



North Dakota Supreme Court Rules N.D.R.Ct. ◀▲

Effective August 1, 2009
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RULE 8.7 GUARDIAN AD LITEM

(a) Qualification. To qualify as a guardian ad litem under N.D.C.C. § 14-09-06.4, a person must be an attorney licensed in the state of North Dakota.

(b) Training Requirements. To be eligible for appointment as a guardian ad litem, an attorney must have completed 18 hours of guardian ad litem training. To remain eligible to be appointed as guardian ad litem, an individual shall complete an additional 18 hours of guardian ad litem-related training every 3 years.

(c) Criteria for Appointment. A guardian ad litem must be appointed if the court finds an appointment is necessary to protect the best interests of the child involved. In determining whether to appoint a guardian ad litem, the court shall consider among other factors:

- (1) whether there is an allegation of sexual abuse;
- (2) whether there is an allegation of domestic violence resulting in serious bodily injury or involving the use of a dangerous weapon;
- (3) whether there is an allegation of a pattern of domestic violence occurring within a reasonable time proximate to the proceeding resulting in a reasonable fear for the safety of a party or the minor child;
- (4) whether the child has special needs;
- (5) whether the child has, at any time, been placed in foster care, or in the home of a third party;
- (6) whether there is an allegation the child is in an unstable environment;
- (7) whether there has been repeated post-decree litigation involving parental rights and responsibility issues;
- (8) whether the interests of the child and either or both parents are in substantial conflict;
- (9) whether a guardian ad litem could provide the court with significant information not otherwise available or likely to be

presented by the parents; and

(10) whether there are any other areas of special concern which may impact the best interests of the child.

(d) Responsibilities of Guardian ad Litem.

(1) A guardian ad litem shall advocate the best interests of the child as to parental rights and responsibility and support. A guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and, consistent with the Rules of Professional Conduct, shall consider, but not be bound by, the wishes of the child or others as to the best interests of the child.

(2) After appointment, a guardian ad litem shall:

(A) work with a parenting investigator, if appointed, to coordinate investigation activities and avoid duplicating services;

(B) interview and observe the child to ascertain the facts relevant to parental rights and responsibilities, the child's wishes, the need for independent evaluation, and the need for and appropriateness of interim judicial relief;

(C) advise the child and the child's parents of the role and responsibilities of the guardian ad litem;

(D) interview potential witnesses, lay and expert, with relevant knowledge of the child or parties; and

(E) participate in meetings impacting the life of the child, including permanency planning meetings and other activities as may be directed by the court.

(3) A guardian ad litem may apply for a court order to protect the child, to obtain temporary relief, to determine parenting rights and responsibilities.

(4) A guardian ad litem shall participate whenever any party requests an interim court order which may affect the child.

(5) A guardian ad litem may request an independent court-ordered evaluation or study, including a parenting investigation.

(6) A guardian ad litem shall participate in all pretrial procedures and negotiations and endeavor to resolve the case without the need for a trial.

(7) A guardian ad litem shall observe all statutes, rules, and regulations concerning confidentiality. A guardian ad litem may not disclose or participate in the disclosure of information to any person who is not a party to the case, except as necessary to perform the guardian ad litem duties or as may be specifically provided by law.

(e) Court Proceedings. A guardian ad litem may present a case, cross-examine a witness, deliver a summation, prepare a memorandum of law, file a motion, and file or participate in an appeal on issues involving the best interests of the child.

EXPLANATORY NOTE

Rule 8.7 was adopted, effective March 1, 2000; amended effective August 1, 2009.

The role of a guardian ad litem is to act as an attorney. A guardian ad litem is not to act as a parenting investigator by preparing a parenting investigation report or giving testimony.

SOURCES: Joint Procedure Committee Minutes of May 21-22, 2009, pages 44-45; September 24-25, 1998, pages 8-15.

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