

Children's Law Center of Indiana



Application of Rules of Professional Conduct to Guardians ad Litem¹

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No Indiana Rule of Professional Conduct specifically addresses the conduct of lawyers who serve as Guardians ad Litem. This author could find no Indiana Supreme Court lawyer misconduct cases regarding a lawyer Guardian ad Litem's conduct. Indiana law does not require a Guardian ad Litem to be a lawyer. See IC 31-9-2-50 (a guardian ad litem means an attorney, a volunteer, or an employee of a county program designated under IC 33-24-6-4.) Sometimes a lawyer serves as both attorney for the child and Guardian ad Litem. See IC 31-32-3-3 (the attorney representing the child may be appointed the child's guardian ad litem); Deasy-Leas v. Leas, 693 N.E.2d 90, 98 (Ind. Ct. App. 1998) *trans. denied* (while admittedly the line is blurred when a guardian ad litem is also an attorney, the general duties of representing best interests are similar).

The following information in the Preamble of the Indiana Rules of Professional Conduct may be helpful:

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. Whether or not engaging in the practice of law, lawyers should conduct themselves honorably.

[3] ...there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a

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lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. See Rule 8.4.

[4] In all professional functions, a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

It is this author's opinion that a lawyer who is serving only as a Guardian ad Litem and not as a lawyer for a client is not subject to some of the Indiana Rules of Professional Conduct.

Guardian ad Litem services are not legal services. The Guardian ad Litem role of best interests representation is different from a lawyer-client relationship. See Deasy-Leas, 693 N.E.2d 90, 94-99, where the Court found that Guardians ad Litem have no general confidential or privileged relationship with their charges, but that Indiana Trial Rule 26(C) may be used to provide some protection from discovery requests. The Deasy-Leas opinion suggests that a lawyer GAL does not have a lawyer-client relationship with the child who is being served. It therefore follows that Indiana Rules of Professional Conduct which discuss the lawyer's role in representing a client do not apply to lawyer Guardians ad Litem. Examples of Rules that, in this author's opinion, do not apply, include the Client-Lawyer Relationship Rules 1.1 through 1.18 and the Counselor Rules 2.1 through 2.3.

On the other hand, lawyers who are serving as Guardians ad Litem are subject to those Rules of Professional Conduct which preclude certain behavior by lawyers because they are lawyers. Examples of applicable rules would include the following:

- Ind. Professional Conduct Rule 3.3 (Candor Toward the Tribunal)
- Ind. Professional Conduct Rule 3.5 (Impartiality and Decorum of the Tribunal)
- Ind. Professional Conduct Rule 3.6 (Trial Publicity)

- Ind. Professional Conduct Rule 8.2(a) (false or reckless statements concerning judge's qualifications or integrity)
- Ind. Professional Conduct Rule 8.4 (Misconduct, including criminal acts that reflect on trustworthiness or fitness; conduct prejudicial to the administration of justice; demonstrating bias or prejudice based on race, religion, gender, national origin, age, sexual orientation, disability, or socioeconomic status)

The above list is not exhaustive.

A lawyer Guardian ad Litem should also review court appointment orders and seek any needed clarification from the court, without engaging in ex parte communication, to be certain whether the court is appointing the lawyer to serve as the child's lawyer or the child's Guardian ad Litem.