



Supreme Court of Tennessee

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Supreme Court Adopts Provisional Rule for *Guardians Ad Litem* in Parenting Cases

Nashville, TN--The Tennessee Supreme Court today adopted a provisional rule for the appointment of guardians ad litem (GAL) in cases involving the custody of children, whether or not those cases involve a divorce. A guardian ad litem is a person appointed to represent the interests of a child or an adult with diminished mental capacity in court proceedings. In cases involving child custody issues, guardians may be attorneys, licensed professionals, or other advocates with specialized training in the evaluation of children's best interests.

"The guidelines outlined in Rule 40A should result in a reduction in the frequency of appointments of guardians ad litem. They also give those appointed as GALs clearer direction about the duties a GAL must perform as well as limitations on a GAL's involvement in a case," said Chief Justice Janice Holder.

"The proper role of the GAL is to represent the best interests of children involved in divorce and other custody proceedings, and this rule gives clear guidance about how to properly carry out that duty and should reduce the overall costs to the parties of a GAL's involvement in their case," Holder added.

The issue first came to the attention of the Court in August of 2007, when the Tennessee House of Representatives' Children and Family Affairs Committee (CFA) heard testimony from several current and former parties to court proceedings involving child custody issues. Those who testified all related similar accounts of perceived difficulties they had encountered in connection with a divorce or custody proceeding.

One of the primary concerns was the proper role of court-appointed guardians ad litem in these cases, as well as the financial impact that GAL fees had on the parties.

Rule 40A has been released as a provisional rule. It will take effect on May 1, 2009, and will be in effect for one (1) year.

“The adoption of the provisional rule is the result of more than a year of study and consultation with persons involved in the judicial system and in the legislature,” Holder said.

CFA Committee Chairman John J. DeBerry, Jr. sought the assistance of the Court, and the Bar in general, to address the use and conduct of GALs in divorce and custody proceedings. The Supreme Court had previously adopted provisions governing the practice of GALs in juvenile court neglect, abuse and dependency cases, and determined that guidelines for GALs in divorce or other custody proceedings should also be developed.

According to Libby Sykes, Director of the Administrative Office of the Courts (AOC) which manages the day-to-day business of the courts, a working group of judges and AOC staff researched and identified appropriate issues to be addressed, and ultimately submitted a proposed new Supreme Court rule governing these activities. Following its regular procedure for public input, the Court solicited public comments on the proposed rule through June 30, 2008. Sykes said many constructive and helpful comments were received during that period.

In releasing the provisional rule, Chief Justice Holder acknowledged and thanked the diverse groups that provided valuable assistance in drafting. “Their vast experience and expertise, as well as their careful attention to this issue, have been extremely helpful,” she said. “The Court especially appreciates the leadership shown by Chairman DeBerry and the members of the House Children and Family Affairs Committee on this subject.”

Holder said additional evaluation and review of comments will determine if further changes to the rule need to be made.

Attachment: Provisional Rule 40 A