

NORTH DAKOTA	Legal Authority
	GENERAL DUTIES AND ACTIVITIES OF THE CHILD'S LEGAL REPRESENTATIVE
<p>1. General Duties: <i>Timely appointment, mandatory or discretionary, attorney or lay person, represent child's interests, undertake basic obligations, address conflict situations, address special needs and disabilities, and accommodate client preferences.</i></p>	<ul style="list-style-type: none"> - The court, in every case involving an abused or neglected child which results in a judicial proceeding, shall appoint a guardian ad litem for the child in those proceedings. Cent. Code 50-25.1-08. - The court at any stage of a proceeding under this chapter, on application of a party or on its own motion, shall appoint a guardian ad litem for a child who is a party to the proceeding if the child has no parent, guardian, or custodian appearing on the child's behalf or their interests conflict with the child's or in any other case in which the interests of the child require a guardian. A party to the proceeding or that party's employee or representative may not be appointed. A guardian ad litem appointed under this section is immune from civil liability for damages for any act or omission arising out of that individual's duties and responsibilities as a guardian ad litem, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct. Cent. Code 27-20-48. - North Dakota law permits guardianship as a disposition option for children found to be abused or neglected. Once appointed, a guardian may subsequently seek to resign or a petition may be filed to remove the guardian. If, at any time in a resignation/removal proceeding, the court determines that the interests of the child are, or may be, inadequately represented, it may appoint an attorney to represent the child, giving consideration to the preference of the child if the child is fourteen or more years of age. Cent. Code 27-20-48.4(4).
<p>2. Out of Court - Actions to be Taken: <i>Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements</i></p>	<ul style="list-style-type: none"> - 1. Except as provided in this section, all files and records of the juvenile court, whether in the office of the clerk of district court or juvenile court, of a proceeding under this chapter are closed to the public. Juvenile court files and records are open to inspection only by: <ul style="list-style-type: none"> ... b. The parties to the proceeding or their counsel or the guardian ad litem of any party. ... Cent. Code 27-20-51. - (b) Responsibilities of a lay guardian ad litem. A lay guardian ad litem must: <ul style="list-style-type: none"> (1) advocate for the best interests of the child; (2) exercise independent judgment, gather information, participate in negotiations, and monitor the case, including: <ul style="list-style-type: none"> (A) reviewing relevant documents; including social services, psychological, psychiatric, medical, therapy, and education records; (B) meeting with and observing the child in the home setting or placement; (C) interviewing parents, siblings, caregivers, and other interested parties with relevant information to the case. (3) complete work in a professional manner by participating in meetings impacting the life of a child, including attending all court proceedings related to the deprivation matter, child-family team meetings, settlement

negotiations, appropriate school meetings, and other activities as may be directed by the court in the child's best interest for pre- or post-adjudication matters.

(4) obtain releases of information as required and observe all statutes, rules and regulations, regarding confidentiality. A lay guardian ad litem must not disclose or participate in the disclosure of information to any person, except as necessary to perform the guardian ad litem duties specifically provided by law.

(5) prepare a written report regarding the child's best interest, including conclusions with specific recommendations as appropriate to the facts of the case -- psychological, psychiatric, parenting and chemical dependency evaluations or services or treatment deemed necessary -- this report must be submitted to the juvenile court as directed by the court, and upon receipt copies must be provided to all parties by the juvenile court.

(6) treat all individuals with dignity, respect and sensitivity to religious background, racial or ethnic heritage, cultural, gender/orientation and socio-economic diversity.

(7) comply with all state laws regarding the reporting of child abuse or neglect. [ND R. Ct. Juv. P. 17.](#)

- General Principles

Professionalism

When providing lay guardian ad litem services to the court, lay guardians ad litem should act with care, reliability, and diligence. In phone calls, meetings, interviews, and other exchanges related to their responsibilities, lay guardians ad litem should act in good faith and in a respectful and professional manner. All activities must be performed in a timely manner.

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Competence

The lay guardian ad litem must provide competent assistance to the court. This competence implies the legal knowledge and professional skills reasonably necessary to provide lay guardian ad litem services.

Independence

A lay guardian ad litem shall preserve professional independence in the discharge of the guardian's responsibilities. A lay guardian ad litem must act in accordance with the law, free from all other influence, rendering services based on the guardian's best knowledge. A lay guardian ad litem should avoid any impairment of

independence and must not permit professional standards to be compromised by external pressure.

Quality

Reports, correspondence, and other documents prepared by lay guardians ad litem should always reflect the highest quality work.

Truthfulness of Information

A lay guardian ad litem may not knowingly give false, misleading, or inconsistent information. A lay guardian ad litem may not try to influence the court directly or indirectly by any ways and means contradictory to the law or this Code.

Objectivity

When providing lay guardian ad litem services, a lay guardian must adhere to the facts. Facts should be presented in as neutral and clear a manner as possible. The facts should speak for themselves, and conclusions and analysis should not involve exaggeration, adjectival assistance, or other editorial overemphasis.

Non-discrimination

Any and all actions must not be based on race, color, religion or faith, sex, birth, political opinion, nationality, country of origin, or any other similar criteria.

Confidentiality

Confidentiality and record maintenance are obligations of the lay guardian ad litem. All lay guardians ad litem must maintain confidentiality and protect against unauthorized disclosure and usage of information acquired in connection with the case. Confidentiality is required for all forms of transmission, including verbal, written, digital, manual or hardcopy records, videos, and pictures.

Conflicts of Interest

A conflict of interest arises when a lay guardian ad litem has competing, incompatible duties or when there is a conflict between a lay guardian ad litem's private interests and the guardian's professional responsibilities. A lay

	<p>guardian ad litem must exercise independence, act with loyalty, and preserve the confidentiality of the case as necessary. The lay guardian ad litem should avoid cases in which there is a conflict of interest. If in the course of providing lay guardian ad litem services a conflict of interest arises, the lay guardian ad litem is obligated to inform the parties and the court about the present conflict and the nature and extent of the conflict. After full disclosure, the lay guardian ad litem may continue to provide services with the express written consent of the parties only if this will not lead to an unjustified compromise of the parties' interests or to a violation of other provisions of this Code.</p> <p>Communications with Judicial Officer</p> <p>The lay guardian ad litem may not communicate with a judicial officer, without notice to all parties, concerning a case for which the person is serving as a lay guardian ad litem except that the lay guardian ad litem may communicate with a judicial officer about such matters as scheduling, emergencies, or purely administrative matters that do not deal with substantive matters or issues involved in the case.</p> <p>...ND R. Ct. Juv. P. Appendix A.</p>
<p>3. In Court - Active Participation in Hearings: <i>Appear in court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation into other needed areas, and undertake certain obligations post-disposition.</i></p>	<p>- (c) Rights and powers of a lay guardian ad litem.</p> <p>(1) Court Proceedings. A lay guardian ad litem must attend all court proceedings unless excused by the court and must testify when requested. Except as allowed under Rule 5(d), a lay guardian ad litem may not call a witness, question a witness, file a motion, or act as a legal advocate.</p> <p>(2) Interim Report. A lay guardian ad litem may submit an interim report and request a case status review. The interim report must be served on each party, who may serve and file a response within ten days after service of the report. The court may consider the interim report and any response without oral argument or evidentiary hearing. If the court finds grounds for a case status review, the court must set a hearing. ND R. Ct. Juv. P. 17.</p>
<p>4. Post-Hearing: <i>Review courts order, communicate order to child, and monitor</i></p>	<p>- (a) Mandatory Vacation of Order. An order of the court must be set aside if:</p> <p>(1) it appears it was obtained by fraud or mistake;</p> <p>(2) the court lacked jurisdiction over a necessary party or of the subject matter; or</p> <p>(3) newly discovered evidence so requires.</p>

<p><i>implementation of orders.</i></p>	<p>(b) Discretionary Modification.</p> <p>(1) Except an order terminating parental rights, or an order of dismissal, an order of the court may also be changed, modified, or vacated on the ground that changed circumstances so require in the best interest of the child.</p> <p>(2) An order terminating parental rights and the parent and child relationship may be vacated by the court on motion of the parent if the child is not placed for adoption and the person having custody of the child consents in writing to the vacation of the decree.</p> <p>(3) An order granting probation to a child found to be delinquent or unruly may be revoked on the ground that the conditions of probation have not been observed.</p> <p>(c) Motion for Relief. Any party to the proceeding, the director of juvenile court or other person having supervision or legal custody of or an interest in the child may move the court for the relief provided in this rule. The motion must set forth in concise language the grounds on which relief is requested.</p> <p>(d) Notice. Reasonable notice and an opportunity to be heard must be given to the child and the parent, guardian, or other custodian before the court may extend the duration of:</p> <p>(1) an order committing a delinquent or unruly child to the division of juvenile services;</p> <p>(2) an order placing a child in foster care; or</p> <p>(3) an order placing a child in detention or shelter care.</p> <p>(e) Hearing. After the motion is filed, the court must set a hearing and cause notice to be served on the parties. After the hearing, which may be informal, the court may deny or grant relief as the evidence warrants. ND R. Ct. Juv. P. 16.</p>
<p>5. Appellate Advocacy: <i>Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</i></p>	<p><i>No explicit requirements regarding GAL participation in appeals.</i></p>
<p>6. Cessation of Representation: <i>Contacts post representation, if any.</i></p>	<p>- Withdrawal of Services</p> <p>The lay guardian ad litem may not withdraw services unless there is good cause. Good cause may include conflict of interest or inability to provide competent, professional services. If the lay guardian ad litem must withdraw services for good cause, the lay guardian ad litem should try to do so in such a manner that does not adversely affect the best interests of the child.</p> <p>... ND R. Ct. Juv. P. Appendix A.</p>

	Organizational and Administrative Supports for the Child Representative
<p>7. General Representation Rules: <i>Administrative structure is clear for appointment, support and accountability of the CR. The child's representative is independent from the court</i></p>	<p>- The Guardian ad Litem must be recognized as an independent advocate and representative of the child. The lay GAL advocates for the best interests of the child (as found on http://www.ndguardian.net/guardians.html).</p> <p>- (d) Lay guardian ad litem review board.</p> <p>(1) Membership. The lay guardian ad litem review board consists of seven members: a chair appointed by the Chief Justice; one referee; one state's attorney; one parents' counsel; one representative from social services, one representative from juvenile court and one lay guardian. Board staff are one person from the guardian ad litem program and one person from the Court Administrator's office.</p> <p>(2) Terms. Board members are appointed by the Chief Justice for three-year terms and may serve no more than three consecutive three-year terms. Of the members initially appointed and as determined by lot at the first meeting, two will serve for one year, two will serve for two years, and three will serve for three years. Subject to the three term limit, each member is eligible for reappointment and serves until the member's successor is appointed.</p> <p>(3) Board Responsibilities. The board, through panels established under this rule, must receive and review complaints concerning the performance and conduct of lay guardians providing services under this rule.</p> <p>(4) Complaints - Procedure for Review.</p> <p>(A) All complaints must be submitted in writing to the chair of the board. The complaint must include facts underlying the complaint, must specify the misconduct that is the subject of the complaint, and must be signed by the complainant.</p> <p>(B) Upon receipt of a written complaint, the chair of the board must determine if the complaint is with regard to a pending case in which lay guardian ad litem services are being provided. If the complaint involves lay guardian ad litem conduct in a pending case, the chair must inform the complainant that the complaint may only be addressed before the court that is hearing the pending case, either by seeking removal of the lay guardian or by contesting the information or recommendation contained in the lay guardian ad litem's report or testimony. In pending cases, review of the complaint and communications with the complainant must be handled by the chair of the board in a manner that assures the judge or referee presiding in the case remains uninformed about the complaint. If the complaint concerns conduct unrelated to a pending case, the following procedures apply:</p>

(i) The chair of the board must review the complaint to determine whether the allegations, if true, have merit. If the allegations are determined to be without merit, the complaint will not be reviewed further and the chair must notify the complainant of the disposition.

(ii) If the chair of the board determines the allegations in the complaint, if true, have merit, the complaint must be referred to a three-member panel of the board appointed by the chair. The panel must provide a copy of the complaint to the lay guardian and request a written response from the lay guardian ad litem within 30 days of receipt of the request. The request must identify specific issues in the complaint to which the panel desires a response. The lay guardian ad litem must provide a copy of the response to the complainant. The panel may, as circumstances warrant, request that the complainant and the lay guardian ad litem meet with the panel to review the allegations in the complaint.

(5) Misconduct. In reviewing a complaint, the panel must consider whether the allegations in the complaint indicate any of the following forms of misconduct:

(A) failure to fulfill responsibilities required under Rule 17(c);

(B) violation of the code of conduct for lay guardians, which is included and incorporated in Rule 17 as an [appendix](#);

(C) misrepresentation of qualifications to serve as a lay guardian ad litem;

(D) violation of state or local laws or court rules; or

(E) taking or failing to take any other action that would reasonably place the suitability of the person to serve as a lay guardian ad litem in question.

(6) Findings and Dispositions. In considering the complaint and the lay guardian ad litem's written response, the panel must make findings regarding each of the specific issues in the complaint to which the panel requested a response. The findings must indicate that either there is no merit to the issue based on the lay guardian ad litem's response or that there is merit to the issue. The panel must determine whether the issues found to have merit indicate any form of misconduct identified under Rule 17(e)(4). The panel may take any of the following actions: issue a written reprimand, refer the lay guardian ad litem to additional training, require that the lay guardian ad litem be assigned a mentor for a specified period of time, or direct that the lay guardian ad litem be removed from the roster. The panel must take into consideration any prior complaints that resulted in the imposition of any of the

	<p>identified actions. The complainant and the lay guardian ad litem must be notified in writing of the panel's disposition of the complaint. If the panel directs removal from the roster, the panel may specify the manner and time frame within which the person may apply for placement at a later time on the roster.</p> <p>(7) Confidentiality. A complaint and any associated records are confidential unless the panel has determined under Rule 17(e)(5) that the complaint has merit. Confidential records may be disclosed only in response to a court order.</p> <p>(8) Time frames for Disposition. Complaints must be resolved within 25 days of receipt of the complaint if the complaint involves a pending case. All other complaints must be resolved within 120 days of receipt of the complaint. These time frames may be extended by the chair of the board upon a finding by the chair that good cause exists for an extension. ND R. Ct. Juv. P. 17.</p>
<p>8. Lawyer Training: <i>Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</i></p>	<p>- (e) Lay guardian ad litem training. The state court administrator must provide for regular training programs to satisfy the qualification requirements under Rule 17(a)(2) and (3). The state court administrator must provide for the development and maintenance of a lay guardian ad litem manual to serve as a resource for those providing services under Rule 17 and as a basis for lay guardian ad litem training programs. ND R. Ct. Juv. P. 17.</p> <p>- (a) Qualifications. Before a person is eligible for service as a lay guardian ad litem, the person must satisfy the following minimum qualifications:</p> <p>(1) Possess written credentials establishing that the person has:</p> <p>(A) a bachelor's degree, preferably in a human service, education or related field; or</p> <p>(B) an associate degree in an academic field related to child care, child development, or children's services and at least three years of experience in the delivery or supervision of child care or children's services, child development services, or in the education of children.</p> <p>(2) Complete a minimum of 18 hours of specialized lay guardian ad litem training;</p> <p>(3) Complete an additional 18 hours of approved guardian ad litem training every three years;</p> <p>(4) Possess communication skills necessary to successfully conduct an interview, prepare a written report, and make an oral presentation; and</p> <p>(5) Have no criminal conviction or substantiated instance of child abuse or neglect. ND R. Ct. Juv. P. 17.</p>
<p>9. Lawyer Compensation: <i>Adequate and timely</i></p>	<p>- Fees</p> <p>The lay guardian ad litem must charge a reasonable fee for the guardian's services commensurate with experience</p>

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<i>compensation, reimbursement provided expenses.</i>	and ability. The lay guardian ad litem must provide an accounting for time on each case and must make fees known to the parties in advance of providing services. ND R. Ct. Juv. P. Appendix A.
10. Caseload Levels: <i>Caseloads are of a manageable size.</i>	<i>No explicit legal authority or requirement.</i>