

HO-CHUNK NATION RULES FOR GUARDIAN AD LITEM

I. MINIMUM QUALIFICATIONS FOR A GUARDIAN AD LITEM

Before a person may be recommended for service as a guardian ad litem the person must satisfy the following minimum qualifications:

- a.** have an abiding interest in children and their rights and needs;
- b.** have sufficient listening, speaking, and writing skills to successfully conduct interviews, prepare written reports, and make oral presentations;
- c.** 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;
- d.** have knowledge and an appreciation of the ethnic, cultural, and socio-economic backgrounds of the population to be served;
- e.** 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;
- f.** 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;
- g.** not have been removed from a panel of approved guardians ad litem due to unsatisfactory performance; and
- h.** have satisfactorily completed the pre-service training requirements.

II. SELECTION OF GUARDIANS AD LITEM

a. Recruitment

The recruitment of persons to apply to be guardians ad litem shall be announced to the general public annually. Announcements shall be provided to tribal social service agencies and to public agencies and private organizations serving the Ho-Chunk Nation, and shall be placed in the Hocak Worak and the HCN Court Bulletin.

b. Application Process

Any person who desires to become a guardian ad litem shall be required to submit a completed guardian ad litem application. The application shall address the minimum qualifications set forth in these Rules. Every completed application must be accompanied by a signed release of information authorization sufficient to enable the Court to independently verify the facts set forth in the application and freely check into the applicant's background and qualifications.

c. Screening Process

Before an applicant is approved by the Court for inclusion on a panel of guardians ad litem maintained by the Clerk of Court: (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 Clerk of Court shall be contacted to see if the applicant has been removed from the approved panel for cause.

d. Panel of Approved Guardians Ad Litem

The Clerk of Court shall maintain a current panel of approved guardians ad litem, and shall keep the Court updated as to the names on the panel. To be included on the panel, a guardian ad litem shall satisfy the minimum qualifications set forth in these Rules.

e. 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 the expertise of each available guardian ad litem; the caseload of each available guardian ad litem; and such other circumstances as may reasonably bear upon the matter.

In every case, the goal is the prompt appointment of a guardian ad litem to advocate for the best interests of the child. To be appointed a guardian ad litem must meet the minimum qualifications set forth in these Rules, must have no conflict of interest regarding the case, and must be listed on a panel of approved guardians ad litem.

f. Requirements

Guardian ad Litem must complete the full training offered by the Court or comparable training offered within a state or other tribal jurisdiction.

III. OATH OR AFFIRMATION

Prior to performing the responsibilities of a guardian ad litem, the guardian ad litem shall take an oath or make an affirmation. At the discretion of the Court, the oath may be taken or the affirmation made at the time the guardian ad litem is placed on a panel of approved guardians ad litem or at the time the guardian ad litem is appointed to a particular case, or at both times.

IV. SUPERVISION AND EVALUATION OF GUARDIANS AD LITEM; REMOVAL FROM PANEL

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 in the Ho-Chunk Nation Court System. 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 Panel

On the basis of a performance investigation or other justifiable cause, the Court shall determine whether to retain the guardian ad litem on the panel of approved guardians ad litem.

In appropriate cases, as an alternative to removal from the panel of guardians ad litem, the Court may place the guardian ad litem on probation, require the guardian ad litem to complete a mentorship, require the guardian ad litem to attend additional training, or take other action deemed appropriate.

V. GENERAL RESPONSIBILITIES OF GUARDIANS AD LITEM; OTHER ROLES DISTINGUISHED

a. General Responsibilities

Every case in which a guardian ad litem is appointed, the guardian ad litem shall perform the responsibilities set forth in clauses 1 to 14:

1. The guardian ad litem shall advocate for the best interests of the child.

Note on Contact with the Child.

The guardian ad litem must have sufficient contact with the child to ascertain the best interests of the child. The frequency and duration of contact will vary from child to child depending upon the nature of the case, the age of the child, and the needs of the child. There is no specific benchmark with respect to frequency of contact.

2. The guardian ad litem shall exercise independent judgment, gather information, participate as appropriate in negotiations, and monitor the case, which activities must include, unless specifically excluded by the Court: reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case.
3. The guardian ad litem shall, as appropriate to the case, make written and/or oral reports to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based.
4. The guardian ad litem shall complete work in a timely manner, and advocate for timely court reviews and judicial intervention, if necessary.
5. The guardian ad litem shall be knowledgeable about community resources for placement, treatment, and other necessary services.
6. The guardian ad litem shall 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.

7. The guardian ad litem shall, during service as a guardian ad litem, keep all records, notes, or other information confidential and in safe storage. At the conclusion of service, the guardian ad litem shall keep or destroy the notes and records in accordance with the requirements of the Court.
8. The guardian ad litem shall complete continuing education requirements, and seek advice as necessary from the Court.
9. The guardian ad litem shall treat all individuals with dignity and respect while carrying out her or his responsibilities.
10. The guardian ad litem shall 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.
11. The guardian ad litem shall 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.
12. The guardian ad litem shall comply with all applicable laws regarding the reporting of child abuse and/or neglect. (Citation to the Children's Act)
13. The guardian ad litem shall inform individuals contacted in a particular case about the role of the guardian ad litem in the case.
14. The guardian ad litem shall ensure that the appropriate appointment and discharge documents are timely filed with the Court.

Comments:

A guardian ad litem appointed by the Ho-Chunk Nation Trial Court will hold the following responsibilities and duties:

- Work as an independent fact finder who will review all relevant records and documents; interview the child, parents, social workers, teachers, and other persons to gather the facts; and investigate the circumstances of the child's situation;
- Determine the interests of the child by taking into account the child's age, maturity, and culture and by monitoring his or her interest over time;
- Maintain communication with the child so that he or she is aware of and understands the role of the guardian ad litem;
- 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;
- Provide written reports of findings and recommendations to the Court when requested to assure that all relevant facts are before the Court in order to render a sound decision;
- Appear at all hearings to represent the child's interests, providing testimony where needed;
- Explain the court proceedings to the child in language and terms appropriate to the child's age and maturity level;
- Request that clear and specific orders be entered for the evaluation, assessment,

services and treatment of the child and the child's family;

- 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;
- 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
- Advocate for the child's best interests in all other legal, mental health, educational, and community systems.

b. Considering the Child's Wishes

The role of a guardian ad litem is to advocate for the best interests of the child, which interests may or may not conflict with the wishes of the child. In arriving at a recommendation as to the child's best interests, one factor that may be considered by the guardian ad litem, as appropriate to each case, is the wishes of the child as to the matters that are before the Court. In that regard, the guardian ad litem, as appropriate to each case, may attempt to ascertain the child's wishes regarding the matters that are before the Court.

If the guardian ad litem determines that it is appropriate to ascertain the child's wishes, careful interviewing techniques must be used to elicit those wishes without creating conflicts for the child. Directly asking the child for her or his opinion regarding the matters before the Court is not recommended, as doing so may create conflict for the child. For example, directly asking the child for a custody preference is not recommended as it places the child in the position of choosing between two parents for whom the child may care deeply. In addition, if the Court implements the child's expressed preference, the child may feel guilty or may feel that the other parent has been betrayed. Instead, questions should be open ended and the guardian ad litem should be prepared to listen carefully.

If the wishes of the child are ascertained, the guardian ad litem should use discretion in deciding whether to communicate those wishes to the Court, and/or to the child's parents, and may do so if it is in the child's best interests. 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 choose an appropriate course of action. This may include simply listening to the child's wishes; listening and reporting them to the Court, if appropriate; reporting them to the Court even if the guardian ad litem considers them not in the child's best interests; or requesting the Court to appoint independent legal counsel for the child for the purpose of representing and advocating for the child's wishes.

c. 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. 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. 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. The guardian ad litem may locate and recommend services for the child and family, but should not routinely deliver services.

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 entertaining 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; or (8) provide a "message service" for parents to communicate with each other.

VI. CONTINUING EDUCATION REQUIREMENTS

Once a guardian ad litem is listed on a panel of approved guardians ad litem, the guardian ad litem may maintain that listing only by annually completing eight hours of continuing education. The continuing education requirement shall begin in the calendar year following the year in which the guardian ad litem is first listed on a panel of approved guardians ad litem and shall continue each year thereafter until such time as the guardian ad litem is no longer listed on the panel of approved guardians ad litem.

VII. COMPLAINT STANDARD

A party who wishes to file a formal complaint about 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 (e-mail is acceptable);
- c.** file complaint at any time during the case, and no later than 30 days from the date of issuance of the final order or discharge of the guardian ad litem on the proceeding in question;
- d.** specify the alleged malfeasance of duty, *i.e.*, the specific rule, law or ethical responsibility that the guardian ad litem violated; and
- e.** specify whether or not the alleged malfeasance of duty was brought to the attention of the Court.

A complaint about a guardian ad litem that is no longer on the guardian ad litem panel will not be investigated unless that guardian ad litem reapplies.

The Court will promptly respond to a written complaint.

VIII. EFFECTIVE DATE

These Ho-Chunk Nation Rules for Guardian Ad Litem will take effect on the first Court workday after the date these Rules are adopted by the Supreme Court. They will govern all proceedings pending on that date unless, in the discretion of the Court, their application would not be feasible.

Rules for Guardian ad Litem: Adopted June 17, 2006, revised July 7, 2012.