

[Existing Rule 173 of the Texas Rules of Civil Procedure, entitled "Guardian Ad Litem", states:

When a minor, lunatic, idiot or a non-compos mentis may be a defendant to a suit and has no guardian within this State, or where such person is a party to a suit either as plaintiff, defendant or intervenor and is represented by a next friend or a guardian who appears to the court to have an interest adverse to such minor, lunatic, idiot or non-compos mentis, the court shall appoint a guardian ad litem for such person and shall allow him a reasonable fee for his services to be taxed as part of the costs.

It would be replaced with the following rule.]

RULE 173. AD LITEM REPRESENTATION

- 173.1 Court's Power Limited.** A court may not appoint, authorize, or compensate an ad litem representative except as permitted by this rule or by statute.
- 173.2 Appointment.**
- (a) *When Appointment Required.* The court must appoint a guardian ad litem for a party who is a minor or is under other legal incapacity if but only if:
 - (1) the party has no next friend or guardian within this State, or
 - (2) the party has a next friend or guardian who appears to the court to have an interest adverse to the party.
 - (b) *Attorney as Guardian ad Litem.* The court may appoint an attorney as guardian ad litem and must do so if the guardian is to provide legal representation to the party.
 - (c) *Attorney ad Litem.* The court may appoint an attorney ad litem in addition to a guardian ad litem in exceptional circumstances when it appears to the court that an attorney appointed as guardian ad litem cannot fully represent the party's interests.

- (d) *Representation for More Than One Party.* The same ad litem representative may be appointed for more than one party if it appears to the court that the parties' interests are not adverse.
- (e) *Attorney to Represent Guardian or Attorney ad Litem.* The court may appoint an attorney to represent a guardian ad litem or an attorney ad litem only as necessary to protect the interests of the party.
- (f) *Written Order Required.* An appointment under this rule must be by written order.

173.3 Eligibility of Attorney for Appointment.

- (a) *Approval by Regional Presiding Judge.* An attorney may not be appointed under this rule without the approval of the presiding judge of the administrative judicial region in which the case is pending. The regional presiding judge must maintain a list of attorneys approved as qualified for appointment.
- (b) *Disqualification.* An attorney who violates this rule is disqualified from appointment under this rule for ten years.

173.4 Authority and Responsibility of Representative.

- (a) *Guardian ad Litem.* A guardian ad litem must represent the party's best interests in the case.
- (b) *Attorney ad Litem.* An attorney ad litem must represent the party's preferences in the case.
- (c) *Limited Participation in Proceedings.* A guardian ad litem or attorney ad litem should not participate in discovery, trial, or other court proceedings except with approval of the court and as necessary to protect the party's interests which are not otherwise adequately represented.
- (d) *Structured Settlements.* If a settlement of the case is proposed that would structure recovery to be paid over a period of time through the use of a financial intermediary - such as a depository, insurer, trustee, assignee, broker, or other such person or entity - a guardian

ad litem or attorney ad litem:

- (1) must report to the court on whether the settlement is fair;
- (2) may not recommend or require the use of a specific intermediary;
- (3) must determine the fiscal soundness of any intermediary to be used; and
- (4) is not liable for the party represented or anyone else for any injury resulting from the intermediary's insolvency more than ninety days after the settlement if the guardian ad litem or attorney ad litem reasonably relied on generally accepted published ratings showing the intermediary to be financially sound.

173.5 Compensation.

- (a) *Entitlement.* A person appointed under this rule is entitled to be reimbursed the reasonable and necessary expenses incurred in the representation, and if the person is an attorney, to be paid a reasonable hourly fee, customary in the community in which the case is pending, for necessary services performed.
- (b) *Determination of Hourly Fee by Court Before Appointment.* The court must state in the order of appointment the hourly fee to be paid and that the hourly fee is customary in the community.
- (c) *Hearing on Completion of Representation.* At the conclusion of the appointed representation, before payment of compensation to the representative, the court must conduct a hearing to determine the total amount of fees and expenses that are reasonable and necessary. In making this determination, the court must not consider the amount of the settlement or judgement or use any percentage or contingent fee.
- (d) *Costs.* Compensation under this rule is to be taxed as costs.
- (e) *Other Compensation Prohibited.*

- (1) A person appointed under this rule may not receive, directly or indirectly, anything of value in consideration of the appointed representation other than as provided by this rule, including without limitation, any payment, referral fee, or consultation fee in any other matter, or any payment from any insurance or financial broker involved in structuring a settlement.
- (2) A person who makes a payment in violation of this rule may be sanctioned for contempt of court.

173.6 Certain Structured Settlements Prohibited. In any case in which an ad litem is appointed under this rule, the court must not approve a settlement that would structure recovery to be paid over a period of time through the use of a financial intermediary - such as a depository, insurer, trustee, assignee, broker, or other such person or entity - if the financial intermediary or any broker, agent, or representative involved:

- (a) is specified by a defendant, a defendant's attorney in the case, or an insurer of a defendant as part of the settlement;
- (b) is one in which any party or attorney in the case has a financial interest; or
- (c) is one from which any party or attorney in the case would receive anything of benefit not disclosed to the court in the settlement agreement.

[Rule 5 of the Rules of Judicial Administration would be amended as follows.]

Rule 5. DUTIES OF THE PRESIDING JUDGE

In addition to the duties place on Presiding Judges by law and these rules, each Presiding Judge should oversee the general docket management, the prompt disposition of all cases filed in each district and statutory county court within the region, and the proper administration of the affairs of the courts within the administrative region. The Presiding Judge shall:

- a. ensure the adoption of uniform local rules;

- b. hold periodic meetings with the judges in counties with more than one court;
- c. consult with each trial judge of the administrative region to implement more efficient methods of docket management;
- d. study in detail the condition of the dockets in each county;
- e. discover and encourage the implementation of systems to reduce delay in local dockets;
- f. provide for orientation and training of new judges in the administrative regions;
- g. ensure adherence to the time standards provided by Rule 6 in the courts of the administrative region;
- h. direct the district and county clerks within the regions to submit such statistical reports as may be requested by either the local administrative judge or the presiding judge;
- i. examine the qualifications of attorneys to serve as guardians ad litem and attorneys ad litem by appointment under Rule 173 of the Rules of Civil Procedure, and to compile a list of such attorneys approved for appointment; and
- j. perform such other duties as may be assigned by the Chief Justice.