

FILED

December 6, 2024

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8041

**ORDER PROMULGATING AMENDMENTS TO THE MINNESOTA
RULES OF JUVENILE PROTECTION, ADOPTION, AND GUARDIAN
AD LITEM PROCEDURE**

The Advisory Committee on the Rules of Juvenile Protection, Adoption, and Guardian Ad Litem Procedure recommended amendments to the Minnesota Rules of Juvenile Protection, Adoption, and Guardian ad Litem Procedure in a report filed on July 26, 2022. Among other recommendations, the Advisory Committee recommended amendments to Rules 902, 903, and 904 of the Rules of Guardian ad Litem Procedure, and related amendments to Rule 37 of the Rules of Juvenile Protection Procedure and Rule 24 of the Rules of Adoption Procedure. The Advisory Committee recommended additional amendments in a report filed on December 13, 2022.

By order filed on January 25, 2023, we established a period for the public to file written comments in response to the proposed amendments. Order Establishing Comment Period on Proposed Amendments to the Minnesota Rules of Juvenile Protection, Adoption, and Guardian ad Litem Procedure, No. ADM10-8041, Order at 2–3 (Minn. filed Jan. 25, 2023). Among the comments submitted, the then-Chair of the Minnesota Supreme Court Advisory Committee on the General Rules of Practice for the District Courts submitted a comment recommending a change to the proposed amendment to Rule 903 of the Rules of Guardian ad Litem Procedure.

By order filed on September 25, 2023, we promulgated most of the proposed amendments to the Rules of Juvenile Protection and Adoption Procedure, with a minor change to one of the proposed amendments. Order Promulgating Amendments to the Minnesota Rules of Juvenile Protection and Adoption Procedure, No. ADM10-8041, Order at 2–5 (Minn. filed Sept. 25, 2023). But we took no action with respect to the proposed amendments to Rules 902, 903, and 904 of the Rules of Guardian ad Litem Procedure, and the related amendments to Rule 37 of the Rules of Juvenile Protection Procedure and Rule 24 of the Rules of Adoption Procedure. *Id.* at 4. We observed that a matter involving the appointment and discharge of guardians ad litem was then pending before our court, and we stated that we would take further action as appropriate following resolution of that matter. *Id.*

On November 1, 2023, we issued an opinion in that matter. *Blakey v. Jones*, 997 N.W.2d 67 (Minn. 2023). In *Blakey*, the court decided, among other things, that a guardian ad litem is “no longer a party to the action once discharged by the district court.” *Id.* at 69. Thereafter the Guardian ad Litem Program submitted a letter to court staff, requesting additional changes to Rule 904 of the Rules of Guardian ad Litem Procedure and Rule 37 of the Rules of Juvenile Protection Procedure, in order to ensure the right of guardians ad litem to participate on appeal in light of the decision in *Blakey*.

By order filed on February 15, 2024, we established a period for the public to file written comments in response to the newly proposed amendments. Order Establishing Comment Period on Proposed Amendments to the Minnesota Rules of Juvenile Protection and Guardian ad Litem Procedure, No. ADM10-8041, Order at 3 (Minn. filed Feb. 15, 2024). One comment was received, supporting the newly proposed amendments.

We agree that the amendments proposed by the Advisory Committee and by the Guardian ad Litem Program should be adopted. First, we adopt the Advisory Committee's proposed amendments to Rules 902 and 903 of the Rules of Guardian ad Litem Procedure, Rule 37 of the Rules of Juvenile Protection Procedure, and Rule 24 of the Rules of Adoption Procedure. These amendments give the Guardian ad Litem Program the authority to designate a specific guardian ad litem to a case. They also enhance coordination between case files when the same guardian ad litem is appointed to represent a child in multiple matters.

Second, we adopt the proposed additional amendment to Rule 903.03 recommended by the General Rules Committee, which better tracks the process used in district courts when appointment of a guardian ad litem is necessary.

Third, we adopt the Advisory Committee's proposed amendments to Rule 904 of the Rules of Guardian ad Litem Procedure. These amendments clarify when a guardian ad litem's term should end.

Fourth, we adopt the additional proposed amendments, recommended by the Guardian ad Litem Program, to Rule 904 of the Rules of Guardian ad Litem Procedure and Rule 37.03(b) of the Rules of Juvenile Protection Procedure. These amendments ensure the right of guardians ad litem to participate on appeal in light of the decision in *Blakey*.

IT IS HEREBY ORDERED that the attached amendments to the Minnesota Rules of Guardian ad Litem Procedure, the Minnesota Rules of Juvenile Protection Procedure, and the Minnesota Rules of Adoption Procedure are prescribed and promulgated as shown below. The amendments are effective as of January 1, 2025, and shall apply to all cases

pending on, or filed on or after, the effective date. The Advisory Committee comments are included for convenience and do not reflect court approval of the comments.

Dated: December 6, 2024

BY THE COURT:

A handwritten signature in black ink, appearing to read "Natalie E. Hudson". The signature is written in a cursive, flowing style.

Natalie E. Hudson
Chief Justice

HENNESY and GAÏTAS, JJ., not having been members of this court at the time of the court's consideration of the recommendations addressed in this order, took no part in the consideration or decision.

AMENDMENTS TO THE MINNESOTA RULES OF GUARDIAN AD LITEM PROCEDURE

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

RULE 902. MINIMUM QUALIFICATIONS

Before a person may be ~~recommended~~ designated 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.

RULE 903. APPOINTMENT OF GUARDIAN AD LITEM

Rule 903.01. Order by Court; ~~Recommendation~~ Designation 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~~ designate 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 or serve unless ~~recommended~~ designated 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. Following the order of the court, the guardian ad litem manager or manager's designee shall designate a guardian ad litem. 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, that person shall continue to serve, and the court may, but is not required, to shall issue an order reappointing the same person in the termination of parental rights proceeding, or other permanent placement determination proceeding matter, or an adoption proceeding for a child under the guardianship of the Commissioner of Human Services. ~~An order is required only if a new person is being appointed as guardian ad litem.~~

Rule 903.03. Family Court Appointment

A guardian ad litem shall not be appointed or serve except upon written order of the court. Following the order of the court, the guardian ad litem manager or manager's designee shall designate a guardian ad litem. The initial or a subsequent 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 904. REMOVAL OR SUSPENSION DESIGNATION OF NEW
GUARDIAN AD LITEM OR DISCHARGE OF GUARDIAN AD
LITEM FROM PARTICULAR CASE**

A guardian ad litem appointed by the court and designated by the guardian ad litem manager or manager's designee shall continue to serve as a guardian ad litem until such time as:

a) the guardian ad litem manager or manager's designee designates a new guardian ad litem;

b) the guardian ad litem is removed from the case by order of the presiding judge for good cause shown upon initiation of the presiding judge;

c) the guardian ad litem is removed from the case by order of the presiding judge for good cause shown after hearing upon the properly filed motion of a 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, the guardian ad litem and the district guardian ad litem manager, and filed and supported in compliance with the applicable rules of court;

d) all district court proceedings in the matter have been completed, including filing and resolution of all post-trial motions and appeal or until the time for appeal has passed if no appeal is filed;

e) the term of service set forth in Rule 37.03 of the Juvenile Rules of Protection Procedure has been completed;

f) the guardian ad litem has fulfilled their specific duties identified by the Court in the Family Court matter and the Court determines that the minor child(ren)'s best interests do not require continuing the guardian ad litem as a party to the proceeding until final resolution of all post-trial motions and appeal or until the time for appeal has passed if no appeal is filed; or

g) the child for whom a guardian ad litem has been appointed reaches the age of eighteen (18) and either the child or the guardian ad litem manager or manager's designee requests that the guardian ad litem be discharged.

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.

2025 Advisory Committee Comment

Rule 904 previously provided a process for removing or suspending a Guardian ad Litem from a case. Rule 904 is amended to reflect the Guardian ad Litem Program's role in removing a guardian ad litem from a case and to add language similar to the Juvenile Protection Rule governing withdrawal or discharge of legal counsel. Rule 904 still contains a provision permitting the presiding judge to remove a guardian ad litem from a case for good cause. Examples of good cause shown for the removal of a Guardian ad Litem include but are not limited to: (1) failure to comply with a directive of the court, including provisions of the order appointing the guardian ad litem; (2) failure to comply with the responsibilities set forth in these Rules; (3) notice of formal sanction of the guardian ad litem by any professional or occupational licensing board; or (4) upon formal request from the Guardian ad Litem Program.

~~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.~~

**AMENDMENTS TO THE MINNESOTA RULES OF
JUVENILE PROTECTION PROCEDURE**

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

RULE 37. GUARDIAN AD LITEM

Rule 37.01. Appointment for Child

Subd. 1. Mandatory Appointment Generally Required. Where Minn. Stat. § 260C.163, subd. 5, requires appointment of a guardian ad litem, the court shall appoint a guardian ad litem under the procedures set forth in the General Rules of Practice, 903.02 Rules of Guardian ad Litem Procedure. If the court has issued an order appointing a person as a guardian ad litem in a child in need of protection or services matter, that person shall continue to serve and the court may, but is not required to, shall issue an order reappointing the same person in the termination of parental rights proceeding, or other permanent placement matter, or an adoption proceeding for a child under the guardianship of the Commissioner of Human Services, unless a new guardian ad litem is designated by the district manager or manager's designee or the guardian ad litem is discharged by the court pursuant to the Rules of Guardian ad Litem Procedure. ~~An appointment order is required only if a new person is being appointed as guardian ad litem.~~

Subd. 2. Discretionary Appointment. Where Minn. Stat. § 260C.163, subd. 5, does not require appointment of a guardian ad litem, the court may appoint a guardian ad litem under the procedures set forth in the General Rules of Practice, 903.02 Rules of Guardian ad Litem Procedure.

Rule 37.03. Term of Service of Guardian Ad Litem

Unless a new guardian ad litem is designated by the guardian ad litem manager or manager's designee, or otherwise ordered by the court, upon appointment to a juvenile protection matter the guardian ad litem shall serve as follows:

- (a) when the permanency plan for the child is to return the child home, the court shall issue an order dismissing the guardian ad litem from the case upon issuance of an order returning the child to the child's home and terminating the juvenile protection matter;
- (b) when the permanency plan for the child is transfer of permanent legal and physical custody to a relative, the court shall issue an order discharging the guardian ad litem from ongoing responsibilities but continuing the guardian ad litem as a party to the proceeding until final resolution of all post-trial motions and appeal or until the time for appeal has passed if no appeal is filed ~~dismissing the guardian ad litem from the case upon issuance of the order transferring custody and terminating the juvenile protection matter;~~
- (c) when the permanency plan for the child is termination of parental rights leading to adoption, or guardianship to the commissioner following a voluntary consent to adopt, the guardian ad litem shall continue to serve as a party until the adoption decree is entered;
- (d) when the permanency plan for the child is permanent custody to the agency ~~long term foster care~~, the guardian ad litem shall continue to serve as a party for the purpose of monitoring the child's welfare, and shall provide the foster parent and child, if of suitable age, with the address and phone number of the guardian ad litem so that they may contact the guardian ad litem if necessary. The guardian ad litem shall be provided notice of all social services administrative reviews and shall be consulted regarding development of any case plan, out-of-home placement plan, or independent living plan required pursuant to Rule 26.

**AMENDMENTS TO THE MINNESOTA RULES OF
ADOPTION PROCEDURE**

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

RULE 24. GUARDIAN AD LITEM

Rule 24.01. Appointment

Subd. 1. Generally. A guardian ad litem appointed to serve in a juvenile protection matter, as defined in Rule 2.01(19) of the Minnesota Rules of Juvenile Protection Procedure, shall continue to serve in the adoption matter following a transfer of guardianship to the commissioner of human services. In any other adoption matter, the court may appoint a guardian ad litem pursuant to the Rules of Guardian ad Litem Procedure. The guardian ad litem shall advocate for the best interests of the child and shall continue to serve until the adoption decree is entered pursuant to Rule 45.