

**TENNESSEE SUPREME COURT RULE 40: GUIDELINES FOR  
GUARDIANS AD LITEM FOR CHILDREN IN JUVENILE COURT  
NEGLECT, ABUSE AND DEPENDENCY PROCEEDINGS**

**(a) Application.**

These Guidelines set forth the obligations of lawyers appointed to represent children as guardians ad litem only in juvenile court neglect, abuse and dependency proceedings pursuant to T.C.A. § 37-1-149, Rules 37 of the Tennessee Rules of Juvenile Procedure, and Supreme Court Rule 13. By adoption of these guidelines it is intended that they not be applied to proceedings in other courts that involve child custody or related issues.

**(b) Definitions.**

As used in this Rule, unless the context otherwise requires:

- (1)** “Guardian ad litem” is a lawyer appointed by the court to advocate for the best interests of a child and to ensure that the child’s concerns and preferences are effectively advocated.
- (2)** “Child’s best interests” refers to a determination of the most appropriate course of action based on objective consideration of the child’s specific needs and preferences. In determining the best interest of the child the guardian ad litem should consider, in consultation with experts when appropriate, the following factors:
  - (i)** the child’s basic physical needs, such as safety, shelter, food, clothing, and medical care;
  - (ii)** the child’s emotional needs, such as nurturance, trust, affection, security, achievement, and encouragement;
  - (iii)** the child’s need for family affiliation;
  - (iv)** the child’s social needs;
  - (v)** the child’s educational needs;
  - (vi)** the child’s vulnerability and dependence upon others;
  - (vii)** the physical, psychological, emotional, mental, and developmental effects of maltreatment upon the child;
  - (viii)** degree of risk;
  - (ix)** the child’s need for stability of placement;
  - (x)** the child’s age and developmental level, including his or her sense of time;
  - (xi)** the general preference of a child to live with known people, to continue normal activities, and to avoid moving;
  - (xii)** whether relatives, friends, neighbors, or other people known to the child are appropriate and available as placement resources;

- (xiii) the love, affection and emotional ties existing between the child and the potential or proposed or competing caregivers;
- (xiv) the importance of continuity in the child's life;
- (xv) the home, school and community record of the child;
- (xvi) the preferences of the child;
- (xvii) the willingness and ability of the proposed or potential caretakers to facilitate and encourage close and continuing relationships between the child and other persons in the child's life with whom the child has or desires to have a positive relationship, including siblings; and
- (xviii) in the case of visitation or custody disputes between parents, the list of factors set forth in 36-6-106.

(c) **General Guidelines.**

- (1) The child is the client of the guardian ad litem. The guardian ad litem is appointed by the court to represent the child by advocating for the child's best interests and ensuring that the child's concerns and preferences are effectively advocated. The child, not the court, is the client of the guardian ad litem.
- (2) Establishing and maintaining a relationship with the child is fundamental to representation. The guardian ad litem shall have contact with the child prior to court hearings and when apprised of emergencies or significant events affecting the child. The age and developmental level of the child dictate the type of contact by the guardian ad litem. The type of contact will range from observation of a very young or otherwise nonverbal child and the child's caretaker to a more typical client interview with an older child. For all but the very young or severely mentally disabled child, for whom direct consultation and explanation would not be effective, the guardian ad litem shall provide information and advice directly to the child in a developmentally appropriate manner.
- (3) The obligation of the guardian ad litem to the child is a continuing one and does not cease until the guardian ad litem is formally relieved by court order. The guardian ad litem shall represent the child at preliminary, adjudicatory, dispositional and post-dispositional hearings, including the permanency plan staffings, court reviews, foster care review board hearings and permanency hearings. The guardian ad litem should maintain contact with the child and be available for consultation with the child between hearings and reviews. For a child who is very young or severely mentally disabled, the guardian ad litem should regularly monitor the child's situation through contacts with the child's caretakers and others working with the child and through periodic observations of the child.

(d) **Responsibilities and duties of a lawyer guardian ad litem.**

The responsibilities and duties of the guardian ad litem include, but are not limited to the following:

**(1) Conducting an independent investigation of the facts that includes:**

- (i)** Obtaining necessary authorization for release of information, including an appropriate discovery order;
- (ii)** Reviewing the court files of the child and siblings and obtaining copies of all pleadings relevant to the case;
- (iii)** Reviewing and obtaining copies of Department of Children's Services' records;
- (iv)** Reviewing and obtaining copies of the child's psychiatric, psychological, substance abuse, medical, school and other records relevant to the case;
- (v)** Contacting the lawyers for other parties for background information and for permission to interview the parties;
- (vi)** Interviewing the parent(s) and legal guardian(s) of the child with permission of their lawyer(s) or conducting formal discovery to obtain information from parents and legal guardians if permission to interview is denied;
- (vii)** Reviewing records of parent(s) or legal guardian(s), including, when relevant to the case, psychiatric, psychological, substance abuse, medical, criminal, and law enforcement records;
- (viii)** Interviewing individuals involved with the child, including school personnel, caseworkers, foster parents or other caretakers, neighbors, relatives, coaches, clergy, mental health professionals, physicians and other potential witnesses;
- (ix)** Reviewing relevant photographs, video or audio tapes and other evidence; and
- (x)** Engaging and consulting with professionals and others with relevant special expertise.

**(2) Explaining to the child, in a developmentally appropriate manner:**

- (i)** the subject matter of litigation;
- (ii)** the child's rights;
- (iii)** the court process;
- (iv)** the guardian ad litem's role and responsibilities;
- (v)** what to expect before, during and after each hearing or review;
- (vi)** the substance and significance of any orders entered by the court and actions taken by a review board or at a staffing.

**(3) Consulting with the child prior to court hearings and when apprised of emergencies or significant events affecting the child. If the child is very young or otherwise nonverbal, or is severely mentally disabled, the guardian ad litem should at a minimum observe the child with the caretaker.**

**(4) Assessing the needs of the child and the available resources within the family and community to meet the child's needs.**

**(5) Considering resources available through programs and processes, including special education, health care and health insurance, and victim's compensation.**

(6) Ensuring that if the child is to testify, the child is prepared and the manner and circumstances of the child's testimony are designed to minimize any harm that might be caused by testifying.

(7) Advocating the position that serves the best interest of the child by:

- (i) Petitioning the court for relief on behalf of the child and filing and responding to appropriate motions and pleadings;
- (ii) Participating in depositions, discovery and pretrial conferences;
- (iii) Participating in settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child;
- (iv) Making opening statements and closing arguments;
- (v) Calling, examining and cross-examining witnesses, offering exhibits and introducing independent evidence in any proceeding;
- (vi) Filing briefs and legal memoranda;
- (vii) Preparing and submitting proposed findings of facts and conclusions of law;
- (viii) Ensuring that written orders are promptly entered that accurately reflect the findings of the court;
- (ix) Monitoring compliance with the orders of the court and filing motions and other pleadings and taking other actions to ensure services are being provided;
- (x) Attending all staffings, reviews and hearings, including permanency plan staffings, foster care review board hearings, judicial reviews and the permanency hearing;
- (xi) Attending treatment, school and placement meetings regarding the child as deemed necessary.

(8) Ensuring that the services and responsibilities listed in the permanency plan are in the child's best interests.

(9) Ensuring that particular attention is paid to maintaining and maximizing appropriate, non-detrimental contacts with family members and friends.

(10) Providing representation with respect to appellate review including:

- (i) discussing appellate remedies with the child if the order does not serve the best interest of the child, or if the child objects to the court's order;
- (ii) filing an appeal when appropriate; and
- (iii) representing the child on appeal, whether that appeal is filed by or on behalf of the child or filed by another party.

**(e) Responsibilities and duties of a guardian ad litem when the child's best interests and the child's preferences are in conflict.**

(1) If the child asks the guardian ad litem to advocate a position that the guardian ad litem believes is not in the child's best interest, the guardian ad litem shall:

- (i) Fully investigate all of the circumstances relevant to the child’s position, marshal every reasonable argument that could be made in favor of the child’s position, and identify all the factual support for the child’s position;
  - (ii) Discuss fully with the child and make sure that the child understands the different options or positions that might be available, including the potential benefits of each option or position, the potential risks of each option or position, and the likelihood of prevailing on each option or position.
- (2) If, after fully investigating and advising the child, the guardian ad litem is still in a position in which the child is urging the guardian ad litem to take a position that the guardian ad litem believes is contrary to the child’s best interest, the guardian ad litem shall pursue one of the following options:
  - (i) Request that the court appoint another lawyer to serve as guardian ad litem, and then advocate for the child’s position while the other lawyer advocates for the child’s best interest.
  - (ii) Request that the court appoint another lawyer to represent the child in advocating the child’s position, and then advocate the position that the guardian ad litem believes serves the best interests of the child.
- (3) If, under the circumstance set forth in sub-section (b), the guardian ad litem is of the opinion that he or she must advocate a position contrary to the child’s wishes and the court has refused to provide a separate lawyer for the child to help the child advocate for the child’s own wishes, the guardian ad litem should:
  - (i) subpoena any witnesses and ensure the production of documents and other evidence that might tend to support the child’s position;
  - (ii) advise the court at the hearing of the wishes of the child and of the witnesses subpoenaed and other evidence available for the court to consider in support of the child’s position.
- (f) **Guardian ad litem to function as lawyer, not as a witness or special master.**
  - (1) A guardian ad litem may not be a witness or testify in any proceeding in which he or she serves as guardian ad litem, except in those extraordinary circumstances specified by Supreme Court Rule 8, § EC 5-9, 5-10 and DR 5-101.
  - (2) A guardian ad litem is not a special master, and should not submit a “report and recommendations” to the court.
  - (3) The guardian ad litem must present the results of his or her investigation and the conclusion regarding the child’s best interest in the same manner as any other lawyer presents his or her case on behalf of a client: by calling, examining and cross examining witnesses, submitting and responding to other evidence in conformance with the rules of

evidence, and making oral and written arguments based on the evidence that has been or is expected to be presented.

FOR THE COURT

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Frank F. Drowota, III  
Chief Justice