

MINNESOTA GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

RULES OF GUARDIAN AD LITEM PROCEDURE IN JUVENILE AND FAMILY COURT

with amendments effective July 1, 2015

TITLE X

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RULE 901. SCOPE OF RULES; IMPLEMENTATION

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 the appointment of a guardian ad litem under Minnesota Rules of Civil Procedure 17.02 in child support and paternity matters. These Rules also do not govern guardians ad litem appointed pursuant to Minnesota Statutes §§ 245.487-245.4888, chapter 253B, § 256B.77, § 257.60(1), §§ 494.01-494.05, § 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 juvenile protection matters set forth in Rule 2.01 of the Minnesota Rules of Juvenile Protection Procedure, including all of the following matters: child in need of protection or services, neglected and in foster care, termination of parental rights, review of out of home placement, and other matters that may be heard or treated as child protection matters; guardianship and adoption proceedings. The phrase "juvenile court case" also refers to the juvenile delinquency matters set forth in Rule 1.01 of the Minnesota Rules of Juvenile Delinquency Procedure.

2015 Advisory Committee Comment

Minnesota Statutes § 480.35 created the State Guardian ad Litem Board effective July 1, 2010. At that time, administration and oversight of the qualifications, recruitment, screening, training, selection, supervision, and evaluation of guardians ad litem transferred from the Office of the State Court Administrator to the State Guardian ad Litem Board. These administrative and oversight procedures are now addressed in the Guardian ad Litem Program Requirements and Guidelines (Non-statutory), formerly titled the Guardian Ad Litem System Program Standards or Program Standards manual. It is the responsibility of the Board to prepare the Requirements and Guidelines (Non-statutory). The minimum standards set forth in the previous rules are to be maintained in the Requirements and Guidelines (Non-statutory), along with procedures governing complaints about the performance of a guardian ad litem. Also included are standards regarding knowledge and appreciation of the prevailing social and cultural standards of Indian and other minority communities. The Requirements and Guidelines (Non-statutory) are published in both print and electronic formats and are available to the public on the State Guardian ad Litem Board website, <http://mn.gov/guardian-ad-litem>.

Rule 901.02. Implementation

The State Guardian ad Litem Board shall be responsible for insuring the implementation of the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. The responsibilities set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court shall be carried out at the direction of the Program Administrator.

RULE 902. MINIMUM QUALIFICATIONS

Before a person may be recommended for service as a guardian ad litem pursuant to Rule 903, the person must satisfy the minimum qualifications set forth in the Guardian ad Litem Program Requirements and Guidelines (Non-statutory) System Program Standards as established by the State Guardian ad Litem Board. The Requirements and Guidelines (Non-statutory) shall be published in print and electronic forms and be available to the public.

2015 Advisory Committee Comment

The Guardian Ad Litem Requirements and Guidelines (Non-statutory), formerly titled the Program Standards, are available on the State Guardian Ad Litem Board website <http://mn.gov/guardian-ad-litem..>

RULE 903. APPOINTMENT OF GUARDIAN AD LITEM

Rule 903.01. Order by Court; Recommendation of Guardian Ad Litem for Appointment

When the court orders the appointment of a guardian ad litem in a particular case, the district guardian ad litem manager or the manager's designee shall promptly recommend a guardian ad litem for appointment. If in the exercise of judicial discretion the court determines that the guardian ad litem recommended is not appropriate for appointment, and communicates the reasons for that determination to the district guardian ad litem manager or the manager's designee, the 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 903.02. Juvenile Court Appointment

Subd. 1. Generally. 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 Minnesota Statutes §§ 260B.331, subd. 6(a), and 260C.331, subd. 6(a), and as established by the State Guardian ad Litem Board; and
- (c) in an adoption proceeding, authorization for the guardian ad litem to review and receive a copy of the adoption study report under Rule 37 of the Rules of Adoption Procedure and the post-placement assessment report under Rule 38 of the Rules of Adoption Procedure to the extent permitted by Minnesota Statutes § 259.53, subd. 3.

If the court has issued an order appointing a person as a guardian ad litem in a child in need of protection or services proceeding, the court may, but is not required, to issue an order reappointing the same person in the termination of parental rights or other permanent placement determination proceeding. An order is required only if a new person is being appointed as guardian ad litem.

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

When a guardian ad litem is appointed pursuant to Minnesota Statutes § 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 the initial petition in the case pursuant to Minnesota Statutes § 260C.141.

Subd. 3. Representation of 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:

- (a) the court determines that the parent or legal custodian 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.

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.

2006 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 decision maker or legal guardian to admit or deny the petition.

2006 Advisory Committee Comment

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

Rule 903.03. Family 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 specific duties to be performed by the guardian ad litem in the case;
- (c) to the extent appropriate, deadlines for the completion of the duties set forth;
- (d) to the extent appropriate; the duration of the appointment; and
- (e) the provisions for parental fee collection as applicable under Minnesota Statutes §§ 257.69, subd. 2(a), and 518.165, subd. 3(a), and as established by the State Guardian ad Litem Board.

Rule 903.04. Other Roles Precluded

Subd. 1. Generally. A guardian ad litem under the supervision of the State Guardian ad Litem Board shall not be ordered to, and shall not perform, the following roles in a case in which the person serves as a guardian ad litem:

- (a) custody evaluator pursuant to Minnesota Statutes § 518.167; or
- (b) parenting time evaluator; or
- (c) parenting time consultant; or
- (d) family group decision making facilitator; or
- (e) early neutral evaluator; or
- (f) mediator, as that role is prescribed in Minnesota Statutes § 518.619 and Rule 310 of the General Rules of Practice for the District Courts; or
- (g) arbitrator or individual authorized to decide disputes between parties; or
- (h) parenting time expeditor, as that role is prescribed in Minnesota Statutes § 518.1751; or
- (i) substitute decision-maker under Minnesota Statutes § 253B.092; or
- (j) evaluator charged with conducting a home study under Minnesota Statutes § 245A.035 or § 259.41; or
- (k) attorney for the child.

Subd. 2. Roles Distinguished. Nothing in this rule shall prevent a properly qualified person who also serves in other cases as a guardian ad litem from serving in any of the roles in subdivision 1 on a privately-paid basis. A guardian ad litem under the supervision of the State Guardian ad Litem Board is not the same as a mediator, arbitrator, facilitator, custody evaluator, or neutral as those titles and roles are described in Rule 114 of the General Rules of Practice for the District Courts.

RULE 904. REMOVAL OR SUSPENSION OF GUARDIAN AD LITEM FROM PARTICULAR CASE

Rule 904.01. Use of Complaints and Investigation Reports

Unless offered into evidence by the guardian ad litem or authorized by written order following an *in camera* review by the court, neither any complaints about the performance of a guardian ad litem, nor any reports of any investigation of such complaints, shall be received as evidence or used in any manner in any proceeding governed by these Rules.

Rule 904.02. Removal or Suspension of Guardian Ad Litem From Particular Case

A guardian ad litem appointed to serve in a particular case may be removed or suspended from the case only by order of the presiding judge. Removal or suspension may be upon initiation of the presiding judge or after hearing upon the motion of a party pursuant to Rule 904.03.

Rule 904.03. Motion to Remove Filed by Party

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 district guardian ad litem manager by the party making the motion.

Rule 904.04. Mandatory Removal By Presiding Judge

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

- (a) when it is shown by written communication from the district guardian ad litem manager or the manager's designee that the 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.

Rule 904.05. Permissive Removal By Presiding Judge

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.

RULE 905. GENERAL RESPONSIBILITIES OF GUARDIANS AD LITEM

Rule 905.01. Generally

In every family court and juvenile court case as defined in Rule 901.01 in which a guardian ad litem is appointed, the guardian ad litem shall:

- (a) conduct an independent investigation to determine the facts relevant to the situation of the child or incompetent adult and the child's parent, legal custodian, or other household or family member, which must include, unless specifically excluded by the court:
 - (i) reviewing relevant documents, which in the case of an adoption shall include the adoption study report and the post-placement assessment report, upon order of the court to the extent permitted by Minnesota Statutes § 259.53, subd. 3(b);
 - (ii) meeting with and observing the child in the home setting and considering the child's or incompetent adult's wishes, as appropriate; and
 - (iii) 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.

2006 Advisory Committee Comment

The responsibilities of a guardian ad litem are the same for all appointments made under these Rules, regardless of case type.

Rule 905.02. Representation of Child’s Parent or Legal Custodian

In every matter where the guardian ad litem is appointed to represent a parent or legal custodian under Rule 903.02, subd. 3, the guardian ad litem shall perform the following responsibilities:

- (a) 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:
 - (i) reviewing relevant documents;
 - (ii) 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
 - (iii) interviewing parents, caregivers, and others relevant to the case;
- (b) 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;
- (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 minor parent or incompetent adult;
- (d) monitor the minor parent’s or incompetent adult’s best interests throughout the judicial proceeding; and

- (e) 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.

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 907. RIGHTS OF GUARDIANS AD LITEM

Rule 907.01. Rights in Every Case

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

- (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.
- (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.

Subd. 2. Not Unauthorized Practice of Law. The exercise of the rights listed in subdivision 1 by a guardian ad litem shall not constitute the unauthorized practice of law.

Rule 907.02. Rights as a Party

In addition to the rights set forth in Rule 907.01 and any other rights set forth in statute, court order, or Rule, in every case in which a guardian ad litem is a party, the guardian ad litem shall have the right to:

- (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.