

RULE 37. GUARDIAN AD LITEM**Rule 37.01. Appointment for Child**

Subd. 1. Mandatory Appointment Generally Required. Where Minnesota Statutes, section 260C.163, subdivision 5, requires appointment of a guardian ad litem, the court shall appoint a guardian ad litem under the procedures set forth in General Rule of Practice 903.02. 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, 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 matter. An appointment order is required only if a new person is being appointed as guardian ad litem.

Subd. 2. Discretionary Appointment. Where Minnesota Statutes, section 260C.163, subdivision 5, does not require appointment of a guardian ad litem, the court may appoint a guardian ad litem under the procedures set forth in General Rule of Practice 903.02.

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 subject to General Rules of Practice 901-907.

Subd. 4. Responsibilities; Rights. The guardian ad litem shall carry out the responsibilities set forth in Minnesota Statutes, section 260C.163, subdivision 5, paragraph (b). The guardian ad litem shall have the rights set forth in General Rule of Practice 907.

Subd. 5. Guardian Ad Litem Not Also Counsel for Child. The child's guardian ad litem shall not also serve as the child's counsel.

Subd. 6. Counsel for Child Not Also Counsel for Guardian Ad Litem. The child's counsel shall not also serve as counsel for the guardian ad litem.

Subd. 7. Reimbursement. Whenever a guardian ad litem is appointed for a child, the court may make inquiries authorized by Minnesota Statutes, section 260C.331, subdivision 6, into the ability of the parents to pay for the guardian ad litem's services, and may make any orders as authorized by that statute.

Rule 37.02. 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 a legal custodian pursuant to General Rule of Practice 903.02, subd. 3. The appointment of a guardian ad litem shall be subject to General Rules of Practice 901-907. Appointment of a guardian ad litem for a parent or legal custodian shall not result in discharge of counsel for the parent or legal custodian.

Rule 37.03. Term of Service of Guardian Ad Litem

Unless 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 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, 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 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.

Rule 37.04. Request for Appointment of Counsel for Child

The guardian ad litem shall request appointment of counsel for a child if the guardian ad litem determines that the appointment is necessary to protect the legal rights or legal interests of the child.

2019 Advisory Committee Comment

Rule 37 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 26. The amendments are not intended to substantively change the rule's meaning.

Rule 37.01 refers to the requirements in Minnesota Statutes, section 260C.163, subdivision 5, which requires the court to appoint a guardian ad litem in many circumstances. Rule 37.01 is also consistent with the requirements of the federal Child Abuse Prevention and Treatment Act (CAPTA) for states to receive federal grants for child protection prevention and treatment services. 42 U.S.C. section 5106a(b)(2)(B)(xiii). The state statutory requirements for appointing a guardian ad litem are broader than the federal CAPTA requirements. Rule 37.01, subd. 5, reflects the statutory prohibition in Minnesota Statutes, section 260C.163, subdivision 3, paragraph (f), against a child's counsel acting as the child's guardian ad litem.

Former Rule 26.05 governed reimbursement for the costs of a court-appointed guardian ad litem, and has been moved to Rule 37.01, subd. 7 for clarity.