

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER OF ADOPTION
Supreme Court No. 990081

Amendments to N.D. Rules of Court

[¶1] On March 18, 1999, the Joint Procedure Committee filed a Petition for the adoption of proposed amendments to the North Dakota Rules of Court, specifically the adoption of Rules 8.6 and 8.7 and the repeal of Rule 4.1. Notice was provided under Section 7, N.D.R.Proc.R., and a hearing was held on the proposed amendments on Wednesday, April 28, 1999. At that time, any written comments received were also submitted to the Court. The Court considered the matter, and

[¶2] ORDERED, that the proposed amendments to Rules 8.6 and 8.7, North Dakota Rules of Court, as further amended by the Court, are adopted effective March 1, 2000.

[¶3] IT IS FURTHER ORDERED, that the proposed amendments repealing Rule 4.1, North Dakota Rules of Court, are adopted effective March 1, 2000.

[¶4] Dated at Bismarck, North Dakota, this 18th day of June, 1999.

[¶5]

Gerald W. Vanle Wall, C.J.
Lucas Ranning Kapsner
Dale Gustafson
May Muehlen Marwig
William [Signature]

1 RULE 4.1 APPOINTMENT OF GUARDIAN AD LITEM [REPEALED]

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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.~~

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13 EXPLANATORY NOTE

14 Rule 4.1 was repealed, effective March 1, 2000.
15 Rule 8.7 addresses guardians ad litem.

1 RULE 8.6 CUSTODY INVESTIGATORS

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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 been designated as a custody investigator by
20 the 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.

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65 EXPLANATORY NOTE

66 Rule 8.6 was adopted, effective March 1, 2000.

67 The Supreme Court anticipates making the qualifications
68 for a custody investigator mandatory, and will review the
69 matter one year after the effective date of this rule.

70 SOURCES: Procedure Committee Minutes of September 24-25,
71 1998, pages 8-15.

1 RULE 8.7 GUARDIAN AD LITEM

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

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89 EXPLANATORY NOTE

90 Rule 8.7 was adopted, effective March 1, 2000.

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

94 SOURCES: Procedure Committee Minutes of September 24-25,
95 1998, pages 8-15.