

Rule 17. Parties Plaintiff and Defendant; Capacity**17.01 Real Party in Interest**

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

17.02 Infants or Incompetent Persons

(a) Representative. 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.

(b) Who May Apply; Priority. Any person, including an infant party over the age of fourteen (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.

(c) Application Contents. The application for appointment shall be made under oath or penalty of perjury in accordance with Minnesota Statutes, section 358.116, and 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, (4) the name, age, address, and occupation of the person whose appointment is sought, and (5) all facts and circumstances of the adversity or potential adversity of the person whose appointment is sought to the party, if any.

(d) Notice.

(1) Discretionary. If the appointment is applied for by the party or by a spouse, parent, custodian or testamentary or other guardian of the party who is not adverse or potentially adverse to the party, the court may hear the application with or without notice to the party, the party's spouse, parent, custodian, testamentary or other guardian, or, if the party is an inmate of a public institution, the chief executive officer thereof.

(2) Mandatory. 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.

(Amended effective for guardians ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005; amended effective January 1, 2007; amended effective June 9, 2023.)

Advisory Committee Comment - 2023 Amendment

Rule 17.02 is revised to organize the rule with headings to improve readability, and to highlight the holding in Vander Wiel v. Wahlgren, 934 N.W.2d 125 (Minn. Ct. App. 2019), that an application for appointment of a guardian ad litem by a spouse who is an adverse party in a dissolution case required notice and an opportunity to be heard. Additional changes clarify that the application must be under oath and provide the facts necessary for the court to determine any potential adversity and the resulting implications of whether notice is or is not provided. The rule retains the discretion of the court to require notice in any case.