. The preclusion of custody evaluator is

intended to preserve the distinct roles between guardian ad litem—an advocate for the best interests of the child—and custody evaluator—a neutral who completes an evaluation according to statutory requirements. A guardian ad litem ordered to also complete the statutory custody evaluation would be compromising their role as advocate. Similarly, a guardian ad litem first appointed in a particular case to conduct a custody evaluation who is then appointed as the guardian ad litem in the case would be compromising their role as custody evaluator. This distinction and preclusion are supported by CCJ Administrative Policy 20, which precludes guardians ad litem from being ordered to conduct statutory custody evaluations.

### **Rule 904 Complaint Procedure; Removal or Suspension of Guardian Ad Litem From Particular Case**

The proposed revision to Rule 904.01 directs the reader to the complaint procedures established by the Office of the State Court Administrator with the advice and consent of the Conference of Chief Judges. The detail of the prior procedure is proposed to be stricken.

New Rule 904.02 addresses removal or suspension of a guardian ad litem from a particular case. In subdivision 1, the requirement that removal of a guardian ad litem from a case be only by order of the presiding judge is retained. An option for suspension is added in cases in which it is appropriate that a guardian ad litem be suspended but not necessarily removed from a particular case. The proposed revision would allow the presiding judge to remove or suspend upon his or her own initiative, or after a hearing upon the motion of a party. The requirement that only a party may bring a motion for removal is a limitation of the current Rule, which permits any person to seek removal of the guardian ad litem. A party bringing such a motion must do so according to the procedures in proposed subdivision 2. In Subdivision 2, the Committee proposes to strike the provision that permits a guardian ad litem who has been removed from a particular case to submit a request to the chief judge to review the removal decision of the presiding judge.

Subdivision 3 of proposed Rule 904.02 establishes new mandatory circumstances under which the presiding judge must remove the guardian ad litem in a particular case. These circumstances include (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. The rationale for this proposed amendment is that if there is not an automatic removal upon these circumstances, then the circumstances become the focus in that guardian ad litem appointment rather than the child's best interests. The Committee and Subcommittee engaged in significant discussion regarding Subdivisions 3 and 4, discussed various options regarding those circumstances that should be mandatory and those that should be at the discretion of the judge, and ultimately proposes the current delineation between mandatory removal (Subdivision 3) and discretionary removal (Subdivision 4). Subdivision 4 sets forth conditions under which a presiding judge may remove a guardian ad

litem from a particular case, i.e., circumstances where the presiding judge has ultimate discretion.

The proposed Rule 904.02 also provides that as an alternative to 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.

### **Rule 905 General Responsibilities of Guardians Ad Litem**

The primary proposed change in Rule 905 is to replace the existing general responsibilities with statutory language, which describes specific responsibilities. Portions of the existing Rule proposed to be stricken relating to GAL training, qualifications, and knowledge of religious and cultural backgrounds will be transferred to the standards manual. The transfer of these items from the Rules to the standards manual will allow for a speedier and less cumbersome revision process as circumstances change and best practices evolve. As described earlier, it is the Committee's recommendation that the Supreme Court establish a multidisciplinary advisory group to review, evaluate, and update training, qualifications, and knowledge requirements as appropriate.

Because the proposed scope of the Rules includes incompetent adults, proposed Rule 905 specifies responsibilities for guardians ad litem when appointed for an incompetent adult.

### **Rule 906 Ex Parte Contact Prohibited**

This proposed rule is essentially the same as old Rule 908.03.

### **Rule 907 Rights of Guardians Ad Litem**

Proposed Rule 907.01 enumerates rights of guardians ad litem in every case, whether the guardian ad litem is a party or a participant. Proposed Rule 907.02 enumerates additional rights of the guardian ad litem when the guardian ad litem is a party in the case. The enumeration of rights as a party is intended to be consistent with the new Rules of Juvenile Protection Procedure Rule 21.02 Rights of Parties.

### **Old Rules 910, 911, 912, and 913**

These Rules are proposed to be stricken. These issues will be addressed in the standards manual.

### **Additional Recommendation**

In addition to the formation of a multidisciplinary advisory group, **the Committee recommends that the roles and responsibilities of guardians ad litem in appointments under the Minnesota Rules of Civil Procedure and the General Rules of Practice for the District Courts be addressed by other, appropriate Rules committees.** The Committee believes the expertise required to address these issues extends beyond the Committee and Subcommittee.

## **GAL-RELATED RULES OF PROCEDURE**

### **Rules of Civil Procedure Rule 17.02 Infants or Incompetent Persons**

The proposed amendment to Rule 17.02 clarifies that the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court do not govern a Rule 17.02 guardian ad litem appointment except when the guardian ad litem is appointed in a paternity action.

### **General Rules of Practice—Rules Governing Civil Actions Rule 108 Guardian Ad Litem**

New Rule 108.02 is proposed to create continuity between Rules of Civil Procedure Rule 17.02 and General Rules of Practice Rule 108 Guardian Ad Litem. The Committee believes that when a guardian ad litem is appointed under Rule 17.02 of the Rules of Civil Procedure, Rule 108 of the General Rules of Practice will apply to that guardian ad litem. Therefore, Rule 108 should be amended to provide the same clarification provided by the proposed addition to Rule 17.02. The Committee accomplished this by proposing Rule 108.02.

### **General Rules of Practice—Rules of Family Court Procedure Rule 302.04 Designation of Parties**

The proposed amendment clarifies that a guardian ad litem appointed under this rule shall carry out the responsibilities set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

### **General Rules of Practice—Rules of Family Court Procedure Rule 367.04 Conflict of Interest**

The Committee's proposal expands the geographic area in which a child support magistrate shall not be allowed to serve as a guardian ad litem in family law matters.

### **Juvenile Delinquency Rules**

The most significant proposed revision to the Juvenile Delinquency Rules is to Rule 24, in which the Committee proposes to add Rule 24.02 General Responsibilities of Guardians Ad Litem—a list that was not otherwise provided in the Rules.

### **Juvenile Protection Rules**

The most significant proposed revision to the Juvenile Protection Rules is to Rule 26, in which the Committee has proposed to add subsection (c) to Rule 26.02. This new subsection enumerates the responsibilities of the guardian ad litem appointed under Rule 26.02 Discretionary Appointment for Child's Parent or Legal Custodian.

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

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## **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 et seq., 253B, 256B.77, 257.60(1), 494.01 et seq., 501B.19, 501B.50, 508.18, 524.1-403, and 540.08.

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 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 Procedure. The responsibilities set forth in Rules 903 to 907 the Rules of Guardian Ad Litem 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 (c), (d), (g), and (h). An individual or organization may serve in more than one county in a judicial district. A program coordinator may delegate the responsibilities set forth in Rules 903 and 904 to a person who has not completed the training requirements set forth in Rule 910, provided that if the person is not under the direct supervision of the program coordinator, the person to whom the responsibilities are delegated has completed the program coordinator orientation and the delegation must be approved by the chief judge of the judicial district. A person who has concerns regarding the performance of a program coordinator may submit those concerns in writing to the chief judge of the district. The chief judge, or designee, shall take whatever action, if any, the chief judge determines to be appropriate.~~

#### **2004 Advisory Task Force Comments—1997 Comments**

~~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**

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

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

- ~~(a) have an abiding interest in children and their rights and needs;~~
- ~~(b) have sufficient listening, speaking, and writing skills in the person's primary language to successfully conduct interviews, prepare written reports, and make oral presentations;~~
- ~~(c) not have been involved in any conduct or activity that would interfere with the person's ability to discharge the duties assigned by the court;~~
- ~~(d) have knowledge and an appreciation of the ethnic, cultural, and socio-economic backgrounds of the population to be served;~~
- ~~(e) be available for at least 18 months and have sufficient time, including evenings and weekends, to gather information, make court appearances, and otherwise discharge the duties assigned by the court;~~
- ~~(f) have the ability to (1) relate to a child, family members, and professionals in a careful and confidential manner; (2) exercise sound judgment and good common sense; and (3) successfully discharge the duties assigned by the court;~~
- ~~(g) not have been removed from a panel of approved guardians ad litem following an unsatisfactory performance evaluation pursuant to Rule 906.02; and~~
- ~~(h) have satisfactorily completed the pre-service training requirements set forth in Rule 910, and demonstrated a comprehension of the responsibilities of guardians ad litem as set forth in Rule 908.01.~~

### **~~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. RequestOrder 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 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 9043.043. 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 the 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~~ the 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 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. Section 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.**

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~~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.**

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~~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 (d). 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

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1 **RULES OF CIVIL PROCEDURE**

2  
3 **Rule 17.02. Infants or Incompetent Persons**

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

13  
14 Any person, including an infant party over the age of 14 years and under no other legal  
15 disability, may apply under oath for the appointment of a guardian ad litem. The application of  
16 the party or the party's spouse or parents or testamentary or other guardian shall have priority  
17 over other applications. If no such appointment is made on behalf of a defendant party before  
18 answer or default, the adverse party or a party's attorney may apply for such appointment, and in  
19 such case the court shall allow the guardian ad litem a reasonable time to respond to the  
20 complaint.

21  
22 The application for appointment shall show (1) the name, age and address of the party,  
23 (2) if the party is a minor, the names and addresses of the parents, and, in the event of their death  
24 or the abandonment of the minor, the name and address of the party's custodian or testamentary  
25 or other guardian, if any, (3) the name and address of the party's spouse, if any, and (4) the name,  
26 age, address, and occupation of the person whose appointment is sought.

27  
28 If the appointment is applied for by the party or by a spouse, parent, custodian or  
29 testamentary or other guardian of the party, the court may hear the application with or without  
30 notice. In all other cases written notice of the hearing on the application shall be given at such  
31 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  
19 is not governed by those rules except when appointed in a paternity action.

20  
21 **Rule 108.03. Guardian 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.

30  
31 **Rule 357.03. Appointment of Attorney at Public Expense**

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

4 (a) establishment of parentage; or

5 (b) contempt proceedings in which incarceration of the party is a  
6 possible outcome of the proceeding.

7  
8 Pursuant to Minn. Stat. § 257.69 (2000), a court-appointed attorney shall represent a  
9 party with respect to all issues necessary for the initial establishment of parentage, including  
10 child support, custody, parenting time, and name of the child.

#### 11 *Advisory Committee Comment*

12  
13 Parentage. The Minnesota Parentage Act, codified as Minn. Stat. §§ 257.51 – .74 (2000),  
14 provides that “the court shall appoint counsel for a party who is unable to pay timely for counsel  
15 in proceedings under sections 257.51 to 257.74.” Minn. Stat. § 257.69, subd. 1 (2000). A party  
16 has a right to appointed counsel for all matters brought under the Parentage Act. See M.T.L. v.  
17 Dempsey, 504 N.W.2d 529, 531 (Minn. App. 1993).

18  
19 Contempt. In Cox v. Slama, 355 N.W.2d 401, 403 (Minn. 1984), the court established  
20 the right to counsel for persons facing civil contempt for failure to pay child support when  
21 incarceration is a real possibility.

#### 22 23 **Rule 357.04. Appointment of Guardian Ad Litem**

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

## JUVENILE DELINQUENCY RULES

### **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 can not 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.

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### **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.

## JUVENILE PROTECTION RULES

### 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.

C1-01-927



OFFICE OF  
APPELLATE COURTS

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JUN - 9 2004

FILED

June 7, 2004

Frederick Grittner  
Clerk of the Appellate Courts  
305 Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

VIA US POST MAIL

**Re: Statement of the Battered Women's Legal Advocacy Project in Response to the Final Report and Proposed Amendments to the Minnesota Rules of Guardian Ad Litem Procedure, and Request to Make an Oral Presentation**

Dear Mr. Grittner:

Enclosed please find twelve (12) copies of the statement referenced above. Please allow this letter to serve as my request to the Court to provide this statement via oral testimony at the hearing on the Proposed Amendments to the Minnesota Rules of Guardian Ad Litem Procedure on June 15, 2004. I understand that the statement may need to be edited so as to fit within the time allotted at the hearing. Please give me notice of how much time will be allowed and I will make the necessary changes.

If my request to give oral testimony is denied, please allow the enclosed to serve as a written statement to the Court instead.

Please let me know if I can provide you with any other information, or if there is any other information I should be aware of prior to the hearing date. Thank you for your attention to this matter.

Sincerely,

Nicole Lindemyer  
Attorney At Law, Program Manager

Enc.: 12 copies of BWLAP Written Statement



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June 7, 2004

Minnesota Supreme Court  
Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King, Jr. Boulevard  
St. Paul, MN 55155

**RE: Statement of the Battered Women’s Legal Advocacy Project in Response to the Final Report and Proposed Amendments to the Minnesota Rules of Guardian Ad Litem Procedure, to be Presented Orally at the Hearing on June 15, 2004, 2:30 p.m.**

As an initial matter, the Battered Women’s Legal Advocacy Project extends its gratitude to the Committee and the Court for the opportunity to participate in the rule-making process. Thank you for letting us add our insights to yours.

**Who We Are and Why We Have a Stake in the Guardian Ad Litem Process**

The Battered Women’s Legal Advocacy Project (herein “BWLAP”) is a statewide, non-profit organization located in Minneapolis. Our mission is to improve the legal system’s response to battered women and their children, particularly those who are traditionally under-served. We practice this mission through litigation and legal consultation on cases involving battered women and their children; education and outreach to advocates, attorneys, professionals, battered women, and other interested individuals on effective advocacy within the legal system for battered women; networking and collaborating with organizations, task forces, and committees to represent the voices of battered women and their children in the legal system; making policies, organizing, drafting legislation, and participating in other systemic approaches for increasing responsiveness to the unique circumstances of battered women and their children.

The importance of the role of the Guardian Ad Litem in various proceedings in which battered women and their children have a stake cannot be overstated. We, as proponents and defenders of the rights of battered women and their children, are inevitably affected by the process and substance of these Proposed Rules. Therefore, we are duly invested in this rule-making process and its ultimate promulgation of rules that ensure protection of children with due consideration for the impact of domestic violence on their lives.

## **Our General Approval and Commendation for the Proposed Rules**

In general, BWLAP applauds the many and significant improvements contained in these Proposed Rules. The proposed amendments take significant steps toward much-needed clarification and refinement of the role of Guardians Ad Litem. It is our belief that, if/when enacted and followed, these Rules will hone the function of the Guardian Ad Litem by eliminating the confusion surrounding their duties and responsibilities. BWLAP commends the work of the Committee and Subcommittee for the improvements contained in their proposed revisions.

We also note that the Committee was genuinely responsive to our Comments to the earlier draft of these Rules. In particular, the Committee considered our suggestion to include a provision providing for mandatory removal of a Guardian Ad Litem upon notice of conviction for acts of domestic abuse. Remarkably, that language was added to the Rules now before us (at Rule 904.02 (e)). We thank the Committee for that critical change and ask the Court to retain it.

## **Our Concerns**

At the same time, the Proposed Rules cause us great concern. As you are aware, the Proposed Rules omit all provisions regarding the qualifications, recruitment, screening, selection, training, supervision, and evaluation of Guardians Ad Litem. The responsibility for these provisions has been assumed by the Office of the State Court Administrator. The Committee's Final Report makes a strong recommendation that the existing minimum standards be maintained. Furthermore, as we had urged in our Comments, the Committee recommends that the Supreme Court "form a multidisciplinary advisory group for the purpose of addressing future revisions of these standards."

It is my understanding that the standards addressed in the existing Rules, those that are to be cut, will be replaced with a standards manual that will contain those omitted Rules virtually verbatim. The Committee is recommending the creation of a multidisciplinary advisory group to assist in later revisions to those standards. However, unless and until that Advisory Group is created and revisions to the Rules are made, little to nothing of the existing Rules on qualifications, recruitment, screening, selection, training, supervision, and evaluation of Guardians Ad Litem will change.<sup>1</sup>

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<sup>1</sup> I base this understanding on the Final Report dated February 6, 2004. To wit, page six, paragraph three of the Final Report states:

... State Court Administration *began in early 2002* to work with the Minnesota Conference of Chief Judges (CCJ) to establish a state GAL program structure and policies regarding the selection, recruitment, training, supervision, and evaluation of guardians ad litem, as well as complaint procedures and quality assurance practices.... The adoption of the state GAL program structure and

Given that the goal date for implementing these Rules is July 2004 and it is already June, and that at least some version of standards must be in effect at the time these proposed rules become effective, I question the efficacy of public input. There is less than one month from the time of the public hearing to the anticipated effective date on these rules. It appears the existing amendments are a foregone conclusion.

Nonetheless, as most of us who work with battered women are—by necessity—forever optimistic, I will assume there is still a chance that we can influence or revise the ultimately approved standards to make positive change for battered women and their children whose lives are so profoundly affected by Guardians Ad Litem.

What we are most concerned about with regard to the Guardian Ad Litem Rules is that they enable crucial life decisions to be made by people not equipped to make them, and as a result, battered women and children suffer. What we want from you are rules, standards, policies, and procedures that ensure that Guardians are knowledgeable decision-makers who fully understand the dynamics of domestic abuse, who can fairly and respectfully assess what's best for the children of a victim of domestic abuse, and who can be held accountable when they act on ignorance or bias.

Without adequate training, Guardians are ill-equipped to recognize and respond to the complex and often covert dynamics of different cultures, backgrounds, lifestyles, and family systems. Untrained Guardians, vested with the substantial power and influence of their role, will inevitably do more harm than good unless and until those Guardians have the skills, knowledge, and understanding of the substance and procedure of the proceedings in which they appear. It is absolutely imperative that these Rules include provisions for pre-service training requirements and the curricula used therein, and BWLAP implores the Committee to retain the existing Rules on these matters.

Moreover, it is equally imperative that the Committee include within its training requirements a comprehensive training on the dynamics and effects of domestic violence. Failure to equip Guardians with the information they require to fully comprehend the pernicious consequences of domestic abuse is tantamount to blindfolding them to the most harmful force in children's lives. Guardians must be specifically trained to know that, for example, it is common for children raised in an abusive parental relationship to sympathize with the abuser rather than the victim; children who live with a victimized parent commonly witness and internalize the statements of blame made by the batterer to the victim and learn by example that the victim has, as her batterer claims, "provoked" the abuse or somehow "deserves" it. Additionally, it is common for an

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CCJ policies have led the GAL Rules Subcommittee and the Juvenile Rules Committee to recommend striking certain rules regarding *matters now addressed in policies adopted by the CCJ*.

Minnesota Supreme Court, Juvenile Protection Rules Committee, Guardian Ad Litem Rules Subcommittee, Final Report and Proposed Amendments to the Minnesota Rules of Guardian Ad Litem Procedure and Guardian Ad Litem-Related Rules of Procedure (Feb. 6, 2004), at p. 6, ¶ 3 (emphasis added).

abuser to do all he can to undermine the victimized parent's authority and parenting skills to ensure that she be perceived—by others and by herself—as an incompetent mother. Her fear of others believing that she is a poor parent is a very effective muzzle; she is afraid to report the abuse lest she lose her children to the abuser. Unless the Guardian is trained to know the dynamics and symptoms of domestic abuse, that mother's fear could become her reality, and the children could be placed in the custody of a violent abuser. Or, consider a situation in which a child has been removed from a home due to the domestic abuse committed by one parent against the other, where that victim has been charged with failing to protect the child from witnessing the abuse. Guardians must have the knowledge and appreciation of domestic violence to understand that there is an exponentially higher risk of increased violence when a battered woman leaves the abuser. The single greatest predictor of domestic homicide is separation by the victim from her batterer. Unless a Guardian has been trained to recognize not only the lack of options a battered woman has, but also that staying with the abuser may be the safest option she and her kids have, that Guardian cannot fairly assess whether removing the child from the home is a worthy option, rather than working with the battered woman to obtain a safe place to live and raise her children in peace.

The need for a properly trained panel of Guardians is absolutely dire. Last November, at the inaugural conference of the Sheila Wellstone Institute, a center dedicated to continuing the late Sheila Wellstone's efforts to end domestic violence, more than 500 conference attendees were asked to make specific recommendations for action to overcome the needs faced by victims of domestic violence. Overwhelmingly, the recommendations called for more and better training for Guardians Ad Litem on "the signals and issues of domestic violence."<sup>2</sup> Based on this feedback, the Institute recommends:

ensur[ing] that custody evaluators, guardians ad litem, child protection workers, mediators, and judges are exposed to the most recent information on the co-occurrence of domestic violence and child abuse, in order to prepare them to make more accurate assessments of the family's situation and make more effective recommendations regarding the necessary precautions or services required in cases involving domestic violence.<sup>3</sup>

This dire need for better-trained Guardians is not, however, new. Battered women and their advocates have been asking for more and better training on domestic violence issues for as long as these Rules have been debated. Our concerns were an integral part of the Legislative Auditor's Report on Guardians Ad Litem issued February 28, 1995. The Auditor's Report stated:

Many concerns have been raised about the use of guardians ad litem. Most complaints have centered on guardian actions in family court cases, primarily in contested divorce actions. Complaints have focused on guardian bias, lack of oversight and accountability, inadequate training, and inappropriate communication between guardians and judges.

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<sup>2</sup> Sheila Wellstone Institute, Sheila Wellstone Institute Recommends Action!, at [http://www.wellstone.org/swinstitute/article\\_detail.aspx?itemID=2009&catID=4](http://www.wellstone.org/swinstitute/article_detail.aspx?itemID=2009&catID=4) (Jan. 23, 2004).

<sup>3</sup> Id.

Parents have also complained that there is no place to seek relief if they have a problem with a guardian.<sup>4</sup>

On the issue of training, the Legislative Auditor's Report stated that "thirty-three counties do not have any basic training requirements and 57 counties do not have any continuing education requirements. Nearly 17 percent of the state's guardians told us that no basic training was required prior to their first case assignment."<sup>5</sup>

That was the state of the GAL system until the current Rules became effective in January 1999, just five years ago. It is clear that the issue of inadequate training has been a longstanding problem for the Guardians Ad Litem in our state.

The lack of training was of particular concern to battered women and children and their advocates. Although the Legislative Auditors did not survey battered women's programs and shelters—although they were repeatedly asked to do so—nor did they hold public hearings during their audit, the Auditor's Report did address one of those concerns, recommending that the Supreme Court's Task Force, "[d]evelop procedures for how guardians should work with parents who have existing Orders for Protection."<sup>6</sup> However, in the 1999 Rules, no such procedures were even mentioned. From the time the Auditor's Report recommended that the Supreme Court establish a Task Force on Rules for Guardians Ad Litem in February 1995, to the time the 1999 Rules became effective in January 1999, battered women's advocates repeatedly raised our concerns about the lack of training for Guardians on domestic violence—and the lack of accountability for biased or unjust decisions by Guardians pursuant to their ignorance on domestic violence. For example, in a memo dated November 30, 1995, from the Battered Women's Legal Advocacy Project to the Guardian Ad Litem Task Force Members, we stated:

Guardians *ad litem* create serious problems for the children of battered women throughout this state. Many do not understand the dynamics of violence against women and its affects of [sic] children. Most lack cultural competency or understanding of issues facing children of color and their families. Guardians are one of the most frequently mentioned obstacles to justice for battered women's children.... Your work will suffer seriously if you ignore battered women's voices. If this body seriously wants to represent the interests of children at risk, you must respond to these points which have so far been neglected.<sup>7</sup>

Battered women and their advocates also gave input at a public hearing held on January 10, 1996; both the Battered Women's Legal Advocacy Project and the Minnesota Coalition for Battered Women submitted comments. However, in the rules promulgated by the Minnesota

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<sup>4</sup> Program Evaluation Division, Office of the Legislative Auditor, State of Minnesota, Guardians Ad Litem: Executive Summary (95-03) (Feb. 28, 1995), p. 1, ¶ 3, available at <http://auditor.leg.state.mn.us/ped/1995/guardsum.htm>.

<sup>5</sup> Id. at p. 3, ¶¶ 1-2.

<sup>6</sup> Id. at p. 4, ¶ 2.

<sup>7</sup> Maria K. Pastoor and Lourdes Santabella, Memo to Guardian Ad Litem Task Force Members (Nov. 30, 1995).

Supreme Court on August 27, 1997, the version of the Rules that is now in effect, battered women's concerns were once again ignored.

The Minnesota State Court Administration Guardian Ad Litem Program issued a Progress Report last fall on the transition to the new state-administered Guardian Ad Litem Program. That Progress Report quotes one of the participants in the GAL Visioning process of 2002 as stating: "If there is one thing the state can and should invest in for the GAL system it's training, training, training."<sup>8</sup>

It is now 2004, five years since the effective date of the current rules, nine years since the Auditor's Report, and thirty years since the 1974 Child Abuse Prevention and Treatment Act that mandated Guardians' appointment. Here we are once again, fighting for acknowledgement of the truth that when women are abused, their children suffer, and the solution is not to take the children away from the mother but to support her in securing safety.

We know that in the current Guardian Ad Litem Training Curriculum, some information on domestic violence is included, and that there has been mandatory training for all Guardians based on this curriculum. We know that the SCAO Guardian Ad Litem Program developed, "a special 2-Day [sic] Family Court training with significant focus on domestic violence and parental alienation issues."<sup>9</sup> However, this training, which took place on May 6-7, 2004, allowed for only a fifteen-minute presentation by one battered women's advocate on a panel with several other persons. As evident from the training's Agenda, domestic violence was not the focus, and did not get anywhere near the attention it warrants.<sup>10</sup>

Finally, in the Amendments now proposed for adoption by the Court, there is a comment from the Advisory Committee explaining the transfer of responsibility over the qualifications, recruitment, screening, training, selection, supervision, and evaluation of Guardians from the Rules of Procedure to a standards manual in the State Court Administrator's Office.<sup>11</sup> The Advisory Committee Comment explains that the minimum standards of the previous rules are to be maintained in the new standards manual. It goes on to say that, "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."<sup>12</sup> While the Comment thus

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<sup>8</sup> Minnesota State Court Administration Guardian Ad Litem Program, Transition to a State Guardian ad Litem System for Children: Challenges, Risks, Opportunities: A 1<sup>st</sup> Annual Progress Report on a Five Year Plan, 2002-2007, Release Date: Fall 2003, at p. 10.

<sup>9</sup> Mark Toogood, GAL Program Manager, Court Services, State Court Administrator's Office, Letter to the Honorable Michael Paymar, Minnesota House of Representatives, at p. 5, bullet point 3 (Feb. 9, 2004).

<sup>10</sup> Agenda, Family Law Training for Guardians Ad Litem, Minnesota Judicial Center, May 6-7, 2004.

<sup>11</sup> See Minnesota Supreme Court, Juvenile Protection Rules Committee, Guardian Ad Litem Rules Subcommittee, Final Report and Proposed Amendments to the Minnesota Rules of Guardian Ad Litem Procedure and Guardian Ad Litem-Related Rules of Procedure (Feb. 6, 2004), at p. 15 (2004 Advisory Committee Comment to Rule 901.01).

<sup>12</sup> Id.

acknowledges the importance of cultural awareness, once again, domestic violence is not even mentioned.

BWLAP works daily in training service providers and assisting battered women and their advocates with the many and complex issues they face on the path to safety and stability. We know all too well how pervasive a batterer's coercion and manipulation can be, and how common it is for the children of battered women to be used as tools in a batterer's pattern of abuse and control. Like the Subcommittee, the Committee, and the Supreme Court, we are fully invested in ensuring that children's best interests are protected, and recognize that Guardians Ad Litem serve a crucial role toward this end. However, it is with our collective experience and expertise in this field that we can aver that it is absolutely essential that Guardians receive specialized training in domestic violence, and that promulgating rules without requiring such training will ultimately harm the children Guardians are appointed to protect. Due respect for the severity of this issue requires comprehensive training of all Guardians Ad Litem via curricula that specifically addresses the complex dynamics of domestic abuse and its impact on children.

It appears that the next forum for addressing these Rules may be the Multidisciplinary Advisory Group recommended by the Committee. We implore the Court to mandate inclusion of advocates for battered women and children in this Advisory Group. Specifically, we ask that, at the very least, one advocate per judicial district be invited to serve on the Advisory Committee and contribute her expertise to the recommendations made to the Conference of Chief Judges. We ask that you mandate revision of the Rules to include a rule directly addressing domestic abuse and setting minimum standards for Guardians to properly screen for and deal with the abuse. We ask the Court to call on the many, many experts on domestic abuse in the state of Minnesota to assist as needed. Of course, the Battered Women's Legal Advocacy Project will do whatever you ask of us.

Thank you for your consideration.

Very Truly Yours,

A handwritten signature in cursive script, appearing to read "Nicole Lindemyer".

Nicole Lindemyer  
Attorney At Law, Program Manager  
Battered Women's Legal Advocacy Project

# Minnesota Coalition for Battered Women



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June 7, 2004

Resa Gilats, Court Operations Analyst  
Minnesota Supreme Court  
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St. Paul, MN 55155

OFFICE OF  
APPELLATE COURTS

JUN 7 2004

**FILED**

Dear Ms. Gilats:

The Minnesota Coalition for Battered Women submits the following testimony regarding the Final Report and Proposed Amendments to the Minnesota Rules of Guardian Ad Litem-Related Rules of Procedure Response to State of Minnesota Supreme Court Order for Hearing C1-01-927.

It is our understanding that the Supreme Court intends to strike the current rules governing GAL practice and replace them with a standards manual that would contain a majority of the rules. The process for establishing Rules of Procedure are meticulous and public and the resulting rules carry a certain weight. While we applaud the creation of a multi-disciplinary task force and the development of a GAL manual, these guiding tools do not provide the same level of authority established by rules, are subject to greater interpretation, do not provide for effective appeal when concerns are raised, and may result in changes without public scrutiny under subsequent changes in administration. Such a change can only result in less accountability and less public scrutiny of a significant court system process that directly impacts the lives of Minnesota families. We believe that this move would be a step backward in creating a fully informed and accountable GAL system that is well positioned to make recommendations in the best interests of children and we strongly urge the Supreme Court to reconsider this change.

For many years, concerns have been raised throughout Minnesota regarding the lack of clear directives for GAL practice and resulting inconsistencies in practice. In 1995, the Minnesota Legislative Auditors report suggested that "guardian ad litem services in Minnesota could be improved if the state—the Legislature and the Supreme Court — provided more guidance to Minnesota counties and district courts."

The final report and Proposed Rules created by a twenty-seven member Task Force in 1995 included clear deliberations resulting from the findings by the legislative auditor, resulting in rules and procedures adopted by the Supreme Court which became effective in January 1999. The accountability that was structured into these Rules and Procedures should not only be maintained as originally intended, but should be periodically reviewed

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in a public process to ensure that they are providing the necessary guidance for informed and accountable GAL practice and responding to new developments in the field. The process resulting in the Rules and Procedures created a community policing whereby the public understands their best interests will be maintained by a checks and balance system. Through public knowledge we will ensure greater accountability and lessen the potential for bias and fragmentation.

We were encouraged by the proposed changes to the Rules of Procedure that were opened for public commentary in January of this year and we believe that the GAL system will be best addressed by adopting rules that are clear and specific to effective GAL practice. Our comments at that time included that the proposed changes to the rules were more concise and should be easier to apply. We strongly supported the addition of specific prohibitions on activities of GALs that were not prohibited in the original rules as well as the more concise responsibilities that should make for a cleaner process and more credible GAL input into the court process.

In particular, we were encouraged by the standard set forth in the new rules that would require that each recommendation be in writing and contain a recitation of the facts upon which it is based. We were concerned about the removal of specific guidelines for GAL qualifications and training requirements, however, and recommended that training on domestic violence be a requirement of service as a GAL. We also strongly recommended that the court create a broad based, multi-disciplinary advisory committee to work with the Court Administrator and the Conference of Chief Judges to formulate qualifications, pre-appointment training and on-going training requirements, and that membership in this committee include persons with expertise and experience in domestic violence. These proposed rule changes addressed many of the issues raised since the adoption of the original rules which we believe will give better guidance to both GALs and the judiciary.

The numerous concerns raised over the last twenty years regarding the GAL system along with the slow progress in making institutional changes to improve this system lead us to conclude that Minnesota should not back away from setting clear rules of procedure for GALs. In fact, we would assert that maintaining rules of procedure are an essential component to assure the establishment of effective guiding standards and creating a multi-disciplinary advisory group that will provide ongoing opportunities for public involvement in assessing the effectiveness of both the rules and the standards. We strongly urge the Supreme Court to revise not strike the Minnesota Rules of Guardian Ad Litem-Related Rules of Procedure based on the public commentary received in January, and to further move toward the goal of improving the GAL system by creating the proposed multi-disciplinary task force and developing a GAL standards manual.

In closing, we would like to add a highlight the make-up of the proposed multi-disciplinary advisory group (MAG). In order to ensure uniformity of good practice statewide, it is essential to develop a MAG that is able to create coordinated responses from various stakeholders that are invested in the best practices for Minnesota's families.

Because the multitude of families making up the Juvenile and Family Courts in Minnesota are communities of color, it is imperative that the state have representation from the American Indian, African-American, and Immigrant and Refugee communities that make up Minnesota. Specifically, American Indian communities (which represent 11 reservations, and the urban American Indian populations outlined by Congress in the Indian Child Welfare Act (ICWA) in 1978) have an overwhelming representation in Minnesota's court systems and should be reflective of the membership of the MAG.

Because of the high number of GAL cases that involve domestic violence, we further recommend that the court seek the representation of domestic violence advocates to further policies and best practices that ensure safety and accountability for domestic violence victims and their children.

Sincerely,

A handwritten signature in cursive script that reads "Lonna Stevens".

Lonna Stevens,  
Public Policy and Legislative Coordinator



*Bonita C Schulz*  
*Guardian ad Litem*

*PO Box 812*  
*Stillwater MN 55082*  
*Cell (651) 308-6338*

OFFICE OF  
APPELLATE COURTS

JUN 7 2004

FILED

June 4, 2004

Minnesota Supreme Court  
305 Judicial Center  
25 Martin Luther King, Jr. Boulevard  
St Paul Minnesota 55155

RE: Amendments to the Minnesota Rules of Guardian Ad Litem Procedure and  
Guardian Ad Litem-related Rules of Procedure

To the Minnesota Supreme Court:

This is my request to make an oral presentation at the hearing to consider the above matter on June 15, 2004. The purpose of my request is to address any questions the court may wish to ask me concerning my written statements.

Respectfully

Bonita C Schulz  
Former Guardian Ad Litem



*Bonita C Schulz*  
*Guardian ad Litem*

*PO Box 812*  
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OFFICE OF  
APPELLATE COURTS

JUN 7 2004

FILED

June 4, 2004

Minnesota Supreme Court  
305 Judicial Center  
25 Martin Luther King, Jr. Boulevard  
St Paul Minnesota 55155

RE: Amendments to the Minnesota Rules of Guardian Ad Litem Procedure and  
Guardian Ad Litem-related Rules of Procedure

To the Minnesota Supreme Court:

The Amendments to the Minnesota Rules of Guardian Ad Litem Procedure and Guardian Ad Litem-related Rules of Procedure prohibits independent guardians ad litem from providing their services in Minnesota Family and Juvenile Court unless they sign a non-negotiable contract tendered by the State Guardian Ad Litem Program. This I believe is problematic for the following reasons and I respectfully request that changes be made to allow independent guardians ad litem to continue advocating for children in Family and Juvenile Court without contracting with the State Guardian Ad Litem Program.

- \* Minnesota counties have engaged independent contract and volunteer guardians ad litem to advocate for the best interests of children in Juvenile and Family Court since about 1984.

Contractors negotiated contracts on an individual basis with each of the counties and were compensated according to their contract agreement. Though I have not had access to those contract agreements, the 1999 sub-committee study indicates there were variations among the counties and that some counties used only contractors and did not have a volunteer program. The information from Washington County (the county I served in for over 12 years as a volunteer and for the last couple of years as a contractor) shows contract agreements varied within the county as to hours and compensation. I also found independent contractors working in more than one county with different agreements in each county.

The State Guardian Ad Litem Program was adopted, and in 2002 independent guardian ad litem agencies (one was Guardians Ad Litem, Inc.) were required to relinquish their files and close their doors. Then in July 2003 independent contractors, at least in the Tenth Judicial District were required to either sign the

state non-negotiable contract or return their cases and go out of business.

I find this problematic and disturbing that any state agency can close down private businesses without cause other than to perhaps eliminate competition. There were no allegations of poor performance or any other reason for closing those independent guardian ad litem businesses; only that they would not agree to the terms of the contract tendered by the state. Imagine if you will, the state finding attorneys were receiving too many complaints and setting up a State Attorney Program. The only way attorneys can practice (except maybe write wills) is to sign a contract agreeing to a hold harmless clause, hourly pay, amount of time on each case and writing briefs, and the other restrictions of the contract guardians ad litem are required to sign.

I approached the State Guardian Ad Litem Program about this problem and was told we could serve in Civil Court matters and advised to contact Washington County Court Administration. Washington County did not know what we were talking about because it had no memory of any Civil Court appointed guardian ad litem. I went back to the state program and was told guardians ad litem in civil matters have a completely different role. In fact, I found in my recent genealogy research that in an Ohio Probated Court a guardian ad litem was appointed for my grandfather in 1890. Clearly serving in Civil Court cases is not an option for guardians ad litem trained and experienced in Family and Juvenile Court cases.

- \* The second reason, maybe the most important yet more difficult to quantify, is the delivery of quality advocacy for children in Family and Juvenile Court. Please do not take the following comments as critical of the advocates who continue to serve so faithfully.

I have talked with many others who could not sign the contract out of passion and principle; the children have lost some of the finest we had to offer. I am troubled by what I have observed, and another guardian ad litem so aptly described as a paradigm shift when the state program took over. The shift was from how to best advocate for the children to how much is it going to cost; from supportive and encouraging of advocates to critical and demeaning. Never in the 14+ years of my service had I heard so much emphasis on money and so little on what is best for the child. At first, I thought it was just my imagination, but when I started hearing it from attorneys, judges and volunteers, as well as contractors who opted not to sign, I figured it was more than imagination.

It appears to me that the state program is more interested in making it look good by meeting quota than what actually happens to children. I would like a shift from making the state program look good to giving as many children as we can the best we have to offer. I am not interested in whether Minnesota is a model state or not, I care about the children. If, in the process of providing outstanding advocacy for children, Minnesota becomes a model state, all the better, I see it resulting from our goal instead of being our goal. Making statistical quotas look good is easy and indeed may provide the numbers for achieving model state status; making a difference for children is much more than a matter of statistics.

- \* Third is the budget. Budget management is important; budget determines program. One financial philosophy is tell me where you spend your money and I will tell you what is important to you and where your strength lies.

According to information gathered from the Minnesota Courts web site, there was a 3% cut in the judiciary budget. I have tried to see the State Guardian Ad Litem Program financial records for the years 2000-2003 since last fall but have not been given access. The budget cut is the reason contract guardians ad litem were given for their hourly compensation cut amounting to as much as 60% or more. To put this in perspective, these contractors had not had an increase since well before July 1, 2001, although expenses increased and their net income went down. Then comes the state and cuts them even more.

There is much said about the budget cuts and providing equitable pay across the state for guardians ad litem. Equitable pay did not happen. According to the state web site, there are 34 employees and 331 contractors. While the employees are paid the same hourly rate as contractors (or were according to the last information I had which may have increased now nearly two years later), they receive benefits and do not have the expenses contractors must absorb.

Employees receive holiday, sick day and vacation pay, mileage, stipend for office expenses, worker's compensation and unemployment insurance, a medical insurance package, and professional liability insurance. Contractors must pay all expenses incurred to operate their business. Estimating expenses, based on my experience, but not taking into consideration the cost of worker's compensation, unemployment, medical or dental insurance, or any retirement plan other than Social Security result in:

- \$20 per hour gross, nets about \$11.60, 40% less than employees
- \$17 per hour gross, nets about \$9.40, 45% less than employees, and
- \$14.00 per hour gross, nets about \$7.15, 49% less than employees

If all factors were considered, I doubt any contractor would be making minimum wage.

Guardians ad litem in Washington County addressed this matter with Greg King, manager in the Tenth Judicial District. He was asked how much he and others at the management level were sacrificing and told guardians ad litem were happy to follow the leadership in sharing the budget shortfall. His reply was, "that is comparing *apples and oranges*." That comment, along with my request for access to Guardian ad Litem financial records being ignored, has not engender a great deal of confidence in the State Guardian Al Litem Program leadership's ability to manage their finances. Since program is dependent on good financial management, there is little wonder that other guardians and I are hearing of problems with the program. How can contractors, who are held in such low esteem as to be paid less or little more than the teenagers they represent who work in a fast food restaurant (I inquired at a well known national chain where starting pay is \$8.00 an hour with some benefits) be

taken seriously in the court room? I hear many are not.

According to the Guardian Ad Litem web site, the program represented about 7,000 Juvenile and Family Court cases in 2003. Considering the approximate \$10,000,000, state funding (not including payments of \$45 per hour collected from clients), it comes to about \$1,425.00 per case. I think private practice guardians ad litem or a non-profit could provide better service for the children with that money and ask that they be given the opportunity.

- \* Last, I believe competition is healthy and will keep both the public and private sector accountable for providing quality advocates for children.

When I started about 15 years ago as a volunteer in Washington County, I told everyone I met about what a wonderful program it was. Now it is dismantled and I can not say the same thing about its replacement. I am deeply saddened by what is taking place. I am aware there were problems; I just think there is a better way to address them. I offered to work with the committee, without compensation, but my offer was politely declined.

The State Guardian Ad Litem Program leadership keeps referring to guardians ad litem as professionals; I find that patronizing and offensive. Let me illustrate: A manager in government told me how he would like to hire a successful businessman for a position. The manager only had \$100,000 to offer for the position. He was trying to find additional funds in order to offer \$200,000; not because the businessman needed the money, but as a matter of respect. Guardians ad litem are treated disrespectfully by the conditions of the contract and employment agreements, by the managers and by the compensation offered.

It was difficult and stressful to write this letter. I am doing it because I believe what I am asking you to do is the right thing for the state, the children and their advocates.

Attached is a simple little rhyme about my beginning and ending as a GAL. Every GAL has a story this is just one of many, offered as a tribute to the many dedicated men and women who serve the children. I hope it is appropriate to offer at this time.

Respectfully,

Bonita C. Schulz  
Former Guardian Ad Litem

Att: GAL rhyme

## Life and Death of a GAL

It entered my life with a little boy  
He was dirty and sad; he had lost all his joy.  
The first graders said he was the worst  
His teacher confirmed in second grade, not first.

What could have happened to this poor little child?  
What could have made him so sad and so wild?  
When I went to talk with him, he stiffened his lip  
And hardened his face so the tears wouldn't drip.

I won't cry no matter what they may do  
And I won't tell my mom what they do after school.  
I love my mom he said, a quiver in his voice,  
But she has to work; there is no other choice.

I talked with his teacher, told her his story  
She said she knew and that I should not worry.  
The other kids teased him; he was not at all cool  
She just tried to teach him while he was at school.

There was nothing to do for this sad little boy  
I wondered how to bring his life joy.  
Advocate for others the best that I could  
And that has now ended, perhaps as it should.

By Bonnie Schulz former guardian ad litem

ADVOCACY DIRECTOR  
Maureen O'Connell

**LEGAL SERVICES ADVOCACY PROJECT**

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2324 University Avenue  
St. Paul, MN 55114  
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ATTORNEYS  
Kathleen McDonough  
Reggie Wagner

SUPERVISING ATTORNEY  
Nancy Mischel

ADVOCATE  
Ron Elwood

RESEARCH ANALYST  
Khanh Nguyen

visit our website at: [www.lsapmn.org](http://www.lsapmn.org)

OFFICE MANAGER  
OFFICE OF APPELLATE COURTS  
Colette Bergeron

June 7, 2004

JUN 7 2004

**FILED**

Mr. Frederick Grittner  
Clerk of the Appellate Courts  
305 Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

RE: Final Report and Proposed Amendments to the Minnesota Rules of Guardian ad Litem Procedure

The Legal Services Advocacy Project (LSAP) was created more than 20 years ago by the six Minnesota regional civil legal services programs to represent the interests of low-income persons before legislative and administrative bodies. In addition, LSAP has participated on a number of judicial task forces and provided comments to the Court on behalf of civil legal services offices statewide. LSAP submits the following brief written comments for the Supreme Court's consideration with regard to the Proposed Amendments to the Minnesota Rules of Guardian ad Litem Procedure.

We strongly support the Committee's recommendation contained in the Comment to Rule 901.01 that the minimum standards set forth in the current rules regarding the qualifications, recruitment, screening, training, selection, supervision and evaluation of guardians ad litem be maintained in the standards manual created by the Office of the State Court Administrator. We urge the Court to ensure that the standards manual contain, at a minimum, the detail and specificity of current rules regarding these issues, and that the manual be made available to the public as soon as possible.

In addition, we urge the Court to adopt the Committee recommendation found in the Summary of Substantive Amendments to the Rules of Guardian ad Litem Procedure, Rule 901, that the Minnesota Supreme Court form a multidisciplinary advisory group for the purpose of addressing future revisions of the standards for qualifications, recruitment, screening, training, selection, supervision and evaluation of guardians ad litem.

We strongly encourage the Court to ensure that the multidisciplinary advisory group includes ample representation from the domestic violence community. It has been our experience that many guardians would benefit from a greater understanding of the issues of power and control that are inherent in domestic violence situations. To that end, we believe the advisory group should consider including specific training regarding domestic violence in the minimum standards. In addition, because a large number of children in juvenile court who are assigned

guardians are children of color, we also encourage the Court to ensure that the members of the advisory group proportionally reflect that diversity.

Please feel free to call me at 651/222-3749, x.103 if I can answer any questions or be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nancy Mischel".

Nancy Mischel  
Supervising Attorney

OFFICE OF  
APPELLATE COURTS

MAY 28 2004

FILED

THE SUPREME COURT OF MINNESOTA  
105 MINNESOTA JUDICIAL CENTER  
25 REV. DR. MARTIN LUTHER KING JR. BLVD.  
ST. PAUL, MINNESOTA 55155

Resa M. Gilats, Court Operations Analyst  
Court Services Division  
State Court Administrator's Office

(651) 297-1145  
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May 28, 2004

Mr. Fred Grittner  
Clerk of the Appellate Courts  
305 Judicial Center  
25 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155

Dear Mr. Grittner:

On behalf of Judge Timothy Bloomquist, Chair of the Juvenile Protection Rules Committee and the Guardian Ad Litem Rules Subcommittee, please consider this the Judge's formal, written request to speak at both the Adoption Rules public hearing at 1:30 p.m. and the GAL Rules public hearing at 2:30 p.m. on June 15, 2004. The Judge will be speaking as Chair of the Committees and will provide an overview of the reports that have been submitted to the Court. We understand the Judge will be given 10 minutes to speak at each hearing.

Please let me know if you need anything more from the Judge, Judy Nord, or myself regarding this request. Thank you.

Sincerely,



Resa Gilats

cc Hon. Timothy Bloomquist  
Judy Nord, Staff Attorney

MAY 7 - 2004

**ROSEAU COUNTY SOCIAL SERVICE CENTER**

David Anderson, Director

**FILED**  
300 6<sup>th</sup> Street SW  
Roseau, Minnesota 56751  
218-463-2411  
1-866-255-2932

May 5, 2004

Frederick Grittner  
Clerk of the Appellate Courts  
305 Judicial Center  
25 Martin Luther King, Jr. Boulevard  
St. Paul, MN 55155

Re: Rules of Guardian Ad Litem Procedure

Dear Mr. Grittner:

In going through the proposed rule changes, I have a suggestion: During the court procedure, often families become confused with the "legal-ese" and are left with many questions including what a guardian ad litem is, why one has been appointed, and what the GAL's duties are. The families also are not given appeal/complaint procedures to follow regarding the GAL. I recommend that these items be included in the proposed rules as a notice to the family. For example, an information sheet could be developed explaining the GAL's duties, who the GAL is, and the complaint/appeal procedure. This information sheet could be given to the family prior to them leaving the courtroom, or it could be sent to the family at the time that a specific GAL has been assigned.

Sincerely,



Patricia A. Roth  
Soc. Service Sup.

DISTRICT COURT OF MINNESOTA  
TENTH JUDICIAL DISTRICT

HONORABLE GARY J. MEYER  
JUDGE OF DISTRICT COURT



CHAMBERS  
WASHINGTON COUNTY GOV'T CENTER  
14949 - 62nd STREET N.  
STILLWATER, MN 55082-3802  
(651) 430-6348 or (651) 430-6349 FAX (651) 430-6300

June 7, 2004

Frederick Grittner  
Clerk of Appellate Courts  
305 Judicial Center  
25 Rev. Dr. Martin Luther King, Jr. Blvd  
St. Paul, Minnesota 55155

OFFICE OF  
APPELLATE COURTS

JUN 7 2004

**FILED**

RE: Proposed Amendments to the Rules of Guardian Ad Litem Procedure.

I have been serving as Chair of the Expedited Child Support Process Rules Committee ("Child Support Rules Committee"). On behalf of that Committee, which is currently inactive, I wish to express some reservations regarding proposed changes to the Guardian Ad Litem Rules of Procedure as they relate to the appointment of a Guardian Ad Litem for a minor parent in a paternity action. Joining me in my written submissions is Jodie Metcalf, Child Support Magistrate/Manager.

When the county commences an action to establish child support or to establish paternity, and a party is a minor, the minor parent must have a guardian ad litem appointed on his/her behalf pursuant to Minnesota Rules of Civil Procedure 17.02. The purpose is so that the minor parent may be served and act as a party, similar to any other civil proceeding involving a minor. The long-standing practice has been to appoint a parent or adult relative of the minor parent/party to serve as the guardian ad litem.

Recognizing that practice, Child Support Rule 357.04, subdivision 2 specifically states the Rules of Guardian Ad Litem Procedure do not apply when the guardian ad litem being appointed is for a minor parent. It was understood by the Child Support Rules Committee that the role of a guardian ad litem in these cases did not rise to a "best interest" standard and should not require the appointment of a guardian ad litem from the guardian ad litem roster. When a parent of a minor party is appointed, there are no costs to the courts in their limited role to sue and be sued on behalf of their child. The proposed amendments will significantly impact the practice of the district court as well as the expedited process, and does not appear to be a good use of limited guardian ad litem roster resources. Common sense dictates continuation of the long-standing process of using parents or adult relatives when appointment of guardian ad litem is pursuant to Rule 17.02. Additionally, the Report fails to justify the additional cost and elimination of this long-standing practice. Therefore, Jodie Metcalf and I propose the following amendments to the proposed changes to the Rules of the Guardian Ad Litem Procedure:

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

Under the current rule, subdivision 2 sets out the exception that the Rules of Guardian Ad Litem Procedure do not apply when the person for whom the guardian ad litem is being appointed is a minor parent. The proposed amendment to this rule is confusing because it deletes subdivision 2 and does not lead a user to Rule 17.02. The concern is that Judicial officers likely will read this rule to conclude the appointment must be pursuant to the Rules of Guardian Ad Litem Procedure and never get to Rule 17.02.

Our recommendation is to change the proposed language changes to Rule 357.04 to read as follows:

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

~~**Subdivision 1. Applicability of Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.** In any proceeding commenced in the expedited process in which a party is a minor parent, the minor parent shall be represented by a guardian ad litem appointed by the court pursuant to Minnesota Rules of Civil Procedure 17.02. Child support magistrates shall appoint guardians ad litem to advocate for the best interests of children when required under Minn. Stat. § 518.165 (2000) or any other applicable statute. When a child support magistrate determines that the appointment of a guardian ad litem is necessary, that appointment shall be made according to the Minnesota General Rules of Practice 901-913.~~

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

**Rule 17.02. Infants or Incompetent Persons**

The Guardian Ad Litem Rules Committee’s proposed amendment to this rule adds language in the first paragraph that states: “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.” The Report does not explain why the current practice of appointing a parent or adult relative as the guardian ad litem of the minor parent should be precluded in paternity actions. We recommend the following change to the language in the first paragraph of Rule 17.02:

**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.

Because the Committee proposed changes to Rule 108 to mirror the language of the proposed changes to Rule 17.02, if the above recommended language is adopted, Rule 108 should be changed accordingly. In addition, the following paragraph should be added to the end of Rule 17.02 that mirrors the current language of Juvenile Protection Procedure Rule 26.02, as follows:

If a minor party's parent or legal custodian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the minor party, the court may sua sponte or upon the written request of a party, appoint a guardian ad litem pursuant to the Rules of Guardian Ad Litem Procedure for Juvenile and Family Court.

This added language to Rule 17.02 allows the court to appoint a guardian ad litem from the roster *if the court determines the parent or legal custodian would not be an appropriate appointment under the circumstances.*

### **Rule 901.01. Scope of Rules**

Proposed amendments to Rule 901 states "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" (emphasis added). This amended rule would now require the appointment of a guardian ad litem under the Rules of Guardian Ad Litem Procedure for a minor parent in all cases and the guardian ad litem must advocate for the best interests of that minor parent. This would require the appointment of a guardian ad litem from the roster, incurring unnecessary expense to the courts. Minors have no capacity to sue or to be sued, thus Rule 17.02 requires the appointment of a guardian ad litem for a minor party for purposes of service of process and maintaining the action. Paternity cases involving a minor party should be treated no differently. If it is determined that the minor party requires a guardian ad litem to advocate for the best interests of that minor due to abuse allegations, there are other court rules and statutes that address those various scenarios. Our proposal is to omit "minor parent" in the scope of Rule 901. It is not clear from the Report why the Guardian Ad Litem Rules Committee determined when the child of the paternity action is made a party, the appointment of a guardian ad litem would not require a best interest standard pursuant to Minn. Stat. § 257.60(1). We propose that reference to this statutory provision in Rule 901.01 also be deleted, as follows:

### **Rule 901.01. Scope of Rules**

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 et seq., 253B, 256B.77, 257.60(1), 494.01 et seq., 501B.19, 501B.50, 508.18, 524.1-403, and 540.08.

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

Finally, the last recommendation is more of a housekeeping measure. When drafting the final rules for the expedited process, the approach was to limit the rules to those that were inconsistent with other court rules. The Guardian Ad Litem Rules Committee has proposed additional language to Rule 26.02 of the Juvenile Protection Procedure Rules that reiterates the duties and responsibilities of the guardian ad litem when appointment is made pursuant to this rule. Our recommendation is to add a sentence that clarifies if appointment is made under this rule, the Guardian Ad Litem Procedure Rules shall apply. Parenthetical (c) could then be deleted.

### **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. In every appointment under this rule, the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court shall apply.

(e) 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~~

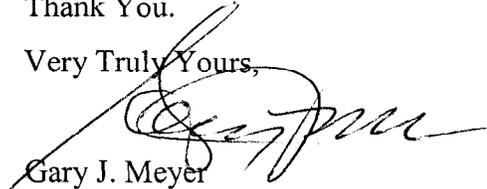
~~(5) — present written reports on the minor parent's or incompetent adult's best interests that include conclusions and recommendations and the facts upon which they are based.~~

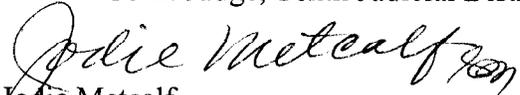
Adopting the proposed changes to the rules listed above will help to clarify when appointment of a guardian ad litem pursuant to the Rules of Guardian Ad Litem Procedure is necessary, yet will continue to support the long-standing practice of appointing a parent as guardian for a minor parent when the appointment is pursuant to Rule 17.02.

I do request that either Jodie Metcalf or I be given the opportunity to appear and testify at the public hearing on June 15, 2004 to answer any questions or provide additional commentary on the Rules.

Thank You.

Very Truly Yours,

  
Gary J. Meyer  
District Court Judge, Tenth Judicial District, Washington County

  
Jodie Metcalf  
Child Support Magistrate/Manager

GJM/cjw



1463 W. Minnehaha Ave., #3  
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*Making children's voices heard*

OFFICE OF  
APPELLATE COURTS

June 11, 2004

JUN 11 2004

**FILED**

Honorable Kathleen Blatz  
Chief Justice  
Minnesota Supreme Court  
25 Rev. Dr. Martin Luther King, Jr., Blvd.  
St. Paul, MN 55155

Re: Comments to Proposed Amendments to Minnesota Rules of Guardian ad Litem  
Procedure and Guardian ad Litem-related Rules of Procedure

Dear Justice Blatz and Members of the Supreme Court:

I wish to make an oral presentation at the Supreme Court public hearing on the proposed amendments to the Minnesota Rules of Guardian ad Litem Procedure and Guardian ad Litem-related Rules of Procedure scheduled for Tuesday, June 15, 2004.

As instructed, I enclose twelve copies of my presentation with twelve copies of this request.

Thank you for the opportunity to comment.

Very truly yours,

Gail Chang Bohr, Esq.  
Executive Director

enc.



1463 W. Minnehaha Ave., #3  
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*Making children's voices heard*

Comments to Proposed Revisions to Rules of Guardian ad litem Procedure  
in Juvenile and Family Court

Thank you for the opportunity to comment on the proposed rules.

I am an attorney and since 1995, have been the executive director of Children's Law Center of Minnesota.

My comments are as follows:

The importance of the guardian ad litem to the child protection system was underscored by Chief Justice Blatz in In the Matter of the Welfare of J.R. Jr. and A.I.R., 655 N.W.2d 1, 5 (Minn. 2003). It is with that significance in mind that I approached these comments.

First, it may be helpful to look at how Minnesota's Guardian ad Litem Program is different from other states. As a member of the ABA Section of Litigation Children's Rights Litigation Committee Working Group, I have had the opportunity to observe and learn about the role of the guardian ad litem in other states. For example, in Iowa, the guardian ad litem is both the attorney – expressing the child's wishes – and the guardian ad litem – deciding what the guardian thinks is in the best interests of the child. In court, the attorney switches hats and explicitly says so. Similarly in Pennsylvania, attorneys for children function as both the guardian ad litem and as attorney but are called attorneys ad litem. In each state, the attorneys are reimbursed by the state and are not state programs. On the other hand, Minnesota's GAL program is based on the CASA model, Court Appointed Special Advocates, which relies on volunteers from the community. Minnesota, in fact, is the pioneer in CASA training, having developed the training that is used in many states across the country. For reasons not entirely clear, Minnesota did not use the model of Iowa or Pennsylvania, among others, of attorneys who functioned as both guardian ad litem and attorney for the child. In fact, Minnesota specifically prohibited the attorney for the child from being the guardian ad litem and the guardian ad litem from being the attorney for the child and developed a volunteer model for the most part – except for Family Court where guardians ad litem are lawyers and are paid.

With that background, to determine whether the proposed rules represent an improvement or a step back, I reviewed the State of Minnesota Office of the Legislative Auditor 1995 Program Evaluation of the Guardians ad Litem. The Office of the Legislative Auditor's Evaluation Report was the result of complaints about guardians ad litem. The Report gave specific recommendations focusing on the broader system in which guardians function.

At the time of the Legislative Auditor's Report, there were no guardian ad litem rules in place. The Legislative Auditor's Report noted that the then Judges Guidelines for

Guardians ad Litem developed by the Minnesota Judges Association to assure the quality of guardian services throughout the state did not carry the authority of statute or rule and were not uniformly applied. Indeed, the Report recommended that the Minnesota Supreme Court adopt the guidelines because otherwise, there was no authority to them. Similarly, program manuals from the Office of the State Court Administrator does not have the same authority as Rules promulgated by the Minnesota Supreme Court.

About a year ago, I cited the Rules in a case on appeal where the case had been dismissed without there being a guardian ad litem despite the court's explicit order for a guardian ad litem to be assigned to the case. Citing the Rules carry more authority.

Court rules lay out the process that must be followed by individuals who appear in court whether the individuals are lawyers or non-lawyers, such as guardians ad litem. Court rules provide guidance to practitioners and everyone appearing in court. Court rules bring transparency to the process. If the court rules are not explicit on training or qualifications, how will the parties in court know why or how those standards were developed?

In the proposed revisions, certain important areas are moved from the Rules and placed in the Office of the State Court Administrator, with the advice and consent of the Conference of Chief Judges. For example, qualifications of the guardian ad litem fall in that category.

Rule 902 Qualifications state that the qualifications for a guardian ad litem shall be established by the Office of the State Court Administrator, with the advice and consent of the Conference of Chief Judges. I believe that removing the qualifications from the Rules is problematic. In 1999, when the Minnesota Rules of Guardian ad Litem Procedure were first promulgated, care was taken to spell out the qualifications to be a guardian ad litem and to make the qualifications public. There was a reason for that. Qualifications that are well known set a minimum level for practice. When qualifications are listed in the Rules, they are public and individuals can be challenged. If the qualifications are not listed in the rules, what mechanism will there be to enforce those qualification criteria?

While the Rules Committee strongly recommends that the previous minimum standards be maintained and that the Minnesota Supreme Court form a multidisciplinary advisory group for the purpose of addressing future revisions of these standards, the Rules Committee, at this time, does not know what the minimum standards would be. Even if, at some point in the future, the minimum standards for qualifications, recruitment, screening, training, selection, supervision and evaluation are established in the standards manual of the GAL Program and are published in print and electronic forms and are available to the public, the public cannot comment on what those standards are, or should be, as they can when the standards are in the Rules.

Similarly with the training requirement. What training will be required and for what period of time? Training or the lack thereof was also a problem area identified in the

1995 Legislative Auditor's report. Based on their review of the program and of other states' programs, the Auditor made specific recommendations for a minimum of 40 hours of basic training and 10 hours of continuing training annually. It is reasonable to believe that the Legislative Auditor spent considerable time researching the issue and that separation of powers is not an issue here.

In 2002, the federal Child Abuse Prevention and Treatment Act (CAPTA) specified the provision of training to the role of the guardian ad litem. 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 provisions 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." 42 U.S.C. §5106a(b)(2)(A)(xiii).

It is because of the critical importance of the guardian ad litem to the child protection court process that the training requirement and qualifications of the guardian ad litem should be stated in the court rules. Having them in the rules provide transparency and accountability for who gets to be a guardian and what minimum level of training is required.

#### Rule 901.02. Implementation

It is not clear who the "judicial district administrator" is who is responsible for carrying out the Rules. Is this the court administrator? Is this adding a layer between the district guardian ad litem manager and the judge who ultimately is responsible for ensuring that the rules are adhered to?

#### Rule 905. General Responsibilities of Guardians ad Litem

(e) written reports – the Rules should spell out what the report should contain, how often they should be written, and how far in advance of a court date they should be submitted – or in the alternative, reference the section in the Rules of Juvenile Procedure where the report is required. By being specific, corrections can be made for GAL reports that are not always forthcoming nor submitted in a timely manner.

#### Rule 907.02. Rights as a Party

"The exercise of these rights shall not constitute the unauthorized practice of law." The powers listed in 907.02 that the guardian ad litem has are things that normally an attorney would carry out such as present evidence, cross-examine witnesses, bring post-trial motions, etc. Because the guardian ad litem has the right to legal representation and it is assumed that the lawyer for the guardian ad litem would present evidence, cross-examine witnesses, etc., it is unclear why this sentence protecting the guardian ad litem from a charge of "unauthorized practice of law" is necessary unless the rule also contemplates that guardians ad litem would be pro se, and therefore have to rely on themselves to cross-examine witnesses, etc.,

Indeed, this section 907.02, Rights as a Party is almost verbatim from Juvenile Protection Rule 21.02, which lists the rights of a party. However Juvenile Protection Rule 21.02 does not contain the sentence, "The exercise of these rights shall not constitute the unauthorized practice of law." If the rule contemplates that the guardian ad litem will function as a lawyer then this sentence makes sense but if that is not the case, then, the sentence is superfluous and should be deleted.

In any event, I disagree with any encouragement of guardians ad litem to be their own attorneys.

It is ironic that as the Court has moved to streamline the process, for example, by having discrete court rules for delinquency and child protection, the court rules that will apply to the most pivotal player in the system, the guardian ad litem, will be harder to find because they will be in separate places, in the Guardian ad Litem Rules and in a manual.

In sum, while the previous rules may have contained many details about qualifications and training, those details were necessary to ensure some measure of uniformity and consistency. Throughout the state the need for uniformity and consistency still exists. Having the minimum expectations for qualifications, training, and accountability set out in the rules will go far in bringing about uniformity and consistency. In the same way, having the minimum expectations for qualifications, training, and accountability set out in the rules will go far in protecting the credibility of the court and ensure public trust and confidence because of the process that the rules have to go through before they are adopted, a process that is transparent and open to the public.

I am happy to answer any questions about these comments.

A handwritten signature in black ink that reads "Gail Chang Bohr". The signature is written in a cursive, flowing style.

Gail Chang Bohr