

MINNESOTA	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>	<p>- Appointment of counsel. Minn. Stat. § 260C.163, Subd. 3.</p> <p>(a) The child, parent, guardian or custodian has the right to effective assistance of counsel in connection with a proceeding in juvenile court as provided in this subdivision.</p> <p>(b) Except in proceedings where the sole basis for the petition is habitual truancy, if the child, parent, guardian, or custodian desires counsel but is unable to employ it, the court shall appoint counsel to represent the child who is ten years of age or older under section 611.14, clause (4), or the parent, guardian or custodian in any case in which it feels that such an appointment is appropriate if the person would be financially unable to obtain counsel under the guidelines set forth in section 611.17.</p> <p>(c) In any proceeding where the sole basis for the petition is habitual truancy, the child, parent, guardian, and custodian do not have the right to appointment of a public defender or other counsel at public expense. However, before any out-of-home placement, including foster care or inpatient treatment, can be ordered, the court must appoint a public defender or other counsel at public expense in accordance with this subdivision.</p> <p>(d) Counsel for the child shall not also act as the child's guardian ad litem.</p> <p>(e) In any proceeding where the subject of a petition for a child in need of protection or services is not represented by an attorney, the court shall determine the child's preferences regarding the proceedings, if the child is of suitable age to express a preference. Minn. Stat. § 260C.163, Subd. 3.</p> <p>(f) Court-appointed counsel for the parent, guardian, or custodian under this subdivision is at county expense. If the county has contracted with counsel meeting qualifications under paragraph (g), the court shall appoint the counsel retained by the county, unless a conflict of interest exists. If a conflict exists, after consulting with the chief judge of the judicial district or the judge's designee, the county shall contract with competent counsel to provide the necessary representation. The court may appoint only one counsel at public expense for the first court hearing to represent the interests of the parents, guardians, and custodians, unless, at any time during the proceedings upon petition of a party, the court determines and makes written findings on the record that extraordinary circumstances exist that require counsel to be appointed to represent a separate interest of other parents, guardians, or custodians subject to the jurisdiction of the juvenile court.</p> <p>(g) Counsel retained by the county under paragraph (f) must meet the qualifications established by the Judicial Council in at least one of the following: (1) has a minimum of two years' experience handling child protection cases; (2) has training in handling child protection cases from a course or courses approved by the Judicial Council; or (3) is supervised by an attorney who meets the minimum qualifications under clause (1) or (2).</p> <p>Subd. 5. Guardian ad Litem.</p>

	<p>(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 section 260C.007, subdivision 6, except proceedings where the sole allegation is that the child is a runaway or habitual truant. In any other case the court may appoint a guardian ad litem to protect the interests of the minor when the court feels that such an appointment is desirable. The court shall appoint the guardian ad litem on its own motion or in the manner provided for the appointment of a guardian ad litem in the district court. The court may appoint separate counsel for the guardian ad litem if necessary.</p>
<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>	<p>- A party shall have the right to: conduct discovery pursuant to Rule 17; bring motions before the court pursuant to Rule 15; participate in settlement agreements pursuant to Rule 19; subpoena witnesses pursuant to Rule 13 ...MN Judicial Branch, Judge's Juvenile Protection Benchbook, Standard 23.02.</p> <p>-A child who is the subject of the juvenile protection matter shall have the right to intervene as a party. R. Minn. Juv. Protection P. 23.01(1).</p> <p>- Guardian ad litem. ...</p> <p>(b) A guardian ad litem shall carry out the following responsibilities: (1) conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case; (2) advocate for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary; (3) maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child; (4) monitor the child's best interests throughout the judicial proceeding; and (5) present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based... Minn. Stat. § 260C.163, Subd. 5. MN Judicial Branch, Judge's Juvenile Protection Benchbook, Standard 23.01A &B.</p> <p>- In every family court and juvenile court case as defined in Rule 901.01 in which a guardian ad litem is appointed,</p>

	<p>the guardian ad litem shall:</p> <ul style="list-style-type: none"> (a) conduct an independent investigation to determine the facts relevant to the situation of the child or incompetent adult and the child's parent, legal custodian, or other household or family member, which must include, unless specifically excluded by the court: <ul style="list-style-type: none"> (i) reviewing relevant documents, which in the case of an adoption shall include the adoption study report and the post-placement assessment report, upon order of the court to the extent permitted by Minnesota Statutes § 259.53, subd. 3(b); (ii) meeting with and observing the child in the home setting and considering the child's or incompetent adult's wishes, as appropriate; and (iii) interviewing parents, caregivers, and others relevant to the case; (b) advocate for the best interests of the child or incompetent adult by participating in appropriate aspects of the case and advocating for appropriate community services when necessary; (c) maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child or incompetent adult; (d) monitor the best interests of the child or incompetent adult throughout the judicial proceeding; and (e) present written reports on the best interests of the child or incompetent adult that include conclusions and recommendations, and the facts upon which they are based. MN R. GAL Procedure in Juvenile & Family Court, R. 904.02. <p>- Subd. 1. Generally. In every case in which a guardian ad litem is appointed pursuant to Rule 903, the guardian ad litem shall have the rights set forth in clauses (a) to (d).</p> <ul style="list-style-type: none"> (a) The guardian ad litem shall have access to the child or incompetent adult including meeting with the child alone as deemed appropriate by the guardian ad litem; and shall have access to all information relevant to the child's or incompetent adult's and family's situation which is accessible under applicable state and federal laws. (b) The guardian ad litem shall be furnished copies of all pleadings, documents, and reports by the party which served or submitted them. A party submitting, providing, or serving pleadings, documents, or reports shall simultaneously provide copies to the guardian ad litem. (c) The guardian ad litem shall be notified of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the case. Timely notice of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the case shall be provided to the guardian ad litem by the party scheduling the proceeding. (d) The guardian ad litem shall have the right to participate in all proceedings through submission of written and oral reports, and may initiate and respond to motions. MN R. GAL Procedure in Juvenile & Family Court, R. 907.01.
3. <i>In Court - Active</i>	- A party shall have the right to:

Participation in

Hearings: *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.*

...

be present at all hearings unless excluded pursuant to [Rule 27](#);

conduct discovery pursuant to [Rule 17](#);

bring motions before the court pursuant to [Rule 15](#);

participate in settlement agreements pursuant to [Rule 19](#);

subpoena witnesses pursuant to [Rule 13](#);

make argument in support of or against the petition;

present evidence;

cross-examine witnesses...

[MN Judicial Branch, Judge's Juvenile Protection Benchbook, Standard 23.02.](#)

-A child who is the subject of the juvenile protection matter shall have the right to intervene as a party. [R. Minn. Juv. Protection P. 23.01\(1\).](#)

- In any permanency hearing, including the transition of a child from foster care to independent living, the court shall ensure that it consults with the child during the hearing in an age-appropriate manner. [Minn. Stat. § 260C.163, Subd. 1, \(e\).](#)

- A child who is the subject of a petition, and the parents, guardian, or legal custodian of the child have the right to participate in all proceedings on a petition, including the opportunity to personally attend all hearings. Official tribal representatives have the right to participate in any proceeding that is subject to the Indian Child Welfare Act of 1978, United States Code, title 25, sections 1901 to 1963... [Minn. Stat. § 260C.163, Subd. 2.](#)

- The minor and the minor's parent, guardian, or custodian are entitled to be heard, to present evidence material to the case, and to cross-examine witnesses appearing at the hearing. [Minn. Stat. § 260C.163, Subd. 8.](#)

- In any child in need of protection or services proceeding, neglected and in foster care, or termination of parental rights proceeding the court may, on its own motion or the motion of any party, take the testimony of a child witness informally when it is in the child's best interests to do so. Informal procedures that may be used by the court include taking the testimony of a child witness outside the courtroom. The court may also require counsel for any party to the proceeding to submit questions to the court before the child's testimony is taken, and to submit additional questions to the court for the witness after questioning has been completed. The court may excuse the presence of the child's parent, guardian, or custodian from the room where the child is questioned in accordance with [subdivision 7](#). [Minn. Stat. § 260C.163, Subd. 6.](#)

	<p>- The court may waive the presence of the minor in court at any stage of the proceedings when it is in the best interests of the minor to do so. In any proceeding, the court may temporarily excuse the presence of the parent or guardian of a minor from the hearing when it is in the best interests of the minor to do so. The attorney or guardian ad litem, if any, has the right to continue to participate in proceedings during the absence of the minor, parent, or guardian. Minn. Stat. § 260C.163, Subd. 7.</p>
<p>4. Post-Hearing: Review courts order, communicate order to child, and monitor implementation of orders.</p>	<p>- A party shall have the right to:</p> <p>...</p> <p>request review of the referee's findings and recommended order pursuant to Rule 7;</p> <p>request review of the court's disposition upon a showing of a substantial change of circumstances or that the previous disposition was inappropriate;</p> <p>...</p> <p>MN Judicial Branch, Judge's Juvenile Protection Benchbook, Standard 23.02.</p> <p>-A child who is the subject of the juvenile protection matter shall have the right to intervene as a party. R. Minn. Juv. Protection P. 23.01(1).</p>
<p>5. Appellate Advocacy: Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</p>	<p>- Every party and participant has the right to be represented by counsel in every juvenile protection matter, including through appeal, if any. R. Minn. Juv. Protection P. 25.01.</p>
<p>6. Cessation of Representation: Contacts post representation, if any.</p>	<p>- An attorney representing a party in a juvenile protection matter, including a public defender, shall continue representation until such time as:</p> <ol style="list-style-type: none"> 1. all proceedings in the matter have been completed; 2. the attorney has been discharged by the client in writing or on the record; 3. the court grants the attorney's ex parte motion for withdrawal; or 4. the court approves the attorney's ex parte written substitution of counsel. <p>If the court grants an attorney's ex parte motion for withdrawal, the withdrawing attorney shall serve upon all parties and the county attorney a copy of the order permitting withdrawal. MN Judicial Branch, Judge's Juvenile Protection Benchbook, Standard 23.16.</p> <p>- TERM OF SERVICE OF GUARDIAN AD LITEM</p> <p>Unless otherwise ordered by the court, upon appointment to a juvenile protection matter the guardian ad litem shall serve as follows:</p> <ol style="list-style-type: none"> 1. Reunification: 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.

2. Transfer of Permanent Legal and Physical Custody: 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.

3. Termination of Parental Rights: 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.

4. Long Term Foster Care: 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 Independent Living Plan required pursuant to [RJPP 37. MN Judicial Branch, Judge's Juvenile Protection Benchbook, Standard 23.03. R. Juvenile Protection Procedure, 26.03.](#)

- Subd. 1. A guardian ad litem appointed to serve in a particular case may be removed or suspended from the case only by order of the presiding judge. Removal or suspension may be upon initiation of the presiding judge or after hearing upon the motion of a party pursuant to subdivision 2 of this Rule.

Subd. 2. A party to the case who wishes to seek the removal or suspension of a guardian ad litem for cause must proceed by written motion before the judge presiding over the case. A motion to remove or suspend a guardian ad litem for cause shall be served upon the parties and the guardian ad litem and filed and supported in compliance with the applicable rules of court. At the time the motion is served, a copy of the motion and all supporting documents shall be provided to the district guardian ad litem manager by the party making the motion.

Subd. 3. The presiding judge shall remove a guardian ad litem from a particular case:

- (a) when it is shown by written communication from the district guardian ad litem manager or the manager's designee that the individual is a contract guardian ad litem who does not have a current contract with the State of Minnesota, or the guardian ad litem has been removed from the state program for cause; or
- (b) upon notice of any felony, gross misdemeanor, or misdemeanor conviction of the guardian ad litem of an offense involving children or domestic assault; or
- (c) upon notice of a finding by the Minnesota Department of Human Services of maltreatment of a child by the guardian ad litem.

Subd. 4. The presiding judge may remove or suspend a guardian ad litem from a particular case:

	<p>(a) for failure to comply with a directive of the court, including provisions of the order appointing the guardian ad litem; or</p> <p>(b) for failure to comply with the responsibilities set forth in these Rules; or</p> <p>(c) upon notice of formal sanction of the guardian ad litem by any professional or occupational licensing board; or</p> <p>(d) upon formal request from the district guardian ad litem program for good cause; or</p> <p>(e) for other good cause shown.</p> <p>As an alternative to removal or suspension from a specific case, the presiding judge may ask the district guardian ad litem manager to provide appropriate remedial action for the guardian ad litem. MN R. GAL Procedure in Juvenile & Family Court, R. 904.02.</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 Children's Justice Initiative (CJI) is a collaboration between the Minnesota Judicial Branch and the Minnesota Department of Human Services. These two state entities work closely with the CJI teams in each of Minnesota's 87 counties, comprised of juvenile court judges, child protection workers, county attorneys, attorneys for parents and children, court administrators, guardians ad litem, tribes, and other key stakeholders. The purpose of the collaboration is to enhance the processing of child protection cases in an effort to improve the outcomes for abused and neglected children. MN Judicial Branch, Judge's Juvenile Protection Benchbook, Standard 1.04.</p>
<p>8. Lawyer Training: <i>Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</i></p>	<p>(g) Counsel retained by the county under paragraph (f) must meet the qualifications established by the Judicial Council in at least one of the following: (1) has a minimum of two years' experience handling child protection cases; (2) has training in handling child protection cases from a course or courses approved by the Judicial Council; or (3) is supervised by an attorney who meets the minimum qualifications under clause (1) or (2).</p> <p>- Before a person may be recommended for service as a guardian ad litem pursuant to Rule 903, the person must satisfy the minimum qualifications set forth in the Guardian Ad Litem System Program Standards¹ as established by the Office of the State Court Administrator with the advice and consent of the Judicial Council. Those Program</p>

¹ The Guardian Ad Litem Program Standards are available on the Guardian Ad Litem Program page located on the Supreme Court public website: www.mncourts.gov.

[Standards](#) provide the following requirements:

A. Attend a minimum of (40) forty hours of pre-service training focused on child protection, termination of parental rights and adoption proceedings, and demonstrate a comprehension of the topics discussed during the training; the training must be approved by the Office of the State Court Administrator and must include, at a minimum:

1. Overview of Child Welfare system
2. Juvenile court statutes, rules, process and procedures;
3. Rules of Guardian ad Litem procedure;
4. Role of the GAL in juvenile protection matters;
5. Ethical, professional and unbiased behavior;
6. Report writing and courtroom skills;
7. Child development, attachment theory and impact of child abuse and family violence;
8. Importance of father involvement;
9. Cultural diversity and sensitivity, with special emphasis on the specific population that a GAL may potentially be working with (presentations by local representatives of racial and ethnic communities is strongly recommended);
10. Culture of poverty and impact on children and families;
11. Impact of alcohol and other drugs on children and families..
12. An orientation to the local program and local court and any expectations and requirements unique to that jurisdiction, including any additional training or preparation the program may require..

B. Indian Child Welfare Act Training

Individuals who may be assigned Indian Child Welfare Act (ICWA) cases must complete an additional (6) six hours of specialized training in the Indian Child Welfare Act. Said training must be reviewed and approved by the Office of the State Court Administrator. The training agenda must include a cultural expert from the tribe (s) and cover, at a minimum:

1. Historical overview of American Indian tribes in Minnesota, tribal sovereignty and the treatment of Indian children by the Federal and State government;
2. Current status of American Indian children in Minnesota's child welfare system;
3. History and overview of the Indian Child Welfare Act, including evidentiary standards;
4. History and overview of the Minnesota Indian Family Preservation Act;
5. Tribal eligibility and membership determinations of Indian child;

	<ol style="list-style-type: none"> 6. Types of ICWA cases; 7. Overview of prevailing cultural practices and tribal support systems with respect to child rearing and extended family care for specific tribes (this piece to be presented by local tribal cultural expert); 8. Notice requirements of ICWA; 9. Consent requirements under ICWA; 10. Intervention and transfers of jurisdiction; 11. Active efforts requirements to alleviate need to remove an Indian child and to rehabilitate the family after removal; 12. Qualifications for and Use of Qualified Expert Witnesses; 13. Placement preferences under ICWA; 14. “Good Cause” departures under ICWA <p>C. Domestic Violence Training</p> <p>In addition to the 40 hour pre-service training, within the first twelve (12) months of their service, every GAL shall also complete no less than (6) six hours of training on domestic and family violence. Said training must be approved by the Office of the State Court Administrator and must include, at a minimum:</p> <ol style="list-style-type: none"> 1. Statistics on family violence; 2. Risk factors and risk assessment in domestic violence cases; 3. Impact on children of family violence; 4. Co-occurrence of family violence and child maltreatment; 5. Research and/or presentations from advocates and service providers on Battering and Common Couple Violence; 6. Domestic abuse and OFP statutes; 7. Role of the GAL and guidelines for practice; 8. Ensuring safety for children and victims
<p>9. Lawyer Compensation: <i>Adequate and timely compensation, reimbursement provided expenses.</i></p>	<p>- Reimbursement: When an attorney or a guardian ad litem is appointed for a child or a child’s parent or legal custodian, the court may inquire into the ability of the parent or legal custodian to pay for the person’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 such fees. MN Judicial Branch, Judge’s Juvenile Protection Benchbook, Standard 9.15.</p>
<p>10. Caseload Levels:</p>	<p><i>No explicit legal authority or requirement.</i></p>

<i>Caseloads are of a manageable size.</i>	
--	--