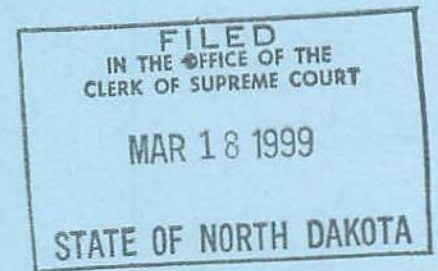


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IN THE SUPREME COURT

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STATE OF NORTH DAKOTA

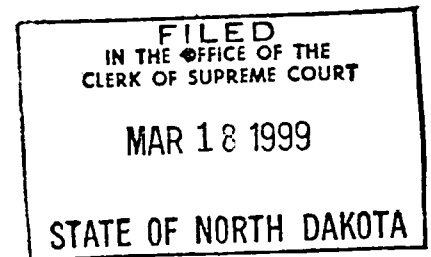


Proposed Amendments  
North Dakota Rules of Court

Submitted by the  
Joint Procedure Committee  
March 1999

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IN THE SUPREME COURT  
STATE OF NORTH DAKOTA



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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Joint Procedure Committee, )  
 ) PETITION FOR ADOPTION  
 ) OF N.D.R.Ct. 8.6 AND 8.7.  
 Petitioner. ) AND REPEAL OF N.D.R.Ct. 4.1  
 )  
 )

TO: The Supreme Court of the State of North Dakota:

The Joint Procedure Committee petitions the Supreme Court, under N.D.R.Proc.R. § 3, for its order adopting N.D.R.Ct. 8.6 and 8.7, and repealing N.D.R.Ct. 4.1, effective March 1, 2000. This petition is supported by the attached material containing a synopsis of the proposals and the proposed rules.

This petition is submitted in advance of the Joint Procedure Committee's annual rules package to provide more time between the date of adoption and the usual March 1, effective date for rule amendments. The lead time will be used for training people as custody investigators and guardians ad litem before the proposals become effective.

Dated March 17, 1999.

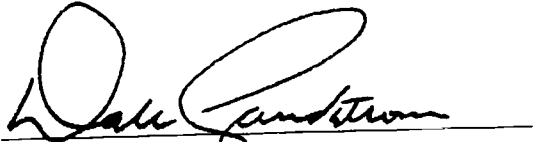
Members of the Joint Procedure Committee:

Honorable Donovan Foughty  
Honorable M. Richard Geiger  
Honorable Gail Hagerty  
Honorable Ronald L. Hilden  
Honorable Maurice R. Hunke  
Honorable Lawrence A. Leclerc

Professor Larry Kraft  
Mr. Lynn M. Boughey  
Mr. Michael R. Hoffman  
Mr. John C. Kapsner  
Mr. Daniel S. Kuntz  
Mr. Ronald H. McLean

Honorable David W. Nelson  
Honorable Mikal Simonson  
Honorable Kirk Smith

Ms. Patricia R. Monson  
Ms. Sherry Mills Moore  
Mr. James T. Odegard  
Ms. Cathy Howe Schmitz

A handwritten signature in black ink, appearing to read "Dale Sandstrom", written over a horizontal line.

Justice Dale V. Sandstrom  
Chair

## SYNOPSIS OF PROPOSED AMENDMENTS

Proposed N.D.R.Ct. 8.6 and 8.7 were drafted by the Joint Task Force on Family Law. Proposed N.D.R.Ct. 8.6 governs a lay guardian ad litem, appointed under N.D.C.C. § 14-09-06.3, which the rule refers to as a custody investigator. Proposed N.D.R.Ct. 8.7 governs a law-trained guardian ad litem appointed under N.D.C.C. § 14-09-06.4. The proposals are intended to replace existing N.D.R.Ct. 4.1.

The proposals distinguish between a lay guardian ad litem and a law-trained guardian ad litem by defining the qualifications, responsibilities and roles of each. Under Rule 8.6, preferred qualifications for a custody investigator include: 1) An Associate Degree in an academic field related to children or five years child care experience; 2) eighteen hours of specialized training; and 3) six hours of annual training.

A custody investigator is responsible for becoming knowledgeable about the child's and family's history and situation through observations, interviews, and by reviewing records and reports. A custody investigator is responsible for preparing and filing a written report regarding the child's best interests, and for recommending appropriate evaluations.

Finally, proposed Rule 8.6 limits the role of a custody investigator in court proceedings. A custody investigator may not call a witness, question a witness, file a motion, or act as a legal advocate.

Proposed N.D.R.Ct. 8.7 governs a law-trained guardian ad litem under N.D.C.C. § 14-09-06.4. To qualify as a guardian ad litem, a person must be a licensed North Dakota attorney, have eighteen hours of guardian ad litem training, and complete an additional eighteen hours of training every three years. A guardian ad litem must be appointed, if the court finds an appointment is necessary to protect the best interests of the child involved. The proposal lists factors for the court to consider in determining whether to appoint a guardian ad litem.

A guardian ad litem is responsible for advocating the best interests of the child as to legal custody, physical placement, visitation, and support. A guardian ad litem is not bound by the wishes of the child or others as to the best interests of the child. Investigation activities are to be coordinated with the custody investigator if there is one to avoid duplicating services.

Finally, a guardian ad litem is to protect the child through and in court proceedings. A guardian ad litem may apply for a court order to protect the child, to obtain temporary relief, to determine custody, or to determine visitation. A guardian ad litem is to act as an

attorney and fully participate in negotiations, pretrial procedures, and judicial 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.

A guardian ad litem is not expected to be frequently appointed. A custody investigator will be more commonly used. The Joint Procedure Committee recommends adoption of the proposals to define the qualifications, responsibilities, and roles of each.

1                   RULE 4.1 APPOINTMENT OF GUARDIAN AD LITEM [REPEALED]

2  
3           ~~In any action for an annulment, divorce, legal~~  
4 ~~separation, or otherwise affecting marriage, in which~~  
5 ~~the court has reason for special concern as to the~~  
6 ~~future welfare of the minor children, the court shall~~  
7 ~~appoint a guardian ad litem to represent such children.~~  
8 ~~If a guardian ad litem is appointed, the court shall~~  
9 ~~direct either or both parties to pay the fee of the~~  
10 ~~guardian ad litem, the amount of such fee shall be~~  
11 ~~approved by the court.~~

12  
13                   ~~EXPLANATORY NOTE~~

14                   Rule 4.1 was repealed, effective \_\_\_\_\_. Rule  
15 8.7 addresses guardians ad litem.



1 RULE 8.6 CUSTODY INVESTIGATORS

2  
3 (a) Preferred Qualifications. To qualify as a custody  
4 investigator under N.D.C.C. § 14-09-06.3, a person should:

5 (1) have an Associate Degree in an academic field  
6 related to child care or children's services, or have at least  
7 5 years of experience in the delivery or supervision of child  
8 care or children's services;

9 (2) have completed at least 18 hours of specialized  
10 custody investigation training;

11 (3) complete 6 hours of annual custody  
12 investigation training each year after receiving the 18 hours  
13 of specialized training;

14 (4) have the communication skills necessary to  
15 successfully conduct an interview, prepare a written report,  
16 and make an oral presentation;

17 (5) have no criminal conviction or substantiated  
18 instance of child abuse or neglect; and

19 (6) have certification as a custody investigator by the  
20 presiding judge of the district where the proceeding is  
21 pending.

22 (b) Investigatory Responsibilities. A custody  
23 investigator shall:

24 (1) become knowledgeable about the child's and family's  
25 history and present situation by reviewing the court file;  
26 reviewing records and reports, including medical, law  
27 enforcement, psychological, psychiatric, and educational

28 records and reports; and researching information about any  
29 related criminal or child protection proceeding,  
30 investigation, or allegation;

31 (2) obtain necessary authorizations for release of  
32 information;

33 (3) interview, as appropriate, social workers and  
34 probation officers to obtain background and current  
35 information regarding the child and family;

36 (4) interview, as appropriate, service providers (i.e.  
37 teachers, psychologists, psychiatrists, doctors, nurses,  
38 neighbors, and others) who are knowledgeable about the child's  
39 and family's past and present situation;

40 (5) interview, as appropriate, the child's parents  
41 and siblings, and the people with whom the child resides or  
42 may reside, and other people who are significant in the  
43 child's daily life;

44 (6) meet and observe the child in a manner consistent  
45 with the child's developmental capabilities;

46 (7) observe, as appropriate, parent and child  
47 interaction;

48 (8) prepare a written report regarding the child's best  
49 interests, including conclusions and recommendations and the  
50 facts upon which they are based;

51 (9) file the written report with the court and serve it  
52 on the parties at least 30 days prior to the hearing; and

53 (10) recommend, as appropriate, psychological  
54 evaluations, psychiatric evaluations, physical evaluations,

55 parenting evaluations, chemical dependency evaluations, or  
56 other evaluations.

57 (c) Court Proceedings. A custody investigator shall  
58 attend all court proceedings and shall testify when requested.  
59 A custody investigator may not call a witness, question a  
60 witness, file a motion, or act as a legal advocate.

61 (d) Post Investigation Duties. The custody  
62 investigator, by order of the court, may assist in custody and  
63 visitation issues after submission of the report.

64  
65 EXPLANATORY NOTE

66 Rule 8.6 was adopted, effective \_\_\_\_\_.

67 SOURCES: Procedure Committee Minutes of  
68 \_\_\_\_\_.

1                                    RULE 8.7 GUARDIAN AD LITEM

2  
3            (a) Qualification. To qualify as a guardian ad litem  
4 under N.D.C.C. § 14-09-06.4, a person must be an attorney  
5 licensed in the state of North Dakota.

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

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

17            (1) whether there is an allegation of sexual abuse;

18            (2) whether there is an allegation of domestic violence  
19 resulting in serious bodily injury or involving the use of a  
20 dangerous weapon;

21            (3) whether there is an allegation of a pattern of  
22 domestic violence occurring within a reasonable time proximate  
23 to the proceeding resulting in a reasonable fear for the  
24 safety of a party or the minor child;

25            (4) whether the child has special needs;

26            (5) whether the child has, at any time, been placed in  
27 foster care, or in the home of a third party;

28           (6) whether there is an allegation the child is in an  
29 unstable environment;

30           (7) whether there has been repeated post-decree  
31 litigation involving custody or visitation issues;

32           (8) whether the interests of the child and either or  
33 both parents are in substantial conflict;

34           (9) whether a guardian ad litem could provide the court  
35 with significant information not otherwise available or likely  
36 to be presented by the parents; and

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

39           (d) Responsibilities of Guardian ad Litem.

40           (1) A guardian ad litem shall be the attorney for the  
41 child and advocate the best interests of the child as to legal  
42 custody, physical placement, visitation, and support. A  
43 guardian ad litem shall function independently, in the same  
44 manner as an attorney for a party to the action, and,  
45 consistent with the Rules of Professional Conduct, shall  
46 consider, but not be bound by, the wishes of the child or  
47 others as to the best interests of the child.

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

49           (A) work with a custody investigator, if  
50 appointed, to coordinate investigation activities  
51 and avoid duplicating services;

52           (B) interview and observe the child to ascertain  
53 the facts relevant to custody, the child's wishes,

54 the need for independent evaluation, and the need  
55 for and appropriateness of interim judicial relief;  
56 (C) advise the child and the child's parents of  
57 the role and responsibilities of the guardian ad  
58 litem;  
59 (D) interview potential witnesses, lay and expert,  
60 with relevant knowledge of the child or parties;  
61 and  
62 (E) participate in meetings impacting the life of  
63 the child, including permanency planning meetings  
64 and other activities as may be directed by the  
65 court.

66 (3) A guardian ad litem may apply for a court order to  
67 protect the child, to obtain temporary relief, to determine  
68 custody, or to determine visitation.

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

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

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

78 (7) A guardian ad litem shall observe all statutes,  
79 rules, and regulations concerning confidentiality. A guardian  
80 ad litem may not disclose or participate in the disclosure of

81 information to any person who is not a party to the case,  
82 except as necessary to perform the guardian ad litem duties or  
83 as may be specifically provided by law.

84 (e) Court Proceedings. A guardian ad litem may present  
85 a case, cross-examine a witness, deliver a summation, prepare  
86 a memorandum of law, file a motion, and file or participate in  
87 an appeal on issues involving the best interests of the child.  
88

89 EXPLANATORY NOTE

90 Rule 8.7 was adopted, effective \_\_\_\_\_.

91 SOURCES: Procedure Committee Minutes of

92 \_\_\_\_\_.