



MINNESOTA GUARDIANS MAY SOON HAVE AMENDED RULES

Proposed amendments to the Rules for Guardians ad Litem are now before Minnesota Supreme Court for review, according to Mark Toogood of the State Guardian Ad Litem Program. He expects proposed amendments to be offered for public comment sometime this spring.

The thrust of the amendments is to delete administrative provisions relating to the qualifications, training, and supervision of guardians, as those issues are now covered in a policies and procedures manual put out by the Office of the State Court Administrator. The proposals also fine-tune existing rules governing guardians' work in cases.

Some Minnesota custody cases have guardians appointed for the children. Some do not.

Judges are required to appoint a guardian if there are allegations in the custody case that the child has been abused or neglected, if a requested adjudication of nonpaternity would leave the child without a legal father, and in other appropriate circumstances.

Frequently, the Court will want the guardian to identify a child's needs and interests when one or both of the parents are highly adversarial, mentally ill or otherwise unable advocate for their own child. It may expect recommendations from the guardian pertinent to a final decision in the case. It may also expect the guardian to take or recommend steps to improve the child's situation while the

case is pending or in the future after the decision is made.

Guardians can be helpful. They can also be controversial. Judges tend to give a guardian's view great weight.

Several years in Minnesota set out to improve its system of guardians in both juvenile and family court. All of the guardians were required to take the same training and keep taking additional training every year. An administrator for each county assigned the guardian to a particular case rather than having the judge on the case make the selection. Each county monitored the work of the guardians used within the county. These new requirements were set out in the Minnesota Rules of Guardians ad Litem along with other provisions intended to ensure consistent quality in guardians across the state.

Last July the Office of the State Court Administrator became the overseer of the all guardians throughout the state.

Some of the proposed amendments directly impact family law cases.

If approved, the proposals would apply not only to guardians of a minor child, but also to guardians appointed on behalf of an impaired adult or a minor parent. Rule 17.02 of the Minnesota Rules of Civil Procedure permits a guardian for these types of individuals if they do not have a representative such as a conservator legally appointed to represent their interests.

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Checklist For The Upcoming Two Months

 Provide/obtain end of the term report cards.

 Get ready to file tax returns. Need the forms for claiming dependency exemptions? See www.irs.gov and www.taxes.state.mn.us/

 Find out when spring parent-teacher conferences occur and what dates and times might work for both households.

 Confirm spring break and Easter parenting time schedules.

 Start thinking and talking about kids' summer plans.

MOVIE REVIEW:

GRAVE OF THE FIREFLIES

Animation often suggests children's themes and entertainment. Not so for Grave of the Fireflies a Japanese anime produced by Ghibli in 1988, sometimes described as the greatest antiwar film ever made.

The story is simple. A teenage boy Seita and his young sister Setsuko are orphaned when bombing during World War II kills their mother. They seek help from their aunt in another town, telling her that their mother is in a local hospital. This is Seita's white lie to protect his sister from the pain of loss. As food rations become tighter, the aunt exploits the children by diverting most of their rations to her family. The aunt's patience with her sister's recovery grows short and Seita has to reveal the truth. The aunt becomes so outraged at the burden she now faces that Seita and Setsuko leave her home.

With no place to belong, the children wander and finally find a cave to house them. They set up housekeeping as best they can. At night, fireflies delight them and provide warmth and light for their dark home. But a firefly's life is short and the delight ends in the morning when they lie on the cave floor, dead. Seita pillages for food in the nearby town during air raids, eating as he goes along gathering the food. Slowly but surely Setsuko — who hides in the cave alone while her brother is gone — is dying from starvation. Seita does not recognize that Setsuko is showing increasingly severe symptoms of malnutrition.

He believes he is providing adequately for her, and he is too proud to ask anyone to help them.

When Setsuko dies, Seita leaves the cave. Then the Japanese surrender, the war is lost, and all of Japan is thrown into even greater deprivation. Seita is overwhelmed with grief and remorse until he too dies, one of the homeless trying to find refuge in a railroad station.

The film is beautiful. It captures the children's sense of wonder and resilient capacity to enjoy the world around them. Yet these imaginative visual messages to us are starkly contrasted by the horrifying vulnerability of the children when adults do not attend to their needs. Even the preoccupation of war, doesn't seem to excuse the conduct.

Only one adult in the film responds directly to the children's needs, and that is the police officer who refuses to arrest Seita when a farmer catches him stealing vegetables from the fields. One is outraged by the niggardliness of the farmer. Yet, the children's aunt seems the most reprehensible. At least she could have provided the children a home and let them eat their own rations. At best she could have shared her own food supplies and provided emotional warmth and comfort. What a difference it could have made to the children to have nurturing from the aunt instead of competition and rejection.



**LIVE SO THAT
WHEN YOUR
CHILDREN THINK
OF FAIRNESS,
CARING AND IN-
TEGRITY, THEY
THINK OF YOU."**

H. Jackson Brown, Jr.

SHOULD ATTORNEYS BE GUARDIANS FOR MINOR CHILDREN IN ANY FAMILY LAW CASE ?

Ten years ago many of the guardians ad litem for minor children in Minnesota family law cases were attorneys. Today, very few are attorneys due to a policy of the Office of the State Court Administrator that a guardian may not serve in a jurisdiction in which he/she also appears before the Court representing parties.

Should attorneys ever serve as guardians? The American Bar Association recently approved standards of practice for lawyers representing children in custody cases which answer this question "Yes" but with qualifications. The full text of the A.B.A standards appears at www.abanet.org/family/.

The A.B.A. Standards define two roles that lawyers may have as appointed representatives of children's interests in custody cases. One is as the "Child's Attorney." The other is as a "Best Interests Attorney."

In the role as Child's Attorney, a lawyer is in an attorney-client relationship with the child. The child sets the objectives of the representation. The lawyer is guided by the child's decisions.

A Best Interests Attorney independently investigates and advocates for the child's best interests as a lawyer. The child's communications to a Best Interest can be used, if proven by other evidence, but otherwise cannot be revealed. (In contrast, the child's communications to a Child's Attorney are completely confidential.)

A lawyer cannot be both a Child's Attorney and a Best Interests Attorney in the same case.

A key clarification made by the ABA standards is that on either role, the attorney not create evidence in the form of a report or recommendation. The attorney does not have the role of a witness. Instead, each type of lawyer carries out their function by presenting witnesses and other evidence, and by cross-examining witnesses.



The Standards contemplate that the Court would appoint someone else to do what we in Minnesota commonly call a custody or parenting time study which comes into evidence with the evaluator appearing as a witness, and making recommendations for the ultimate decisions that the Court will include in its order.

In addition, the ABA standards are not consistent with either the Child's Attorney or the Best Interests

Attorney continuing in a monitoring or coaching role vis-à-vis the parents before or after the resolution of a legal controversy.

The Standards set the stage for thoughtful and conceptually clean efforts to evaluate the roles of parenting time helpers that one frequently sees in Minnesota custody cases, e.g.: non-lawyer guardians, custody and parenting time evaluators, therapists, parenting time expeditors, parenting coordinators and consultants, family counselors, reunification counselors, parenting coaches and the like.

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Cont'd: Amended Guardian Rules

Another proposed amendment clarifies that a guardian is not a custody or parenting time evaluator, mediator, arbitrator, parenting time expediter, or the attorney for the child.

Under the proposal, the guardian is still required to conduct an independent investigation but the language "to determine the facts relevant to the child or incompetent adult and the family" is added. The guardian is still directed to advocate for the ward's best interests, by amendment, "by participating in appropriate aspects of the case and advocating for appropriate community services when necessary."

Other responsibilities listed in the proposed amendment relate to confidentiality, monitoring the ward's best interests, and making a written report consisting of conclusions, recommendations and the facts on which they are based (previously oral reports were permitted).

The proposed amendments prohibit any ex-parte communication between the guardian and the Court except as to procedural matters. The current rules permit substantive communications between the guardian and the Court

in the process of the parties on in writing with copies to the parties or their attorneys.

Few amendments are proposed to the rules on the Guardian's rights. Some are made to comply with new date privacy rules and considerations. The most significant change is that all guardians, whether designated a party or not, have the right to initiate and respond to motions.

The proposed rules still permit the guardian to be specifically designated as a party to the proceeding, which would permit a guardian to request for modifications and bring post-trial motions and appeals. Any of these acts taken by the guardian without an attorney representing him/her "shall not constitute the unauthorized practice of law." However, a guardian who is also a party has the right to legal counsel.

Finally, the proposed amendments set the procedure and criteria for the Court to remove or suspend a guardian.