

**IN THE SUPREME COURT OF THE STATE OF ALASKA**

**ORDER NO. 1847**

Rescinding Delinquency Rule 15  
and adopting a new Delinquency  
Rule 15 concerning Guardians Ad  
Litem.

**IT IS ORDERED:**

Delinquency Rule 15 is rescinded and a new Delinquency Rule 15 adopted to read as follows:

**Rule 15. Guardians Ad Litem.**

**(a) Appointment.**

(1) Any party or the court on its own motion may request a guardian ad litem. The court may appoint a guardian ad litem to represent the best interests of the juvenile in a delinquency proceeding. If the court denies a motion for appointment of a guardian ad litem, the court must make findings to explain the denial.

*Commentary -- In addition to appointment of an attorney, the court may, upon motion of a party or upon its own motion, appoint the office of public advocacy to provide guardian ad litem services to a juvenile.*

*Courts should not routinely appoint guardians ad litem in juvenile delinquency proceedings. In most instances, the juvenile's best interests are adequately protected and represented by the parties. The juvenile's best interests may not be adequately protected in situations, including but not limited to: when no parent or guardian is available, when a parent or guardian is not in a position to advocate for the juvenile's best interests, when a*

*household or family member is an alleged victim, when the juvenile has complex therapeutic needs, or when an adult guardianship or conservatorship may be appropriate.*

(2) A non-attorney guardian ad litem is entitled to counsel. Upon request, the court shall make the appointment. The court may appoint an attorney on its own motion for good cause if the court finds that legal advice or legal representation of the guardian ad litem is necessary to represent the juvenile's best interests.

(3) Within seven days of the court's appointment, the designated guardian ad litem must file an entry of appearance indicating whether the guardian ad litem is an attorney and certifying that the guardian ad litem meets qualifications under subsection (b) below.

(4) Throughout the period of appointment, the guardian ad litem is a party to the proceeding, and must be served with copies of all pleadings and papers relating to the juvenile and must be given notice of all court proceedings. The guardian ad litem, whether an attorney or a non-attorney, has the right to appear and participate at hearings regarding the juvenile. The guardian ad litem may also engage in motion practice, conduct discovery, introduce evidence, examine and cross examine witnesses, make objections, make opening statements and closing arguments, and take or participate in an appeal. Although the guardian ad litem can participate in plea agreement negotiations and make recommendations, the guardian ad litem is not a signatory to and cannot veto any agreement.

**(b) Qualifications.**

(1) A guardian ad litem should possess knowledge, skill, experience, training, or education that allows the guardian ad litem to conduct a thorough and impartial investigation and effectively advocate for the best interests of the juvenile. Specifically, the guardian ad litem should have an understanding of the following as appropriate to the case:

(A) child and adolescent development;

(B) disabilities, including cognitive impairments such as fetal alcohol spectrum disorders;

(C) the impact of child abuse and neglect or other trauma on the juvenile;

(D) the educational needs and rights of juveniles;

(E) the resources available for least restrictive placement, treatment, and other necessary services, both within the community and elsewhere;

(F) the ethnic, cultural, and socioeconomic backgrounds of the population to be served;

(G) domestic violence and substance abuse and their impact on juveniles;

(H) Alaska statutes, rules, and both state and United States Supreme Court decisions relating to juvenile delinquency proceedings;

(I) the legal rights of juveniles accused of delinquency crimes;

(J) the ability to communicate effectively with juveniles and adults;

(K) juvenile alcohol and substance abuse pathology and treatment;

(L) juvenile mental health issues and treatment; and

(M) other qualifications appropriate to the particular case.

(2) Upon request of a party, a guardian ad litem or prospective guardian ad litem shall provide to the parties a written summary of relevant education and experience.

**(c) Order Authorizing Access to Juvenile's Records.**

Unless otherwise ordered, an order appointing a guardian ad litem shall authorize the guardian ad litem access, without further release, to all confidential and privileged records of the child, including but not limited to mental health records, drug and alcohol treatment records, medical records, evaluations, child protection records, law enforcement records, juvenile justice records, and educational records, including special education records. Nothing in this rule shall prevent any party from seeking a protective order.

**(d) Disclosure of Information.**

(1) Defense counsel, the Division of Juvenile Justice, and the Department of Law shall be permitted to review and copy information received by the guardian ad litem under subsection (c) and other discoverable material, including but not limited to notes memorializing interviews and observations. Before disclosing any material to other parties, the guardian ad litem shall give defense counsel notice and a reasonable opportunity to review the material and seek a protective order.

(2) Disclosure obligations are ongoing.

**(e) Disclosure of Conflicts.** The guardian ad litem shall disclose any relationships or associations between the guardian ad litem and any party that might reasonably cause the guardian ad litem's impartiality to be questioned. The guardian ad litem must also disclose whether the guardian ad litem has served or is currently serving as a guardian ad litem for that juvenile, or for that juvenile's sibling, in any other proceeding. This disclosure must be made no later than 10 days after appointment.

**(f) Duties of the Guardian Ad Litem.**

(1) *Role.* The guardian ad litem represents the best interests of the juvenile. The guardian ad litem determines and advocates for the best interests of the juvenile given the juvenile's situation, taking into account the juvenile's age, maturity, culture, ethnicity, least restrictive placement options available, and public laws and policies regarding juvenile justice.

(2) *Duty to the juvenile.* The guardian ad litem shall:

(A) conduct ongoing independent investigations, including, as reasonable and appropriate: in-person visits with the juvenile; review of records; interviews with parents, juvenile probation officers, teachers, and other persons as necessary to assess the juvenile's situation; and observations of the juvenile's interactions with parents or other potential caregivers;

(B) identify relatives, family friends, or other persons who are potential placement options, and take such steps as may be necessary to offer such persons to the Division of Juvenile Justice and/or to the court for placement determinations;

(C) consult professionals as necessary to determine the juvenile's best interests;

(D) monitor services to the juvenile provided by educational, medical, mental health, and other community systems and ensure these services are promoting the best interests of the juvenile;

(E) represent the best interests of the juvenile until the disposition order expires unless the court finds that the appointment is no longer necessary;

(F) explain to the juvenile in language and terms the juvenile can understand that:

(i) the juvenile has a right to refuse to talk to the guardian ad litem,

(ii) communications with the guardian ad litem are not confidential,

(iii) all information and records gathered may be shared with the state, and

(iv) the juvenile has a right to have an attorney be present for interviews with the guardian ad litem.

(3) *Duty to the court.* The guardian ad litem will appear at all hearings, present appropriate witnesses to testify at hearings, present relevant information about the juvenile's status and needs to the court, and may provide written reports.

**Commentary** -- *Whether a guardian ad litem should testify or be subject to cross examination raises complex issues that are best resolved on a case-by-case basis with the benefit of briefing by all parties. Nothing in this rule is intended to dictate a particular outcome.*

**(g) Contact with Juvenile.**

(1) Any entity or person that has physical or legal custody of the juvenile may not deny reasonable access by the guardian ad litem without an order from the court.

(2) With the consent of the juvenile's attorney, the guardian ad litem may meet with the juvenile as often as necessary to ascertain and represent the juvenile's best interests. The juvenile's attorney, at any time, may limit the content and frequency of meetings with the guardian ad litem.

**(h) Confidentiality.** The juvenile's statements to the guardian ad litem are not confidential.

**Commentary** -- *If the guardian ad litem is an attorney, he or she acts in a capacity as a guardian ad litem rather than as an attorney, and information received from the juvenile is not subject to the attorney-client privilege. See Ethics Opinion 85-4, Alaska Bar Association. Notwithstanding these provisions, the guardian ad litem may seek a protective order to keep certain communications confidential in accordance with discovery rules.*

DATED: January 16, 2015

EFFECTIVE DATE: April 15, 2015

/s/  
Chief Justice Fabe

/s/  
Justice Winfree

/s/  
Justice Stowers

/s/  
Justice Maassen

/s/  
Justice Bolger