

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 2005

In the Matter of the Adoption of Rule 106,)
Uniform Rules for District Courts of the)
State of Wyoming)

~~IN THE SUPREME COURT~~
STATE OF WYOMING
FILED

JUN 15 2005


JUDY PACHECO, CLERK

ORDER *NUNC PRO TUNC* ADOPTING RULE 106, UNIFORM RULES FOR DISTRICT COURTS OF THE STATE OF WYOMING

This matter came before the Court by direction of the Board of Judicial Policy and Administration (Board). The Board, pursuant to Chapter 237, 2005 Wyoming Session Laws, reviewed Rule 106, proposed by the District Judges Conference, and recommended approval to this Court. The Court deems it necessary and proper to adopt Rule 106, Uniform Rules for District Courts of the State of Wyoming, it is therefore

ORDERED that Rule 106, Uniform Rules for District Courts of the State of Wyoming, a copy of which is attached hereto, be adopted and shall be effective, per legislative mandate, on July 1, 2005. It is further

ORDERED that this order shall be published in the advanced sheets of the Pacific Reporter and the Wyoming Reporter and thereafter be spread at length upon the journal of this Court.

DATED this 14TH day of June, 2005.

BY THE COURT:



WILLIAM U. HILL
Chief Justice

Rule 106. Attorney guardians ad litem; representation standards for appointments in juvenile court and termination of parental rights.

(a) *Applicability.* These standards set forth the obligations of attorneys appointed by judges to represent the best interest of children as attorney guardians ad litem in child protection cases under W.S. §§ 14-3-101 through 14-3-440, children in need of supervision cases under W.S. §§ 14-6-401 through 14-6-440, or termination of parental rights actions brought as a result of child protection or children in need of supervision actions under W.S. §§ 14-2-308 through 14-2-319 and for an attorney appointed to serve only as a guardian ad litem in a delinquency action pursuant to W.S. § 14-6-216. Attorneys appointed as attorney guardians ad litem requesting payment pursuant to Chapter 237, 2005 Session Laws of Wyoming, are required to have successfully met the training requirements as established by the Board of Judicial Policy and Administration in conformance with this rule. Nothing herein shall be applied in a way that limits or compromises the child's right to counsel as outlined in a delinquency action. These standards shall apply to all attorney guardians ad litem appointed in juvenile court cases unless the court expressly modifies them in the appointment order. All attorneys appointed pursuant to this rule shall be in good standing with the Wyoming State Bar.

(b) *Role of attorney guardian ad litem.* This rule adopts the National Association of Counsel for Children (NACC) Recommendations for Representation of Children in Abuse and Neglect Cases "Attorney Guardian *ad Litem* Hybrid Model."¹ This model provides an attorney to represent the child and instructs the attorney to represent the child's "best interests." The attorney guardian ad litem advocates for a result which he/she believes (not necessarily what the child believes) is in the child's "best interests." Rather than taking direction from the client, as is the case in traditional attorney representation of adults, the attorney guardian ad litem is charged with forming the client's position by using his/her own judgment. Under this model, the attorney guardian ad litem's judgment as to the child's "best interests" takes precedence over the client's wishes. This is the model referred to whenever "attorney guardian ad litem" is set forth herein.

(1) The attorney guardian ad litem is required to consider the child's wishes and preferences when determining the child's best interests, but he or she is not bound by them as in the traditional attorney-client relationship. If the attorney guardian ad litem determines that the child's expressed preference is not in the best interests of the child, both the child's wishes and the basis of the attorney guardian ad litem's disagreement must be presented to the court.

(2) When justice requires, the court may appoint an attorney to represent the child and a different individual to serve as the guardian ad litem. Age and maturity of the child should be relevant factors in the court's consideration.

(3) Unless otherwise specified by order of the juvenile court, an attorney for the child appointed pursuant to the "Child Protective Services," W.S. § 14-3-211, the "Child Protection Act," W.S. § 14-3-416, or the "Children in Need of Supervision Act," W.S. § 14-6-416, or termination of parental rights actions brought as a result of child protection or children in need of supervision actions under W.S. §§

14-2-308 through 14-2-319 shall also serve as guardian ad litem and represent the best interests of the child as an attorney guardian ad litem.

(4) An attorney guardian ad litem is not a special master and may not be a witness or testify in any proceeding in which he or she serves as guardian ad litem.

(c) *Best interest.* Refers to a determination of the most appropriate course of action based on objective considerations of the child's specific needs and preferences.

(d) *General responsibilities of guardian ad litem.*

(1) Notwithstanding any additional conditions imposed by order of the court, an attorney guardian ad litem in a juvenile court case shall possess the knowledge and training necessary to perform the court appointment and shall be subject to all of the rules and standards of the legal profession.

(2) An attorney guardian ad litem appointed pursuant to this rule shall specifically:

(A) Establish and maintain competence of the applicable legal and ethical standards, including relevant court rules, federal and state law, case law, agency rules and regulations and local practice;

(B) Be familiar with recognized standards and best practice procedures in child welfare, protection and juvenile matters, including those set forth in the American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (1996) and NACC Recommendations for Representation of Children in Abuse and Neglect Cases;

(C) Be familiar with the dynamics of domestic violence, how they may affect children and their parents or caregivers, and how to determine if they exist in a particular case;

(D) Conduct a full and independent case investigation in a timely manner, which shall include, at a minimum:

(i) Obtaining information about the child and the circumstances that led to the filing of the petition, which shall include obtaining copies of all pleadings and relevant notices;

(ii) Where appropriate, meet with and observe the child's interaction with the caregivers, which may include meeting with and observing the child at home or in placement;

(iii) Personally interview the child if deemed appropriate by the guardian ad litem and dependant on the child's age and capabilities.

(E) Insofar as is practical, counsel the child concerning the subject matter of the litigation, the attorney's role, the child's rights, the possible outcomes of each proceeding, and the consequences of the child's participation or lack of participation;

(F) Identify appropriate family and professional resources for the child and be familiar with the knowledge of experts and their possible input and role in the cases;

- (G) Participate in depositions, negotiations, discovery, pretrial conferences, multi-disciplinary team meetings and hearings, including review hearings;
- (H) The attorney must advocate for timely resolution and permanent resolution (absent compelling reasons to the contrary) of the case;
- (I) Recommendations will remain independent and should take into consideration cost impacts and savings of potential service options, with an emphasis on services most likely to preserve families and avoid out-of-home placement, when appropriate;
- (J) Determine whether the child should attend hearings by considering the impact the hearing will have on the child and the child's ability to understand what is occurring;
- (K) After the hearings, review the court's orders to ensure the written orders conform to the court's oral orders, as well as comply with statutorily required findings and notices;
- (L) Monitor the implementation of the case and/or permanency plan, the court's orders and communicate with the responsible agencies; and
- (M) Recognize that 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 or the court terminates its jurisdiction over the child.

(e) *Qualifications and caseloads.*

(1) Before a person may be appointed to serve as an attorney guardian ad litem pursuant to this rule, the person must satisfy certain minimum qualifications in addition to training requirements set forth by the Board of Judicial Policy and Administration.

(2) In order to ensure that attorneys have adequate time to provide the investigation and advocacy necessary to secure appropriate outcomes for dependent children and their families, an attorney appointed pursuant to this rule shall maintain a reasonable caseload and, in no event, should an attorney who serves as a full-time attorney in juvenile court cases, including as an attorney guardian ad litem or attorney for children, have more than 65 juvenile cases.ⁱⁱ

This is a base-level standard and should be taken into consideration by attorneys in managing their caseloads.

(f) *Training.* Courts should appoint from the ranks of qualified attorneys. Appointments should not be made without regard to prior training or practice. Competence requires relevant training and experience. Attorneys appointed as guardians ad litem pursuant to this rule shall be subject to all of the rules and standards of the legal profession.

(1) *Initial training.* A lawyer shall not be qualified for an initial appointment pursuant to this rule unless the lawyer has received, since July 1, 2003, ten (10) or more hours of child related training accredited by the Wyoming State Bar, or the attorney otherwise provides evidence acceptable to the State Court Administrator that he or she has recent training, experience, or both, which is reasonably

equivalent. Attorneys handling ongoing cases as attorney guardians ad litem on the effective date of this rule shall meet the initial ten (10) hours of training requirement on or before December 31, 2005, in order to qualify for reimbursement in accordance with Chapter 237, 2005 Session Laws of Wyoming, for any work performed in the ongoing case on or after July 1, 2005. Work performed prior to the effective date of this rule does not qualify for reimbursement pursuant to this rule or its accompanying enabling legislation.

(2) Continuing training. In addition, beginning with the 2006 reporting period, the attorney guardians ad litem shall obtain five (5) hours of continuing legal education or other courses relevant to an appointment that enhance the attorney's knowledge of the issues of representation, per legal education reporting period to maintain qualification pursuant to this rule. These hours are not in addition to any existing continuing legal education requirements of the Wyoming State Bar. The court shall require that proof of such education, expertise, or experience is on file with the Bar at the time of appointment. All qualifying continuing legal education credits may be carried over to subsequent years pursuant to the Wyoming State Bar rules and regulations.

(g) *Payment.* In consultation with the Board of Judicial Policy and Administration, the Supreme Court and the individual county shall establish the reimbursement rate within the county for attorneys providing legal representation as guardians ad litem in applicable cases. Nothing herein shall affect payment pursuant to W.S. § 14-2-318. Attorneys appointed as attorney guardians ad litem requesting payment pursuant to Chapter 237, 2005 Session Laws of Wyoming, are required to have successfully met the training requirements as established by the Board of Judicial Policy and Administration in conformance with this rule. Any request for extraordinary expenses, including expert witness fees, shall be submitted to the juvenile court judge for pre-approval or denial prior to expenditure.

(h) *Selection of guardians ad litem; inclusion on panel.*

(1) Application process. Any person who desires to be appointed as an attorney guardian ad litem pursuant to this rule shall be required to submit a completed written application to the Wyoming Supreme Court's State Court Administrator. The application shall address the minimum qualifications set forth in this rule. Every completed application must be accompanied by a signed release of information authorization sufficient to enable the State Court Administrator to independently verify the facts set forth in the application and freely check into the applicant's background and qualifications.

(2) Screening process. Before an applicant is approved by the State Court Administrator for inclusion on a panel of guardians ad litem maintained pursuant to this rule, (A) the applicant shall be an attorney in good standing with the Wyoming State Bar, and (B) the applicant's continuing legal education credits shall be verified by the Wyoming State Bar.

(3) Panel of approved guardians ad litem. The State Court Administrator shall maintain a list of qualified attorneys from which courts may make appointments of attorney guardians ad litem able to be reimbursed pursuant to this rule. The list

shall be updated at least quarterly to reflect the addition of newly qualified attorneys and the subtraction of attorneys who have not met the continuing training requirements. To be included on the panel, an attorney shall satisfy the minimum qualifications set forth in this rule. An attorney must submit an updated affidavit every year to ensure that she or he is maintaining her or his qualifications for such appointments. The State Court Administrator shall furnish a list of qualified attorneys who have successfully met the training requirements pursuant to this rule to each juvenile court in the state at least annually and shall make the list available on the Wyoming Supreme Court's and the Wyoming State Bar's website.

(4) Factors to be considered in selection. All pertinent factors shall be considered in the identification and selection of the attorney guardian ad litem to be appointed. To be appointed pursuant to Rule 106, a guardian ad litem must meet the minimum qualifications set forth in Rule 106, must have no conflict of interest regarding the case, and must be listed on a panel of approved guardians ad litem maintained pursuant to Rule 106.

(5) Appointment order; specification of duties. An attorney guardian ad litem shall not be appointed or serve except upon written order of the court. The order shall set forth the role of a guardian ad litem; the specific duties to be performed by the guardian ad litem in the case; establish, to the extent appropriate, deadlines for the completion of the duties set forth; and the duration of the appointment.

(6) Support, advice, and supervision. The State Court Administrator shall maintain a list of resources available in order to promote support, advice, and training to attorney guardians ad litem serving in the state.

ⁱ Ann M. Haralambie identifies and discusses the "hybrid" role in *The Child's Attorney, A Guide to Representing Children in Custody, Adoption and Protection Cases*, ABA 1993 at p. 37.

ⁱⁱ Figures obtained from "Judicial Council of California Administrative Office of the Courts" 2004. NACC Recommendations for Representation of Children in Abuse and Neglect Cases, III (A)(2) and Comment A, which reads, "Children need attorneys with adequate time and resources. The system of representation must include reasonable caseload limits and at the same time provide adequate compensation for attorneys representing children." "Comment A: The NACC recommends that a full time attorney represent no more than 100 individual clients at a time, assuming a caseload that includes clients at various stages of cases, and recognizing that some clients may be part of the same sibling group. This is the same cap recommended by the U.S. Dept. of HHS Children's Bureau and American Bar Association. One hundred cases averages to 20 hours per case in a 2000-hour year." See also ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, §§ L-1, L-2; The U.S. Department of Health and Human Services supports this principle. *Adoption 2002: The President's Initiative on Adoption and Foster Care. Guidelines for Public Policy and State Legislation Governing Permanence for Children*, U.S. Dept. of HHS ACF ACYF Children's Bureau, 1999, page VII-5.