

**MILLE LACS BAND**

**GUARDIAN AD LITEM**

**RULES**



Judicial Branch

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RULES FOR GUARDIAN AD LITEM  
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**MILLE LACS BAND  
RULES FOR GUARDIAN AD LITEM**

**I. PURPOSE STATEMENT:**

The purpose of the Guardian ad Litem Rules is to provide standards governing the qualifications, recruitment, screening, training, selection, appointment, supervision, evaluation, responsibilities, and removal of Guardians ad Litem appointed to make recommendations for the best interests of the child in children, family, and juvenile court cases.

**II. MINIMUM QUALIFICATIONS FOR A GUARDIAN AD LITEM**

- A. Minimum Qualifications: Before a person may be recommended for service as a Guardian ad Litem the person must satisfy the following minimum qualifications:
1. Have an abiding interest in children and their rights and needs;
  2. Have sufficient listening, speaking, and writing skills to successfully conduct interviews, prepare written reports, and make oral presentations;
  3. Not have been involved in any conduct or activity that would interfere with the person's ability to discharge the duties assigned by the court;
  4. Have knowledge and an appreciation of the ethnic, cultural, and socio-economic backgrounds of the Mille Lacs Band of Ojibwe;
  5. Be knowledgeable about and appreciative of the child's religious background and racial or ethnic heritage, and sensitive to the issues of cultural and socio-economic diversity;
  6. Shall apply the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties;
  7. Be knowledgeable about the Indian Child Welfare Act (ICWA), the Minnesota Indian Family Heritage Preservation Act, and the Mille Lacs Band Family Protection Act;
  8. Be available for at least twelve (12) months and have sufficient time, including evenings and weekends, to gather information, make court appearances, and otherwise discharge the duties assigned by the Court;
  9. Have the ability to (1) relate to a child, family members, and professionals in a careful and confidential manner; and (2) exercise sound judgment and good common sense;
  10. Have a valid drivers license and show proof of insurance (*If in the case of medical or physical condition and/or other extenuating circumstance, a contractor cannot drive their own vehicle then an alternative and approved method of reliable transportation must be documented.*);

11. Have satisfactorily completed the 40 hour pre-service training requirement as conducted by an approved and accredited Guardian ad Litem trainer, and demonstrated a comprehension of the responsibilities of Guardians ad Litem as set forth in the current Rules for Guardian ad Litem Procedure. (*Experienced Guardians ad Litem will not be required to have the 40 hour pre-service training if they have served as a Guardian ad Litem in Minnesota within the last 4 years and can show proof of having received the 40 hours of Guardian ad Litem training.*);
  12. Any combination of training and work experience that constitutes possession of the knowledge, abilities and skills listed above; and
  13. Have a high school diploma/GED; and completed some post-secondary education.
- B. Background Checks: Candidates for a contract for Guardian ad Litem service must satisfactorily pass Criminal, BCA, Law Enforcement, and Driving History checks and will be asked to consent to a social services maltreatment record check.
1. Background checks will be conducted as part of the initial screening for new Guardian ad Litem's as well as periodically throughout the contractor Guardian ad Litem's term of service.
  2. Guardian ad Litem contractor candidates with unsatisfactory background checks or non-compliance with the background check procedure will not be offered contracts for service.
  3. An unsatisfactory background check of existing Guardian ad Litem contractors is grounds for termination of contract.
- C. Knowledge Abilities and Skills: Candidates for Guardian ad Litem contracts must, at a *minimum*, meet all of the requirements outlined above. In addition, candidates with the following skills are more likely to be chosen for Guardians ad Litem contracts:
1. Knowledge of the juvenile and family judicial process, rules and laws.
  2. Knowledge of the objectives, philosophy, policies and procedures of the state and/or Mille Lacs Band Guardian ad Litem Program.
  3. Knowledge of the issues and dynamics that surround juvenile and family cases.
  4. Knowledge, awareness and understanding of addictions i.e. chemical, gambling etc.
  5. Knowledge of the dynamics of child development.
  6. Knowledge of cultural diversity issues and an ability to demonstrate culturally competent interactions.
  7. Ability to interview using required techniques.
  8. Ability to make objective recommendations in the best interests of the child.
  9. Ability to gather report and interpret information in a non-threatening, unbiased manner.
  10. Ability to create and maintain accurate, complete, and up-to-date files and case logs.

11. Ability to effectively and objectively communicate at all levels both orally and in writing. (i.e. effective communication with children, families, courts and other professionals).
12. Ability to write clear, concise, grammatically correct, professional reports and/or correspondence.
13. Ability and willingness to use/learn related computerized software programs and applications.
14. Maintain professional standards for appearance, work ethics, and demeanor.

### **III. GUARDIANS AD LITEM AS INDEPENDENT CONTRACTORS**

- A. Reimbursement: Parameters of pay levels, hiring processes, promotion processes, and reimbursement for expenses will be a matter determined by Court Administration. The Office of Management and Budget (OMB) will approve contracts in accordance with Mille Lacs Band procurement laws.
- B. Status of a Guardian ad Litem-Independent Contractor Guardians ad Litem:
  1. Are not employees of the Mille Lacs Band;
  2. Must have a signed and approved contract with the Mille Lacs Band in order to perform their work;
  3. Are not guaranteed work; and
  4. Are not eligible for vacation, sick and holiday pay, medical and dental insurance, overtime compensation, or worker's compensation, or any other expense unless that expense is an extraordinary expense and is pre-approved, in writing, by the OMB and the Court Administrator.
- C. Steps toward consideration for a contract:
  1. **Step 1.** Prospective contractors shall complete and submit to the Court a packet containing:
    - a. Guardian ad Litem Contract Application;
    - b. Signed Background Check form(s);
    - c. Names and addresses of professional or Guardian ad Litem references; and
    - d. Proof of certification as a trained Guardian ad Litem, or of trainee status, if available.
  2. **Step 2.** Once an initial contract offer has been made, the prospective contractor shall provide the Court Administrator the following items:
    - a. Proof of successful completion of Guardian ad Litem training;
    - b. Proof of 8 hours of annual continuing education, where relevant;

- c. References (three);
  - d. Copy of valid Driver's License and/or documentation of approved transportation method;
  - e. Proof of car insurance, if applicable.
3. **Step 3.** Once the background and reference checks and other requirements have been satisfactorily completed, the contract offer can be made and the contract signed and effectuated following standard OMB contracting procedures.
- D. Guardian ad Litem Hourly Rate
- 1. As independent contractors, Guardians ad Litem will **not be** reimbursed for expenses incurred in the performance of their normal duties.
  - 2. Guardians ad Litem will be reimbursed at an **inclusive** hourly rate for time spent conducting Guardian ad Litem work.
  - 3. The Court Administrator shall establish the inclusive hourly rate.
- E. Transportation and Mileage “Windshield Time”
- 1. Guardian ad Litem contractors will **not be** reimbursed for mileage incurred while conducting Guardian ad Litem work.
  - 2. Contractors **will be** reimbursed their hourly wage for the reasonable and necessary "windshield time" spent driving in the course of conducting Guardian ad Litem work.
  - 3. The Court Administrator reserves the right to determine if travel time on a case exceeds the expectation that travel time be both reasonable and necessary.
- F. Expenses: As independent contractors, Guardians ad Litem **will not** be reimbursed for expenses incurred in the performance of their normal duties. If the contractor Guardian ad Litem is aware of an upcoming extraordinary expense (e.g. a necessary overnight trip to visit a child at a distant treatment facility; payment for a court transcript, etc.) then they shall seek prior written approval of the Court Administrator to incur the expense.
- G. Billable Hours and Invoicing: Guardians ad Litem must be prepared to explain their work and the Court Administrator may decline payment for activities deemed frivolous or excessive.
- 1. Billable Hours Allowed: Guardian ad Litem contractors will be paid at an agreed upon hourly rate for time spent delivering Guardian ad Litem work (see Duties in Section VII. of Contract). Hours billed that are deemed reasonable and necessary include the following:
    - a. Reviewing court files;
    - b. Writing reports;
    - c. Interviewing children, families and/or collateral contacts;

- d. Case related phone calls;
  - e. Court appearances;
  - f. Case related meetings, case conferences, team screenings, and various staffings;
  - g. Program related meetings and staffings, i.e. monthly Guardian ad Litem meeting, other mandated meetings, etc.;
  - h. Windshield time;
  - i. Providing or receiving mentoring as required by the Guardian ad Litem Rules and as arranged by the Court Administrator; and
  - j. Completing monthly invoice (as approved by the Court Administrator).
2. Billable Hours Not Allowed: Guardian ad Litem contractors are expected to conduct their business in an efficient and cost effective manner. The Court will not pay Guardian ad Litem contractors for services or time spent on such things as:
- a. Work deemed outside of the contractor Guardian ad Litem duties and general scope of responsibility, or not otherwise reasonable, necessary, and satisfactorily completed.
  - b. Time incurred obtaining ongoing education or training. The contractor Guardian ad Litem is responsible for acquiring, and maintaining, the necessary education and other requirements needed to enter into a contract with the Mille Lacs Band for Guardian ad Litem services. The Court will **not** reimburse Guardian ad Litem contractors for time spent driving to or from education/training activities, including the pre-service training, nor will the contractor be paid for hours spent in training. *(However, each Court Guardian ad Litem program is encouraged to actively seek and promote educational opportunities throughout the year at minimal or no cost to all Guardian ad Litem contractors.)*
  - c. The Court is not obligated to pay invoices, either in part or in whole, for services found unsatisfactory or performed in violation of Mille Lacs Band Statutes, federal, or state law, rule or case law or for hours that were not reasonably and necessarily incurred.
- H. Benchmarks: The billable time required to complete Guardian ad Litem responsibilities will be determined on a case-by-case basis. There are no established benchmarks to determine how much time needs to be spent on each Guardian ad Litem duty. Failure to perform all of the responsibilities may compromise the best interests of the child and may lead to removal from a case and/or removal from the Approved List of Guardians ad Litem.
- I. Billing Procedure: Submitting invoices and case activity logs.
- 1. The Guardian ad Litem contractor shall submit to the Court Administrator:
    - a. An invoice detailing all hours expended;
    - b. Case activity logs for services performed on each case;

- c. An invoice for any approved expenses; and
    - d. On or before the 7th day of the month following the month in which the services were performed. If the 7th day of the month falls on a weekend or holiday, the invoice vouchers shall be due the following regular business day.
  - 2. The Court Administrator will review the invoices and case activity logs then sign them as approved for payment.
  - 3. Approved invoices will be submitted to the Office of Management and Budget (OMB) for payment. The OMB will keep paper copies of the approved invoices for auditing purposes consistent with Finance Policy.
- J. Guardian ad Litem Contract Reviews: To determine whether services rendered follow the guidelines set forth in these Policies and Procedures, Guardians ad Litem will undergo annual contract reviews by the Court Administrator and/or Guardian ad Litem Coordinator with input from (the) presiding judge(s).
  - 1. The service for which the Court is contracting with the contractor Guardian ad Litem is the provision of professional quality information gathering and presentation on behalf of the best interests of those children to whom the Guardian ad Litem is appointed.
  - 2. Each appointment is a work order authorizing the contractor to expend a reasonable work effort.
  - 3. Guardian ad Litem contractors shall have their work, and work products, reviewed periodically throughout the year.
  - 4. Contract reviews may consist of informal and formal reviews of their performance, written work, understanding and mastery of Guardian ad Litem roles and responsibilities, and professional relationships.
  - 5. Contract review proceedings may include but are not limited to the following methods:
    - a. Written input from area professionals working with the contractor Guardian ad Litem;
    - b. Observation of the contractor's performance in conducting their work, i.e. home-visits, court appearances etc.;
    - c. Review of contractor's written work, i.e. reports to the court; and
    - d. Review of on-going education, professional development.
- K. Performance improvement plans: Should the recommendations of a Guardian ad Litem contract review suggest a need for an improvement in performance but not immediate removal from a list, such a plan shall be incorporated into the regular duties and responsibilities of that Guardian ad Litem. Failure to comply with the requirements developed in such a plan will result in termination of the contract or non-renewal of the contract, and removal from the approved Guardians ad Litem list.

#### L. Records Management Policies

1. Finance Records: The Contractor must keep, and make available upon request, "all books, records, and documents relevant to this contract for a minimum period of six years from the termination of this contract." By law, these materials are subject to examination by the contracting department and the Office of Management and Budget (OMB). In light of the possibility of a financial audit, we strongly recommend the Contractor Guardian ad Litem keep sufficient documentation to support the invoicing submitted to the Mille Lacs Band for services rendered.
2. Minimally, the Contractor Guardian ad Litem should keep copies of their Activity logs and Invoices submitted for payment. In addition, the Contractor Guardian ad Litem may wish to keep other supporting documentation sufficient to support the invoicing practices of the contractor. It is the responsibility of the Contractor to store the above records in a secure and safe place such that the records are preserved.
3. Case Records: The Contractor Guardian ad Litem shall turn their case file, including their case notes, over to the Court Guardian ad Litem program upon dismissal by the court from the case. The Court Guardian ad Litem program shall keep and destroy files in compliance with Mille Lacs Band policy on case file retention.
4. All documentation and records must be protected from unauthorized disclosure or damage.

#### IV. MAINTAINING AN APPROVED LIST OF GUARDIANS AD LITEM

- A. Recruitment: The recruitment of persons to apply for Guardian ad Litem positions shall be announced to the general public annually. Court Administration shall post announcements.
- B. Application Process: Any person who desires to become a Guardian ad Litem and meets the minimum requirements shall be required to submit a completed Guardian ad Litem application accompanied by references and a signed release of information authorization sufficient to enable the Court to check into the applicant's background and qualifications. (See *Steps toward consideration for a contract* above.)
- C. Screening Process: Before an applicant is approved by the Court for inclusion on an Approved List of Guardians ad Litem maintained by the Court Administrator:
  1. the written application shall be reviewed;
  2. the applicant shall be interviewed;
  3. the applicant's references shall be contacted;
  4. a criminal history and personal background check shall be completed; and
  5. the Court Administrator shall be contacted to determine if the applicant has been removed from the Approved List for cause.

D. Maintaining an Approved List: The Court Administrator shall maintain an Approved List of the current Guardians ad Litem and shall keep the Court updated as to the names on the Approved List. To be included on the Approved List, a Guardian ad Litem shall satisfy the minimum qualifications set forth in these Rules.

E. Affirmation; Prior to performing the responsibilities of a Guardian ad Litem, the Guardian ad Litem shall sign a written affirmation of the oath as follows:

*As a Guardian ad Litem for the Mille Lacs Band of Ojibwe, I swear to uphold the laws of the Mille Lacs Band of Ojibwe and perform my duties as set forth in the Guardian ad Litem Policies and Procedures. I swear to engage in respectful communication when performing these duties and to be objective in my conclusions. I understand that as a Guardian ad Litem I am not a therapist, a caseworker, nor an attorney and shall refer to the appropriate professional for input if there is a question or need which is not within the boundaries or scope of Guardian ad Litem duties. I pledge that I am not an activist for a political party or cause and will not use this position to advance any political agenda nor will I make referrals to private business for personal gain. I accept the responsibilities as Guardian ad Litem and will only exercise my authority to make recommendations to the court for the best interests of the child.*

F. Six months of mentoring under an experienced Guardian ad Litem is required prior to service as a fully independent contractor. (*Experienced Guardians ad Litem are not required to have 6 months of mentoring with the Mille Lacs Band, however, their work may be carefully scrutinized by the Court Administrator and/or Guardian ad Litem Coordinator in the first months of service in order to maintain consistency throughout the program.*)

## **V. SUPERVISION AND EVALUATION OF GUARDIANS AD LITEM; REMOVAL FROM APPROVED LIST**

- A. Support, advice, and Supervision: The Court shall be responsible to provide support, advice, and supervision to Guardians ad Litem serving in the program.
- B. Performance Evaluation: The Court shall investigate the performance of Guardians ad Litem serving the Mille Lacs Band. The investigation shall be objective in nature and shall include a review of the cases assigned to the Guardian ad Litem; a review of the Guardian ad Litem's compliance with the Rules; inquiries to judges presiding over cases in which the Guardian ad Litem was appointed; a review of complaints filed against the Guardian ad Litem, if any; follow-up background checks, if warranted; and such other information as may have come to the attention of the Court.
- C. Removal from Approved List: On the basis of a performance investigation or other justifiable cause, the Court shall determine whether to retain the Guardian ad Litem on the Approved List of Guardians ad Litem. In appropriate cases, as an alternative to removal from the Approved List of Guardians ad Litem, the Guardian ad Litem may agree to attend additional training. The Court may take other action deemed appropriate.

- D. Should the Court decide that a Guardian ad Litem assigned to a particular case is not acting in the best interests of the child, that Guardian ad Litem may be removed from that case but not removed from the Approved List of Guardians ad Litem.
- E. Training requirements and fiscal year: Once a Guardian ad Litem is on an Approved List of Guardians ad Litem, the Guardian ad Litem may maintain that Approved listing only by annually completing eight hours of continuing education.
- F. The continuing education requirement shall begin in the calendar year following the year in which the Guardian ad Litem is first listed. Each Guardian ad Litem must have and maintain ongoing documentation of successful completion of at least 8 hours of applicable required continuing education credits annually.
- G. The complaint process: (See section IX. COMPLAINTS AND LIABILITIES)

## **VI. AUTHORITY AND POWERS OF THE GUARDIAN AD LITEM ESTABLISHED**

- A. Appointment: When the Court determines that a Guardian ad Litem is needed to make recommendations based on the best interests of the child, a separate court order appointing a Guardian ad Litem shall be issued.
- B. Factors to be Considered in Selection of Guardian ad Litem for a Case: All pertinent factors shall be considered in the identification and selection of the Guardian ad Litem to be appointed, including:
  - 1. The expertise of each available Guardian ad Litem;
  - 2. The caseload of each available Guardian ad Litem;
  - 3. Whether a conflict of interest exists regarding the case; and
  - 4. Such other circumstances as may reasonably bear upon the matter.
- C. Discovery Authority: The Guardian ad Litem has the authority to obtain all information necessary to make recommendations based on the best interests of the child. The Guardian ad Litem shall:
  - 1. Receive copies of and view confidential material. Including but not limited to: HIPAA (Health Insurance Portability and Accountability Act of 1996) regulated files, school records, psychological evaluations, police records, etc.;
  - 2. View court files from Minnesota district courts according to Rule 10 of Minnesota Statutes on Court Procedures;
  - 3. View court files from other Tribal Courts;
  - 4. View files from district courts outside of Minnesota;
  - 5. Obtain confidential information by interviewing persons connected to and/or working with the child;

6. Attend meetings, staffings, IEP's (Individual Education Plan meetings), etc involving children for whom the Guardian ad Litem is appointed; and
  7. Have access jurisdiction and rights to discovery for any and all case files involving each enrolled Mille Lacs Band members for whom that Guardian ad Litem is appointed.
- D. Best Practices: A Guardian ad Litem may present a copy of their Orders Appointing to obtain access to confidential files, however best practices are to have signed authorizations in compliance with HIPAA regulations or complying with the policies and procedures of the provider of information before requesting a special court order to overcome a dispute in releasing information.
  - E. Guardians ad Litem work independently.
  - F. Guardians ad Litem will work in association with social services, treatment facilities, probation offices, police, etc.
  - G. Guardian ad Litem recommendations shall be made independent of the authority of the various agencies involved.
  - H. Guardians ad Litem are bound by the Mille Lacs Band Rules for Guardian ad Litem procedure as well as all relevant statutes and court rules and should generally conduct themselves in accordance with recognized codes of professional conduct and ethics.

## **VII. DUTIES AND RESPONSIBILITIES**

- A. General Responsibilities: A Guardian ad Litem will carry out the following responsibilities and duties regarding the best interests of the child. The actions of a Guardian ad Litem include various duties and responsibilities:
  1. For the best interest of the child. The Guardian ad Litem shall:
    - a. Make recommendations based on the best interests of the child;
    - b. Take into account the child's age, maturity, and culture and monitor his or her interest over a period of time;
    - c. Request that clear and specific orders be entered for the evaluation, assessment, services and treatment of the child and the child's family;
    - d. Seek cooperative resolution to the child's situation within the scope of the child's interest and welfare and within the abilities of the identified parties;
    - e. Inform individuals contacted in a particular case about the role of the Guardian ad Litem;
    - f. Be knowledgeable about and appreciative of the child's religious background and heritage, and sensitive to the issues of cultural and socio-economic diversity, and shall apply the prevailing social and cultural standards of the community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties;

- g. Maintain communication with the child so that he or she is aware of and understands the role of the Guardian ad Litem;
  - h. Explain the court proceedings to the child in language and terms appropriate to the child's age and maturity level; and
  - i. Have sufficient contact with the child to ascertain the best interests of the child.
2. Regarding discovery. The Guardian ad Litem's fact finding role shall be limited as follows:
- a. To objectively collect data and provide that information to the court;
  - b. Review relevant documents;
  - c. Meet with and observe the child in the home setting and considering the child's wishes, as appropriate;
  - d. Interview parents, caregivers, and others with knowledge relevant to the case;
  - e. Attend various team-type meetings which call for information to be provided by the Guardian ad Litem; and
  - f. Take notes regarding phone calls and meetings attended on behalf of the child.
3. As a party to a case. The Guardian ad Litem shall:
- a. Treat all individuals with dignity and respect while carrying out responsibilities;
  - b. Appear at all hearings to speak to the child's best interests, providing testimony where needed;
  - c. Present only verifiable facts not conjecture, hear-say, or opinion unless noted as such;
  - d. As appropriate to the case, make written and/or oral reports to the Court with recommendations and the facts upon which they are based;
  - e. Provide written reports of findings and recommendations to the Court five to ten (5-10) days in advance to assure that all relevant facts are before the Court in order to timely render a sound decision;
  - f. Maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by the Order of Appointment to promote cooperative solutions that are in the best interests of the child;
  - g. Comply with all applicable laws regarding the reporting of child abuse and/or neglect. (Mille Lacs Band Statute, Title 8 Children & Families, Chapter 5, and the Minnesota Statutes on Child Abuse.);
  - h. When necessary, seek specific directions from the Court;
  - i. Ensure that the appropriate appointment and discharge documents are filed with the Court and in a timely manner;

- j. Monitor implementation of service plans and dispositional orders to determine whether or not services ordered by the Court are actually provided in a timely manner and directed toward the desired goal;
  - k. Inform the Court promptly if services are not being made available to the child and/or family, services are not achieving their intended purpose, or new developments or violations require a modification of services; and
  - l. Use the Guardian ad Litem appointment and authority appropriately to advocate for the best interests of the child, avoid any impropriety or appearance of impropriety, and not use the position for personal gain.
4. As a case file administrator. The Guardian ad Litem shall:
- a. Maintain all case files for any and all cases which Guardian ad Litem has been appointed;
  - b. Maintain notes from phone calls, meetings, etc;
  - c. Maintain copies of documents which support the facts presented in reports and recommendations;
  - d. Keep all records, notes, or other case information confidential and in safe storage; and
  - e. At the conclusion of service, the Guardian ad Litem shall submit notes and records in accordance with the requirements of the Court.
5. As a professional team member. The Guardian ad Litem shall:
- a. Exercise independent judgment, gather information, participate as appropriate in negotiations, and monitor the case, which activities must include, unless specifically excluded by the Court;
  - b. Complete work in a timely manner and distribute (or cc) copies of necessary documents to the various parties;
  - c. Advocate for timely court reviews and judicial intervention, if necessary;
  - d. Be knowledgeable about community resources for placement, treatment, and other necessary services;
  - e. Complete continuing education requirements;
  - f. Offer input for the child's best interests in all other legal, mental health, educational, and community systems;
  - g. Share personal views only when "opinion" is requested; and
  - h. Any formal documentation or informal presentation of that opinion must be qualified as an "opinion" not as a matter of indisputable fact.
6. Written and Verbal Reporting: The Guardian ad Litem will provide the Court with both written and oral reports, as required.

- a. Written Reports: The Guardian ad Litem shall prepare written reports in a format and manner prescribed by the Court. Written reports are to be submitted to the Court in accordance with Court policy prior to any hearing.
  - i. Copies of the written report are to be sent to the Social Worker, the Solicitors Office and the Attorney(s) for respondent parents and all parties of record not later than five (5) days in advance of hearings.
  - ii. In addition to reports prepared for court hearings, written reports may be submitted whenever it is determined by the Guardian ad Litem that information discovered that significantly impacts the welfare and safety of the child, and/or the continued implementation of the plan.
  - iii. Written reports submitted by the Guardian ad Litem are subject to cross-examination.
- b. Verbal Reports: The Guardian ad Litem will be requested to provide verbal reports during Court proceedings, at any hearing subsequent to appointment.
  - i. Verbal reports may occasionally be in lieu of written reports.
  - ii. The Guardian ad Litem may be subpoenaed to testify by any of the parties and may be cross-examined during such testimony.

#### **VIII. PROFESSIONAL BOUNDARIES AND LIMITS OF THE Guardian ad Litem ESTABLISHED**

- A. Inappropriate Guardian ad Litem Actions: The provision of direct services to the child or the child's parents is generally beyond the scope of the Guardian ad Litem's responsibilities.
- B. Therefore, except in special circumstances, the Court should not order the Guardian ad Litem, and the Guardian ad Litem should not undertake, to provide such direct services.
- C. Providing such direct services could create a conflict of interest and/or cause a child or family to become dependent upon the Guardian ad Litem for services that should be provided by other agencies or organizations.
- D. The Guardian ad Litem may locate and recommend services for the child and family, but should not deliver direct services.
- E. Specifically, a Guardian ad Litem should not:
  1. Provide "counseling" or "therapy" to a child or parent;
  2. Foster a friendship or "big brother/big sister" relationship with a child or parent by inviting the child or parent into the home of the Guardian ad Litem, routinely entertain the child or parent at the movies, or giving money or gifts to the child or parent;
  3. Give legal advice or hire an attorney for the child or parent;
  4. Supervise visits between the child and parent or third parties, except as ordered by the Court;
  5. Routinely provide transportation for the child or parent, except as ordered by the Court;

6. Provide child care services for the child;
7. Make placement arrangements for the child or remove a child from the home;
8. Provide a "message service" for parents to communicate with each other;
9. Make unqualified recommendations or offer input beyond the scope of that Guardian ad Litem's area of expertise or training.
10. Engage in case managing in conflict with any parties involved.

## **IX. COMPLAINTS AND LIABILITIES**

### **A. Making Complaints:**

1. Complaints filed with the court regarding the contractor's performance in carrying out their contracted duties pursuant to the Guardian ad Litem Rules shall be investigated and handled in accordance with Mille Lacs Band policy and procedure.
2. The Court Administrator shall, whenever possible and appropriate, utilize the informal complaint procedure for resolving conflict or complaints that center on the contractor Guardian ad Litem's performance and shall in all events give the contractor Guardian ad Litem an opportunity to respond, as per the complaint procedure, to any complaints made against them.
3. **COMPLAINT STANDARD:** A party who wishes to file a formal complaint concerning the performance of a Guardian ad Litem in a Court proceeding must meet all the following criteria:
  - a. Hold party status in the proceeding in which the Guardian ad Litem was appointed;
  - b. Submit complaint in writing to the Court;
  - c. File complaint at any time during the case, and no later than 30 days from the date of issuance of the Guardian ad Litem violated; and
  - d. The final order or discharge of the Guardian ad Litem on the proceeding in question;
  - e. Specify the alleged malfeasance of duty, i.e., the specific rule, law or ethical responsibility that specifies whether or not the alleged malfeasance of duty was brought to the attention of the Court.

### **B. Guardian ad Litem Liabilities:**

1. **Liability:** The Mille Lacs Band will not be liable for damages to a contractor's personal or real property while the contractor is performing their Guardian ad Litem duties.
2. The Guardian ad Litem shall assume liability for any client or case-related party or participant transported in their personal vehicle and holds the Mille Lacs Band harmless for so doing.

3. **Work-related Injuries:** The Court is not responsible for injuries that occur in the performance of the contract. The contractor is not eligible for worker's compensation through the Mille Lacs Band Guardian ad Litem program.
  4. **Indemnification:** The contractor Guardian ad Litem enjoys broad immunity from personal lawsuits under Minnesota case law provided they are performing within their normal duties as a Guardian ad Litem. (An independent Guardian ad Litem contractor may consider taking out a personal liability policy.)
  5. Mille Lacs Band has jurisdiction over all liability cases involving Guardians ad Litem appointed by the Mille Lacs Band Tribal Court.
- C. Response to Complaints: The Court will respond to complaints in the following manner:
1. The Court will promptly respond to a written complaint.
  2. Recommendations made by the Guardian ad Litem may be reviewed by the Court Administrator and/or the Guardian ad Litem Coordinator
  3. A complaint about a Guardian ad Litem who is no longer on the Guardian ad Litem Approved List will not be investigated unless that Guardian ad Litem reapplies.
  4. Disciplinary actions will occur first by an informal process through Court Administration. Should this fail to resolve the issue, a formal hearing may be held in Tribal Court.
  5. A Guardian ad Litem who is named on a complaint found to have merit may also be subjected to the following actions:
    - a. Removed from the Approved List of Guardians ad Litem;
    - b. Recommended resolve between the Guardian ad Litem and the party of the issuing the complaint;
    - c. Replace the current Guardian ad Litem with another Guardian ad Litem (with or without disciplinary actions) so the case may proceed in the best interests of the child;
    - d. Recommend further training in the area of concern as specified in the complaint.
- D. Guardian ad Litem Response to a Complaint: The Guardian ad Litem will respond to complaints in the following manner:
1. The Guardian ad Litem will respond by presenting existing evidence that they have acted in the best interests of the child.
  2. The Guardian ad Litem shall not divert from focus on the child and become embroiled in arguments with a complainant.
  3. An investigation shall be conducted wherein the Court Administrator and/or the Guardian ad Litem Coordinator shall provide for a defense of the accused Guardian ad

Litem if necessary or make determinations on the status of that Guardian ad Litem on the Approved List.

4. Should the Guardian ad Litem be found to be at fault or in poor judgment, the reports and recommendations of that Guardian ad Litem may be removed from court records and a new Guardian ad Litem may be appointed to review the case and make recommendations on the best interests of the child.
5. The Guardian ad Litem may be asked to agree to a Performance Improvement Plan in order to remain on the Approved List of Guardians ad litem.

## **X. BASIS FOR QUALIFIED RECOMMENDATIONS**

- A. Determining the best interests of the child: Professional recommendations need to be gathered from professionals who are qualified to make those recommendations. A Guardian ad Litem cannot generate recommendations beyond the scope of their qualifications.
- B. Considering the Child's Wishes: The role of a Guardian ad Litem is to help determine the best interests of the child. Such recommendations may or may not conflict with the wishes of the child. The wishes of the child may be considered regarding the matters that are before the Court, however, careful interviewing techniques must be used. (i.e.: Directly asking the child for a custody preference is not recommended as it places the child in the position of choosing between two parents.)
  1. Factors to consider when acquiring the child's wishes: If the Court implements the child's expressed preference, the child may feel guilty or may feel that the other parent has been betrayed. Questions should be open ended and the Guardian ad Litem should be prepared to listen carefully. The Guardian ad Litem should use discretion in deciding whether to communicate those wishes to the Court, and/or to the child's parents.
  2. Depending upon a number of factors, including the child's age, culture, maturity, emotional stability, and ability to reason, communicate, and understand, the Guardian ad Litem must be prepared to provide input regarding an appropriate course of action. This may include:
    - a. Simply listening to and considering the child's wishes;
    - b. Listening and reporting the child's wishes to the Court, if appropriate;
    - c. Reporting the child's wishes to the Court even if the Guardian ad Litem considers them not in the child's best interests; or
    - d. Requesting the Court to appoint independent legal counsel for the child for the purpose of representing and advocating for the child's wishes.

C. Making Recommendations: Recommendations made by the Guardian ad Litem shall adhere to guidelines in order for them to be plausible and legitimate. Recommendations are to be:

1. Based on factual evidence;
2. Focused on the best interests of the child;
3. Practical regarding resources available to parents and social service agencies; and
4. Directed to orders for which the Court has legal jurisdiction.

D. Recommendations cannot be:

1. Beyond the professional qualifications of the Guardian ad Litem;
2. Beyond the jurisdiction of the Court;
3. Punitive or disciplinary to the child;
4. Punitive or disciplinary to any of the parties involved;
5. Focused on conflicts between the Guardian ad Litem and other parties;
6. Based on a Guardian ad Litem's unqualified diagnosis, prognosis, or prescriptions;
7. Based on favors to any of the parties or outside interests;

E. Recommendations may:

1. Have emphasis on or agreement with an existing, professionally qualified, recommendation;
2. Be modified by discussion in court;
3. Not demand final decisions. A Guardian ad Litem provides information for the Judge so the Court may render their decisions.

NOTE: These rules can not anticipate every circumstance or question about Guardian Ad Litem program, however as the program continues to evolve, the Court Administrator or Chief Justice reserves the right to revise, supplement or rescind any policies or portion of the rules from time to time as it deems appropriate to better serve the program and the best interest of the child. Guardians Ad Litem will be notified of such changes to the rules as soon as it is feasible.