

Rule 26. Guardian Ad Litem**26.01 Appointment for Child**

Subdivision 1. Mandatory Appointment Generally Required. Pursuant to the procedures set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court, the court shall issue an order appointing a guardian ad litem to advocate for the best interests of the child in each child in need of protection or services matter, termination of parental rights matter, and other permanent placement matter where such appointment is mandated by Minnesota Statutes, section 260C.163, subdivision 5. 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. Pursuant to the procedures set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court, in all other cases, except as provided in subdivision 1, 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, subdivision 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.

(Amended effective January 1, 2004; 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 July 1, 2007.)

1999 Advisory Committee Comment (amended 2003)

Rule 26.01 is consistent with Minnesota Statutes, section 260C.163, subdivision 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, section 260C.007, subdivision 6.

With respect to the appointment of guardians ad litem, Minnesota Statutes, section 260C.163, subdivision 5, complies with the federal Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. section 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. section 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. Minnesota Statutes, section 260C.163, subdivision 5.

26.02 Discretionary Appointment for Child's Parent or Legal Custodian

Subdivision 1. Appointment. Pursuant to the procedures set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court, 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.

Subd. 2. Attorney Not Discharged. 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.

Subd. 3. 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.

(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.)

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.

26.03 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 37.

(Amended effective January 1, 2004; amended effective August 1, 2009.)

26.04 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.

(Added effective January 1, 2004.)

2003 Advisory Committee Comment

In deciding whether to request appointment of counsel for the child, the guardian ad litem should assess the following, among other factors: the child's ability to work with counsel, whether the guardian ad litem's recommendation is contrary to the child's expressed preference, whether the child's siblings are represented, and the complexity of the issues involved.

26.05 Reimbursement

The court may inquire into the ability of the parent or legal custodian to pay for the guardian ad litem's services and, after giving the parent or legal custodian a reasonable opportunity to be heard, may order the parent or legal custodian to pay the guardian ad litem's fees. The parent or legal custodian shall have an ongoing duty to disclose any change in the person's financial circumstances.

(Added effective January 1, 2004; amended effective January 1, 2007.)