

[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 Application

This rule applies to civil lawsuits for damages, equitable or declaratory relief, except

- (a) the Family Code governs the appointment of ad litem in suits involving the parent child relationship.
- (b) the Probate Code governs the appointment of ad litem in probate proceedings.
- (c) the Texas Parental Notification Rules govern the appointment of ad litem in parental notification lawsuits.

173.2 Appointments generally

- (a) The court may appoint the same ad litem for parties who are similarly situated in the lawsuit, unless it appears to the court that separate appointments are necessary.
- (b) Unless the parties agree to an earlier appointment, the court must appoint a guardian ad litem for a party represented by a next friend only when the defendant has made an offer to settle that party's claims and there appears to be an adverse interest between the next friend for the party and the party. The court must not appoint an ad litem if no adverse interest exists.
- (c) The court must appoint an attorney ad litem to represent a defendant or defendants served by publication, where the defendant has not appeared.
- (d) Appointments must be by written order.

173.3 Duties of ad litem

- (a) A guardian ad litem acts as a personal, not a legal representative for the party. A guardian ad litem has the limited duty to review the proposed settlement, determine whether the settlement is in the party's best interest, and advise the court as to the fairness of the settlement for the party.
- (b) A guardian ad litem must not participate in discovery, court proceedings or trial, except for mediation, unless ordered by the court for sufficient reasons shown.
- (c) An attorney ad litem must be an attorney and acts as a lawyer for the party.

173.4 Compensation.

- (a) Ad litem may be reimbursed for reasonable and necessary expenses incurred and may be paid a reasonable hourly fee, customary in the community in which the case is pending, for necessary services performed.
- (b) At the conclusion of the appointed representation, 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 compensation as a percentage of any judgment or settlement.
- (c) The court may tax ad litem fees and expenses as costs of court. [Not recommended: The successful party to the suit must recover from its adversary, those costs, unless the court, for good cause stated on the record, adjudges the costs differently. (source of language, rule 131 and Rule 141)]
- (d) An ad litem may not receive, directly or indirectly, anything of value in consideration of the appointed representation other than as provided by this rule.
- (e) Any party, or the ad litem, may appeal the order awarding ad litem fees and expenses. Such appeal will not affect the finality of the settlement or judgment. The court must grant a motion to sever the ad litem fee order, creating a final appealable order.