

**PRAIRIE BAND POTAWATOMI NATION DISTRICT COURT**

Prairie Band Potawatomi Nation Reservation  
11444 158<sup>th</sup> Road, Mayetta, Kansas 66509

**FILED**  
**IN THE DISTRICT COURT**  
2019 JAN -2 PM 3:01  
**OF THE PRAIRIE BAND**  
**POTAWATOMI NATION**

**ADMINISTRATIVE ORDER**

2018-07

PURSUANT TO §2-2-6(B)(1) of the Prairie Band Potawatomi Nation Law and Order Codes vesting authority in the Tribal District Court to “Be responsible for creating and maintaining the regulations and rules of the Court, not conflicting with the Tribal Law and Order Codes for the orderly and efficient administration of justice. Such rules must be filed in the office of the Court Clerk before becoming effective.”

WHEREAS, Rules of Practice for Guardians ad Litem in the Prairie Band Potawatomi Nation Tribal Court will effectuate that purpose.

NOW THEREFORE, the Administrative Judge adopts the attached Rules of Practice for Guardians ad Litem to go into effect on January 1, 2019. These Rules will remain in effect until otherwise directed by further rules of the District Court or until amended by the Prairie Band Potawatomi Law and Order Codes.



Honorable Theresa L. Barr  
Administrative Judge of the District Court

**RULES OF PRACTICE FOR GUARDIANS-AD-LITEM  
IN THE PRAIRIE BAND POTAWATOMI NATION  
TRIBAL DISTRICT COURT**

**Rules Adopted.** The following rules of practice for guardians ad litem are hereby adopted pursuant to Prairie Band Potawatomi Nation Law and Order Code § 2-2-16. These rules and any amendments thereto shall be effective upon filing with the Clerk of the Prairie Band Potawatomi Nation Tribal District Court.

**Modification of Rules.** The application of the rules to a particular case or other matter may be modified or waived in any action as that judge shall deem necessary to meet emergencies or to avoid injustice or great hardship.

**RULE 1  
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:

1. Have an appreciation of the cultural and socio-economic backgrounds of the Prairie Band Potawatomi children to be served;
2. Complete at least six hours of Federal or Tribal Indian Law education annually and provide proof to the Court;
3. Show interest in and respect for the Nation's culture and traditions by participating in at least four hours of cultural education annually;
4. Have an abiding interest in children and their rights and needs;
5. Have sufficient listening, speaking, and writing skills to successfully conduct interviews, prepare written reports, and make oral presentations; and
6. Have the ability to relate to a child, family members, and professionals in a careful and confidential manner.

**RULE 2  
SELECTION OF GUARDIANS AD LITEM**

**Application Process**

Any person who desires to become a guardian ad litem shall submit a letter of interest and resumé to the PBPJ Judicial Administrator.

**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, the applicant shall be interviewed; the applicant's references shall be contacted; and a criminal history and personal background check shall be completed.

**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.

**RULE 3  
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.

**RULE 4  
GENERAL RESPONSIBILITIES OF GUARDIANS AD LITEM;  
OTHER ROLES DISTINGUISHED**

**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 13.

1. The guardian ad litem shall advocate for the best interests of the child and should 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;
2. 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;
3. The guardian ad litem shall treat all individuals with dignity and respect while carrying out her or his responsibilities;
4. The guardian ad litem shall work as an independent fact finder and investigate the circumstances of the child's situation. The GAL shall review all relevant records and documents; interview parents, caregivers, social workers, teachers, and others with knowledge relevant to the case; meet with and observe the child in the home and/or placement setting; consider the child's wishes, as appropriate;
5. The guardian ad litem shall make written and oral reports to the Court regarding the best interests of the child, including all relevant facts, conclusions and recommendations and the facts upon which the recommendations are based;
6. The guardian ad litem shall complete work in a timely manner, and advocate for timely court reviews and judicial intervention, if necessary;
7. The guardian ad litem shall be knowledgeable about community resources for placement, treatment, and other necessary services;
8. 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. The guardian ad litem shall, during service as a guardian ad litem, keep all records, notes, or other information confidential and in safe storage;
9. Appear at all hearings to represent the child's interests, providing testimony where needed;
10. Explain the court proceedings to the child in language and terms appropriate to the child's age and maturity level;
11. Monitor implementation of service plans and dispositional orders to determine whether services ordered by the Court are actually provided in a timely manner and directed toward

the desired goal;

12. 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
13. Advocate for the child's best interests in all other legal, mental health, educational, and community systems.

### **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. 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.

### **Note on Contact with the Child**

The guardian ad litem should maintain communication with the child so that he or she is aware of and understands the role of the guardian ad litem. 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.

### **Inappropriate Guardian Ad Litem Actions**

The provision of direct services to the child or the child's parents is generally beyond the scope of responsibilities of the GAL. 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 to a child or parent;
2. Invite the child or parent into the home of the guardian ad litem, routinely entertaining 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;
8. Provide a message service for parents to communicate with each other.

**RULE 5  
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:

1. Hold party status in the proceeding in which the guardian ad litem was appointed;
2. Submit complaint in writing to the Court on a form provided for that purpose; and
3. Specify the alleged breach of duty, *i.e.*, the specific rule, law or ethical responsibility that the guardian ad litem violated.

The Administrative Judge will investigate the complaint and take appropriate action.