

**MINNESOTA GUARDIAN AD LITEM-RELATED RULES OF
PROCEDURE**

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RULES OF CIVIL PROCEDURE

Rule 17.02. Infants or Incompetent Persons

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

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

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

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

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

RULE 108. GUARDIAN AD LITEM

Rule 108.01. Role of Guardian Ad Litem

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

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

Rule 108.02. Other Guardian Ad Litem Roles Distinguished

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.

Rule 108.03. Guardian Ad Litem Not Lawyer for Any Party

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

Task Force Comment – 1991 Adoption

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

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

GENERAL RULES OF PRACTICE – RULES OF FAMILY COURT PROCEDURE

RULE 302.04. DESIGNATION OF PARTIES

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

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

(b) Guardians Ad Litem. Appointment of a guardian ad litem is governed by the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. The guardian ad litem shall carry out the responsibilities set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. The guardian ad litem shall have the rights set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

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

Family Court Rules Advisory Committee Commentary*

A guardian appointed pursuant to Minnesota Statutes, section 257.60 becomes a party to the action if the child is made a party. The guardian then 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 a child without the necessity of applying to the court.

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

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

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

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

Task Force Comment--1991 Adoption

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

RULE 357. LEGAL REPRESENTATION AND APPOINTMENT OF GUARDIAN AD LITEM

Rule 357.01. Right to Representation

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

Rule 357.02. Certificate of Representation

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

Rule 357.03. Appointment of Attorney at Public Expense

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

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

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

Advisory Committee Comment

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

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

Rule 357.04. Appointment of Guardian Ad Litem

Subdivision 1. Applicability of Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. Child support magistrates shall appoint guardians ad litem to advocate for the best interests of children when required under Minn. Stat. § 518.165. When a child support magistrate determines that the appointment of a guardian ad litem is necessary, that appointment shall be made according to the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court.

RULE 367.04. CONFLICT OF INTEREST

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

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

(b) a guardian ad litem in any family law matter, in any district in which the person serves as a child support magistrate.

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

RULES OF JUVENILE DELINQUENCY PROCEDURE

Rule 2.01. Right to Attend Hearing

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

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

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

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

Rule 2.04. Right to Participate

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

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

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

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

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

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

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

Rule 24. Guardian ad Litem

Rule 24.01. Appointment

(A) Except as provided in Rule 24.01 (B), the court shall appoint a guardian ad litem, to act in place of a parent, legal guardian or legal custodian to protect the best interest of the child when it appears, at any stage of the proceedings, that the child is without a parent, legal guardian or legal custodian. If the parent, legal guardian or legal custodian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the child's best interests, a guardian ad litem shall be appointed.

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

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

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

Rule 24.02. General Responsibilities of Guardians Ad Litem

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

- (1) conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court: reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others relevant to the case;
- (2) advocate for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;
- (3) maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child;
- (4) monitor the child's best interests throughout the judicial proceeding; and

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

Rule 24.03. Guardian ad Litem not Counsel for Child

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

Rule 30.02. Availability of Juvenile Court Records

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

Subd. 2. No Order Required.

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

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

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

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

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

RULES OF JUVENILE PROTECTION PROCEDURE

RULE 26. GUARDIAN AD LITEM

Rule 26.01. Appointment for Child

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

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

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