From: Subcommittee Rules 216-299a
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Date: February 10, 2019

Re: The Role of an Attorney Ad Litem Appointed Pursuant to TRCP 244 When Defendant is Served by Publication

Issue:

What is the appropriate role of an attorney ad litem appointed pursuant to Texas Rule of Civil Procedure (TRCP) 244 when a defendant is served by publication?

Existing Rule & Proposal of The State Bar of Texas Committee on Court Rules

TRCP 109 allows, on a limited basis, service by publication on a defendant in Texas civil lawsuits:

> When a party to a suit, his agent or attorney, shall make oath that the residence of any party defendant is unknown to affiant, and to such party when the affidavit is made by his agent or attorney, or that such defendant is a transient person, and that after due diligence such party and the affiant have been unable to locate the whereabouts of such defendant, or that such defendant is absent from or is a nonresident of the State, and that the party applying for the citation has attempted to obtain personal service of nonresident notice as provided for in Rule108, but has been unable to do so, the clerk shall issue citation for such defendant for service by publication. In such cases it shall be the duty of the court trying the case to inquire into the sufficiency of the diligence exercised in attempting to ascertain the residence or whereabouts of the defendant or to obtain service of nonresident notice, as the case may be, before granting any judgment on such service.

TRCP 244 requires the court to appoint an attorney ad litem to represent the absent defendant served by publication:

> Where service has been made by publication, and no answer has been filed nor appearance entered within the prescribed time, the court shall appoint an attorney to defend the suit in behalf of the defendant, and judgment shall be rendered as in other cases; but, in every such case a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the cause as a part of the record thereof. The court shall allow such attorney a reasonable fee for his services, to be taxed as part of the costs.

The State Bar of Texas Committee on Court Rules, concerned at the amount of the ad litem attorney fees that may be taxed against a prevailing plaintiff and questioning the propriety of the ad litem attorney providing full-blown representation of a missing defendant, proposed amendments to TRCP 244 that would limit the role of the attorney ad litem. Specifically, Carlos Soltero, Chair of the Committee, proffered this explanation:

> Under the current Rule 244, which provides for the appointment of an attorney to defend a suit in which service is made by publication, appointed attorneys have often perceived a duty to exhaust all remedies available to the non-appearing defendant and, in many cases, to represent the defendant's interests on appeal. The fees for these services are taxed as costs, ultimately borne by the plaintiff. *See Cahill v. Lyda,* 826 S.W.2d 932 (Tex. 1992).
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> The practice of appointing an attorney for an absent defendant has its roots in Mexican and Spanish law and was adopted in Texas after Texas attained statehood. *See* Millar, *Jurisdiction Over Absent Defendants: Two Chapters in American Civil Procedure*, 14 La. L. Rev. 321, 335-335 (1954). This practice reflects a minority view in American jurisprudence, having been adopted by only four states. Id. At 335-38 (adopting Spanish law were Texas, Louisiana, Kentucky and Arkansas). One of those states, Louisiana, has abandoned the Spanish rule in favor of a rule similar to the rule proposed here. *See* La. Code Civ. Proc. Ann. art. 5094 (West 2003).
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> The proposed Rule 244 limits and clarifies the role of the appointed attorney, whose duties would end after the attorney submits a report documenting the efforts made to locate the defendant and provide notice of the proceedings. The Committee believes that the proposed rule, by preventing automatic entry of default judgments against defendants who can be located, accomplishes the primary aim of the current rule. The Committee also notes that when a default judgment is entered following service by publication, Rule 329 allows the defendant two years in which to file a motion for new trial seeking to set aside the judgment.
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> The principal advantage of the proposed rule is that it reduces the cost of the litigation. The proposed rule, by providing that the appointed attorney is not responsible for defending the suit or pursing an appeal, and by requiring fees and expenses awarded to be reasonable, eliminates the often-substantial fees and expenses associated with those responsibilities. Moreover, by clarifying that the appointed attorney does not represent the defendant, the proposed rule addresses the concern that under the current rule, the appointed attorney might owe a duty to a non-appearing defendant who later comes forward and alleges the representation was inadequate. By eliminating the specter of liability to the absent defendant, the proposed rule eliminates the current incentive for attorneys to render services and incur expenses whose benefit to the absent defendant cannot be justified in light of their cost to the plaintiff.

The proposal of the State Bar of Texas Committee on Court Rules is as follows:

244.1 APPOINTMENT OF ATTORNEY. If service has been made by publication and no answer has been filed nor appearance entered within the prescribed time, the court must appoint an attorney who, without acting as an attorney for any party, must use due diligence to try to locate the defendant.

244.2 REPORT OF ATTORNEY. The appointed attorney must make a report in open court or file a report with the court not later than the thirtieth day after being appointed, or within such other reasonable time period as the court may allow. The report must describe the parties' attempts to locate the defendant or obtain service of nonresident notice, describe the appointed attorney's attempts to locate the defendant, and provide the defendant's location, if discovered. No judgment on service by publication may be granted before the report is made and the court finds that the defendant cannot be located or personal service cannot be obtained.

244.3 DISCHARGE OF ATTORNEY. The court must discharge the appointed attorney from any further duties upon receiving a report from the attorney that complies with this Rule. The appointed attorney will have no duty or authority to represent the defendant on the merits of the case or to appeal any judgment in the case.

244.4 FEES AND EXPENSES. The court must award the attorney a reasonable fee for services provided and all reasonable expenses incurred during the appointment, to be taxed as part of the costs in the judgment rendered by the court.

Analysis:

Citation by publication is constructive service accomplished by publishing a truncated citation in the newspaper for four weeks generally in the county where the lawsuit is pending. TEX. R. CIV. P. 114-11. As observed by the United States Supreme Court in the seminal case of *Mullane v. Central Hanover Bank*, it is a very weak form of notice and raises serious due process concerns. **The form of service [personal, substituted or constructive] must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."** *Mullane v. Cent. Hanover Bank & Trust Co.,* 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950) (emphasis added). The Court observed:

> It would be idle to pretend that publication alone is a reliable means of acquainting interested parties of the fact that their rights are before the courts. It is not an accident that the greater number of cases reaching this Court on the question of adequacy of notice have been concerned with actions founded on process constructively served through local newspapers. Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper,

> and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed. In weighing its sufficiency on the basis of equivalence with actual notice, we are unable to regard this as more than a feint. Id. at 315.

However, the Court recognized that, for missing or unknown persons service by publication would not offend due process. *Id.* at 317.

The United States Supreme Court revisited the adequacy of service by publication in *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 1983). Notice of a public auction of real property for unpaid taxes was given to creditors by publication. Indiana law required that notice be posted at the county courthouse and published for three consecutive weeks. The Court held "unless the mortgagee is not reasonably identifiable, constructive notice [by publication] alone does not satisfy the mandate of *Mullane*." *Id*. at 798. The identity of the mortgagee was known and the Court assumed the mortgagee's address could be ascertained by reasonably diligent efforts. When an interested party's identity is known, service by publication is generally inadequate and violates due process guarantees. However, constructive service by publication is sufficient when the interested party's identity is not known.

In *Tulsa Professional Collection Services, Inc. v. Pope,* 485 U.S. 478, 108 S.Ct. 1340, 99 L.Ed.2d 565 (1988), the United States Supreme Court held notice of a probate proceeding by publication to known creditors of the decedent or creditors whose identity could be reasonably ascertainable violated due process and Oklahoma statutes to the contrary were constitutionally infirm. The creditor, unaware of the probate proceeding, did not file its claim in the probate proceeding until after the statutory deadline passed. However, because a judgment premised on service by publication as to known creditors is void, the collateral attack by the creditor could be made at any time.

The Texas Supreme Court addressed the constitutionality of service by publication in *In re E.R*., 385 S.W.3d 552 (Tex. 2012). A mother's parental rights were terminated with service by citation accomplished by publication. The court held that method of service is invalid absent a demonstrated diligent attempt to locate the parent. The trial court must "inquire into the sufficiency of the diligence exercised in attempting to ascertain the residence or whereabouts of the defendant before granting a judgment when the only service of citation is by publication." TEX. R. CIV. P. 109; ; *see also* TEX. FAM.CODE § 161.107(b) ("If a parent of the child has not been personally served in a suit in which the Department of Family and Protective Services seeks termination, the department must make a diligent effort to locate that parent."). A lack of diligence makes service by publication ineffective. The court clarified what constitutes sufficient diligence, opining;

> A diligent search must include inquiries that someone who really wants to find the defendant would make, and diligence is measured not by the quantity of the search but by its quality. Even disregarding the factual dispute about what [Mother] L.R. told Chidozie about her address, the uncontroverted evidence here establishes a lack of diligence. Chidozie neglected "obvious inquiries" a prudent investigator would have made. *In the Interest of S.P.,* 672 N.W.2d at 848. She did not contact L.R.'s mother, nor she did attempt service by mail in an effort to obtain a forwarding

> address. She did not pursue other forms of substituted service that would have been more likely to reach L.R., such as leaving a copy with L.R.'s mother. *See* TEX.R. CIV. P. 106(b)(1); *see also McDonald v. Mabee,* 243 U.S. 90, 92, 37 S.Ct. 343, 61 L.Ed. 608 (1917) ("To dispense with personal service the substitute that is most likely to reach the defendant is the least that ought to be required if substantial justice is to be done."). Even if L.R.'s address was not "reasonably ascertainable," an address was unnecessary for personal service on L.R. because she visited the Department's offices during the relevant time period. When a known parent has not left the jurisdiction, when she has attended at least two court hearings and has come to the Department offices for a prescheduled, hour-long meeting with her children during the very period service was being attempted, and when the Department can reach her by telephone and can communicate with her family members, service by publication cannot provide the kind of process she is due. Sending a few faxes, checking websites, and making three phone calls—none of which were to L.R. or her family members—is not the type of diligent inquiry required before the Department may dispense with actual service in a case like this. *Mullane* authorized service by publication when "it is not reasonably possible or practicable to give more adequate warning." *Mullane,* 339 U.S. at 317, 70 S.Ct. 652. Here, it was both possible and practicable to more adequately warn L.R. of the impending termination of her parental rights, and notice by publication was therefore constitutionally inadequate. *Jones v. Flowers,* 547 U.S. 220, 237, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006).
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> *In re E.R.* at 566-567.

The Family Code provision that "the validity of an order terminating the parental rights of a person who is served by citation by publication is not subject to collateral or direct attack after the sixth month after the date the order was signed" only applies to parents for whom service by publication is valid. A complete failure of service deprives a litigant of due process and a trial court of personal jurisdiction; the resulting judgment is void and may be challenged at any time. *Id.* at. 566. However, a parent must take prompt action to set aside the judgment upon learning of an adverse judgment, even when service by publication violated their due process rights. "If, after learning that a judgment has terminated her rights, a parent unreasonably stands mute, and granting relief from the judgment would impair another party's substantial reliance interest, the trial court has discretion to deny relief." The record at issue in the case was silent as to when Mother learned that her rights were terminated or what actions she took in response. Accordingly, the case was reversed and remanded to the trial court to determine if Mother unreasonably delayed in seeking relief after learning of the judgment. If she acted with reasonable diligence, she would be entitled to a new trial.

Sub-Committee Recommendation

The subcommittee shares the due process concerns about the efficacy of service by publication and questions the realistic ability of an attorney ad litem to adequately

represent an absent client served by publication. Constructive service of citation need not be limited to publication and may be effectuated by any method of service reasonably calculated under the circumstances to give the absent defendant notice (such as through a social media platform). Another subcommittee chaired by Richard Orsinger is currently exploring alternative methods of constructive service besides service by publication.

This subcommittee is tasked with addressing (1) the appropriate role of an attorney ad litem appointed when a defendant is served constructively and (2) the payment of the ad litem fees. The subcommittee noted the disparity in the rules that require prior court approval before obtaining an order approving substituted service on someone other than the defendant and the provisions of TRCP 109 that allow the clerk to issue citation by publication for a defendant without prior judicial approval. Also of concern is the potential imposition of substantial ad litem costs (including attorneys fees of the ad litem) that may be taxed against the plaintiff (*see, e.g.*, *Garza v. Slaughter*, 331 S.W.3d 43 (Tex. App.-Houston [1st Dist.] 2010, no pet.)), as well as the lack of limitation on the scope of the ad litem's role. *See, e.g.*, *Cahill v. Lyda,* 826 S.W.2d 932, 933 (Tex. 1992) ("The attorney ad litem must exhaust all remedies available to the client and, if necessary, represent his [absent] client's interest on appeal."); *In re Estate of Stanton*, 202 S.W.3d 205, 208 (Tex. App.—Tyler 2005, pet. denied) ("It the attorney ad litem's duty to defend the rights of his involuntary client with the same vigor and astuteness as he would employ in the defense of clients who had expressly employed him for such purpose."); *Isaac v. Westheimer Colony Assoc.*, 933 S.W.2d 588, 590 (Tex. App.—Houston [1st Dist.] 1996, writ denied) ("The purpose of the portion of Rule 244 requiring the appointment of an attorney ad litem is to provide a non-appearing defendant effective representation."). The efficacy of an appointed ad litem to represent an absent defendant on the merits of the proceeding is questionable. Accordingly, the subcommittee suggests limiting the scope of the attorney ad litem's role.

The subcommittee recommends combining and amending TRCP 109 and 244 as follows:

Rule 109 [Constructive Service of Process] Citation By Publication

A plaintiff should first attempt to obtain service of citation on a defendant, pursuant to Rule 106, by personal in hand service or via the mail (certified or registered, return receipt requested) by qualified process servers. As to a non-resident defendant, the same attempt should be made in conformity with Rule 108.[1]

[If personal service of process is unsuccessful, the plaintiff must use diligent efforts to obtain information of where the defendant resides or a location where the defendant can probably be found before moving for substituted service under Rule 106(b).

If substituted service is unsuccessful [or if substituted service is not possible as the whereabouts of a defendant are unknown after diligent efforts have been made], the plaintiff may move for constructive service under this rule. The motion must be supported by a detailed affidavit by an affiant with personal knowledge describing with particularity the actions the plaintiff took in attempting to locate the defendant and the results of all earlier service attempts. An oral hearing on the motion must be conducted by the court and a record made. It is the court's duty to inquire into the sufficiency of the diligence exercised by the plaintiff in attempting to ascertain the defendant's residence or whereabouts.

If the trial court is not satisfied that sufficient diligent efforts have been made, the court may either order the plaintiff to make additional efforts to locate the defendant or appoint an attorney ad litem to assist the court in attempting to locate the defendant's residence or a location where the defendant can probably be found. The ad litem will have no other role and cannot recover fees or costs associated with any other role. The ad litem must assist the court alone and must not act as an attorney for any party.

[The trial court should inform the plaintiff of the following:] Reasonable and necessary fees sought by the attorney ad litem will be taxed as costs. While costs generally are taxed against the unsuccessful party, TEX. R. CIV. P. 131, for good cause the trial court may tax costs against the successful party. TEX. R. CIV. P. 141. The plaintiff may be required to pay those costs before final judgment and failing to do so, the plaintiff's suit may be dismissed, TEX. R. CIV. P. 143, or the plaintiff's property may be levied on, seized, and sold to satisfy unpaid costs, including unpaid ad litem fees. TEX. R. CIV. P. 129–130.

[1] For example, if the plaintiff has a last known mailing address, diligence requires service first via the mail to determine if the defendant can be served at that location and if not, whether a forwarding address for the defendant can be obtained.

The ad litem must review the plaintiff's efforts, conduct its own diligent search for the defendant, and file an affidavit with the trial court not later than the thirtieth day after being appointed or within such other reasonable time period as the court allows. The affidavit must describe with particularity the actions taken by the plaintiff and the ad litem in attempting to locate the defendant and the results of those efforts. An oral hearing must be conducted by the court and a record made. It is the duty of the court to inquire into the sufficiency of the diligence exercised by the attorney ad litem in attempting to ascertain the defendant's residence or whereabouts.

If the trial court is not satisfied that sufficient diligent efforts have been made by the ad litem, the court may direct the ad litem to undertake additional efforts to locate the defendant [or appoint a different ad litem to undertake that task]. If the trial court is satisfied that a diligent effort has been made by the ad litem to locate the defendant but that those efforts were unsuccessful, the court must discharge the ad litem from any further duties and may order constructive service [by publication] or service by any means reasonably effective under the circumstances to give the defendant notice pursuant to Rule 109a. The clerk shall issue citation in accordance with the court's order.

If the defendant fails to timely file an answer or otherwise timely appear, the trial court may enter a default judgment.

A diligent search, for purposes of this rule, must include inquiries that someone who really wants to find the defendant would make. A diligent search is measured not by the quantity of the search but the quality of the search. In determining whether a search is diligent, the trial court should consider the attempts made to locate the missing person or entity to see if attempts are made through channels expected to render the missing identity. While a reasonable search does not require the use of all possible or conceivable means of discovery, it is an inquiry that a reasonable person would make, and it must extend to places where information is likely to be obtained and to persons who, in the ordinary course of events, would be likely to have information of the person or entity sought. Whether all reasonable means have been exhausted has to be determined by the circumstances of each particular case.

If the attorney ad litem requests compensation, the attorney ad litem must be reimbursed for reasonable and necessary expenses incurred and paid a reasonable hourly fee for necessary services performed. At the conclusion of the appointment, an attorney ad litem may file an application for compensation. The application must be verified and must detail the basis for the compensation requested. On request of any party, the court must conduct an evidentiary hearing to determine the total amount of fees and expenses that are reasonable and necessary.

Duties of Attorney Ad Litem under the Family Code

Do we want to enumerate more specifically the duties of the attorney at litem?

V.T.C.A., Family Code § 107.014

§ 107.014. Powers and Duties of Attorney ad Litem for Certain Parents

Effective: September 1, 2013

(a) Except as provided by Subsections (b) and (e), an attorney ad litem appointed under Section 107.013 to represent the interests of a parent whose identity or location is unknown or who has been served by citation by publication is only required to:

(1) conduct an investigation regarding the petitioner's due diligence in locating the parent;

(2) interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the parent; and

(3) conduct an independent investigation to identify or locate the parent, as applicable.

(b) If the attorney ad litem identifies and locates the parent, the attorney ad litem shall:

(1) provide to each party and the court the parent's name and address and any other available locating information unless the court finds that:

(A) disclosure of a parent's address is likely to cause that parent harassment, serious harm, or injury; or

(B) the parent has been a victim of family violence; and

(2) if appropriate, assist the parent in making a claim of indigence for the appointment of an attorney.

(c) If the court makes a finding described by Subsection (b)(1)(A) or (B), the court may:

(1) order that the information not be disclosed; or

(2) render any other order the court considers necessary.

(d) If the court determines the parent is indigent, the court may appoint the attorney ad litem to continue to represent the parent under Section 107.013(a)(1).

(e) If the attorney ad litem is unable to identify or locate the parent, the attorney ad litem shall submit to the court a written summary of the attorney ad litem's efforts to identify or locate the parent with a statement that the attorney ad litem was unable to identify or locate the parent. On receipt of the summary required by this subsection, the court shall discharge the attorney from the appointment.

Credits Added by Acts 2013, 83rd Leg., ch. 810 (S.B. 1759), § 5, eff. Sept. 1, 2013.

Compensation for Attorney Ad Litem

We may want to borrow from TEX. R. CIV. P. 173?

TEX. R. CIV. P. 173 Guardian Ad Litem

173.1. Appointment Governed by Statute or Other Rules

This rule does not apply to an appointment of a guardian ad litem governed by statute or other rules

173.2. Appointment of Guardian ad Litem

(a) *When Appointment Required or Prohibited*. The court must appoint a guardian ad litem for a party represented by a next friend or guardian only if:

(1) the next friend or guardian appears to the court to have an interest adverse to the party, or

(2) the parties agree.

(b) *Appointment of the Same Person for Different Parties*. The court must appoint the same guardian ad litem for similarly situated parties unless the court finds that the appointment of different guardians ad litem is necessary.

173.3. Procedure

(a) *Motion Permitted But Not Required*. The court may appoint a guardian ad litem on the motion of any party or on its own initiative.
(b) *Written Order Required*. An appointment must be made by written order.
(c) *Objection*. Any party may object to the appointment of a guardian ad litem.

173.4. Role of Guardian ad Litem

(a) *Court Officer and Advisor*. A guardian ad litem acts as an officer and advisor to the court.

(b) *Determination of Adverse Interest*. A guardian ad litem must determine and advise the court whether a party's next friend or guardian has an interest adverse to the party.

(c) *When Settlement Proposed*. When an offer has been made to settle the claim of a party represented by a next friend or guardian, a guardian ad litem has the limited duty to determine and advise the court whether the settlement is in the party's best interest.

(d) *Participation in Litigation Limited*. A guardian ad litem:

(1) may participate in mediation or a similar proceeding to attempt to reach a settlement;
(2) must participate in any proceeding before the court whose purpose is to determine whether a party's next friend or guardian has an interest adverse to the party, or whether a settlement of the party's claim is in the party's best interest;
(3) must not participate in discovery, trial, or any other part of the litigation unless:
(A) further participation is necessary to protect the party's interest that is adverse to the next friend's or guardian's, and
(B) the participation is directed by the court in a written order stating sufficient reasons.

173.5. Communications Privileged

Communications between the guardian ad litem and the party, the next friend or guardian, or their attorney are privileged as if the guardian ad litem were the attorney for the party.

173.6. Compensation

(a) *Amount*. If a guardian ad litem requests compensation, he or she may be reimbursed for reasonable and necessary expenses incurred and may be paid a reasonable hourly fee for necessary services performed.

(b) *Procedure*. At the conclusion of the appointment, a guardian ad litem may file an application for compensation. The application must be verified and must detail the basis for the compensation requested. Unless all parties agree to the application, the court must conduct an evidentiary 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) *Taxation as Costs*. The court may tax a guardian ad litem's compensation as costs of court.

(d) *Other Benefit Prohibited*. A guardian ad litem may not receive, directly or indirectly, anything of value in consideration of the appointment other than as provided by this rule.

173.7. Review

(*a) Right of Appeal.* Any party may seek mandamus review of an order appointing a guardian ad litem or directing a guardian ad litem's participation in the litigation. Any party and a guardian ad litem may appeal an order awarding the guardian ad litem compensation.

*(b) Severance***.** On motion of the guardian ad litem or any party, the court must sever any order awarding a guardian ad litem compensation to create a final, appealable order.

*(c) No Effect on Finality of Settlement or Judgment***.** Appellate proceedings to review an order pertaining to a guardian ad litem do not affect the finality of a settlement or judgment.

COMMENT--2004

1. The rule is completely revised.

2. This rule does not apply when the procedures and purposes for appointment of guardians ad litem (as well as attorneys ad litem) are prescribed by statutes, such as the Family Code and the Probate Code, or by other rules, such as the Parental Notification Rules.

3. The rule contemplates that a guardian ad litem will be appointed when a party's next friend or guardian appears to have an interest adverse to the party because of the division of settlement proceeds. In those situations, the responsibility of the guardian ad litem as prescribed by the rule is very limited, and no reason exists for the guardian ad litem to participate in the conduct of the litigation in any other way or to review the discovery or the litigation file except to the limited extent that it may bear on the division of settlement proceeds. See *Jocson v. Crabb*, 133 S.W.3d 268 (Tex. 2004) (per curiam). A guardian ad litem may, of course, choose to review the file or attend proceedings when it is unnecessary, but the guardian ad litem may not be compensated for unnecessary expenses or services.

4. Only in extraordinary circumstances does the rule contemplate that a guardian ad litem will have a broader role. Even then, the role is limited to determining whether a party's next friend or guardian has an interest adverse to the party that should be considered by the court under Rule 44. In no event may a guardian ad litem supervise or supplant the next friend or undertake to represent the party while serving as guardian ad litem.

5. As an officer and advisor to the court, a guardian ad litem should have qualified judicial immunity.

6. Though an officer and adviser to the court, a guardian ad litem must not have *ex parte* communications with the court. See Tex. Code Jud. Conduct, Canon 3.

7. Because the role of guardian ad litem is limited in all but extraordinary situations, and any risk that might result from services performed is also limited, compensation, if any is sought, should ordinarily be limited.

8. A violation of this rule is subject to appropriate sanction.