

1 Christina M. Phillis,
2 Arizona Public Defender's Association
3 106 W. Baseline
4 Mesa, Arizona 85210
5 Telephone (602) 372-2815
6 Fax (602) 372-8919
7 Arizona Bar Membership No. 014871
8 Email Juv-SE@mail.maricopa.gov

6 **IN THE SUPREME COURT**
7 **STATE OF ARIZONA**

9 PETITION TO CREATE RULE 40.2,
10 Rules of Procedure for Juvenile Court

Supreme Court No. R- -

**Petition to Create Rule 40.2, Rules of
Procedure for Juvenile Court**

12 Pursuant to Rule 28, Arizona Rules of the Supreme Court, the Arizona Public
13 Defender Association ("APDA") petitions this Court to create **Rule 40.2, Rules of**
14 **Procedure for Juvenile Court**, governing Duties and Responsibilities of Appointed
15 Guardians Ad Litem for adults, as proposed **below in the draft of Rule 40.2.**

17 APDA is an Arizona non-profit corporation comprised of public defense offices
18 and programs throughout the State of Arizona. The primary purposes of the
19 organization include improving the quality of legal representation of indigent people
20 who face the loss of liberty or the right to parent, and ensuring a just legal
21 system. APDA's offices defend the majority of parents who are involved in a Title 8
22 dependency.
23
24
25
26

1 **Background and Purpose of the Proposed Rule Amendments**

2 Rule 40C, Rules of Procedure for Juvenile Court, allows for the appointment of a
3
4 Guardian Ad Litem for a parent, guardian or Indian custodian when the court believes
5 the individual may be incompetent and in need of protection. The Guardian Ad Litem
6 is required to conduct an investigation and report the findings to the court. The court
7 uses the information to enter orders to protect the interests of the parent, guardian or
8 Indian custodian. The Rule is silent as to what the continuing duties and
9 responsibilities the Guardian Ad Litem are to the parent, guardian or Indian custodian.
10

11 Rule 40.1, Rules of Procedure for Juvenile Court, details the role and obligation of a
12 Guardian Ad Litem who is appointed to represent a child. The Guardian Ad Litem for
13 a child is responsible for safeguarding the interest of the child, regardless of the child’s
14 stated position. The Guardian Ad Litem is responsible for pursuing placement,
15 services and case plans that are in the best interest of the child and possibly contrary to
16 the child’s desires. A child’s Guardian Ad Litem should take into consideration the
17 desires of the child when determining the best interest of the child. However, the duty
18 of the Guardian Ad Litem is to provide the court with information on the best interest
19 of the child.
20
21

22 The role of Guardians Ad Litem appointed for parents, guardians, or Indian
23 custodians is “to protect the interest of... an incompetent in a particular case before the
24 court.” A.R.S. §8-531(7). Absent a judicial finding the parent is actually incompetent,
25 and to ensure due process before a parent’s decision-making right is infringed, a
26

1 GAL's role must be limited to investigating the best interest of the parent and
2 communicating those interests to the court. *Maricopa County Juvenile Action No.*
3 *JD6982*, 186 Ariz. 354, 359, 922 P.2d 319, 324 (1996). The court may not substitute
4 the opinions of the Guardian Ad Litem for the expressed interests of the parent.
5

6 A parent who is unable to adequately understand the complexities of dependency
7 and termination matters is still entitled to assert their desire and ability to parent their
8 child. The parent, with the assistance of counsel, must be permitted to contest the
9 matters in order to preserve their family. To assist the parent in understanding the
10 complex world of dependency and termination proceedings a Guardian Ad Litem
11 should be appointed to explain the process. The Guardian Ad Litem would be present
12 for all hearings to answer the client's questions about the process, allowing counsel for
13 the parent to advocate the client's position uninterrupted. This process would ensure
14 the parent Due Process. The parent would be provided information about the process
15 and the parent's expressed desires would be advocated.
16
17

18 Client-attorney privilege should apply to Guardians Ad Litem for parents, guardians
19 and Indian custodians. The Guardian Ad Litem will be seated next to the parent,
20 guardian or Indian custodian during proceedings. The parent, not appreciating the role
21 of counsel, may inadvertently provide damaging information to the Guardian Ad
22 Litem during the proceedings, or the Guardian Ad Litem may overhear statements
23 made by the parent to counsel. In order for the Guardian Ad Litem to facilitate the
24
25
26

1 court process and protect the client from statements made to his court team, client-
2 attorney privilege must apply.

3
4 Lastly, Guardians Ad Litem are permitted to file Notices of Appeal on the parent's,
5 guardian's or Indian custodian's behalf without being required to comply with the
6 avowal requirement of Rule 104(B), Rules of Procedure for Juvenile Court. As
7 discussed in *Cecilia A. v. ADES*, 229 Ariz. 286, 274 P.3d 1220 (2012), when a parent
8 is generally confused about the court proceedings and is unable to clearly express their
9 position regarding an appeal, the right to an appeal is not defaulted because counsel is
10 unable to make an avowal regarding the parent's desire for an appeal. In cases where
11 a Guardian Ad Litem for the parent has been appointed and the parent, guardian or
12 Indian custodian cannot communicate their position on an appeal, the Guardian Ad
13 Litem must be permitted to file the notice of appeal without making the avowal. To
14 hold otherwise, would essentially deny all parents, guardians and Indian custodians
15 who are not sophisticated enough to understand the complex juvenile court process,
16 the right to an appeal.

17
18
19
20 **Conclusion**

21 The role of Guardians Ad Litem is not clearly delineated in Juvenile Court Rules.
22 The adoption of Rule 40.2, Rules of Procedure for Juvenile Court, would provide
23 guidance to all parties on the expectations and duties of Guardians Ad Litem for
24 parents.
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

RESPECTFULLY SUBMITTED this 19th day of October, 2015.

/Christina Phillis/

Christina Phillis

On behalf of APDA

Electronic copy filed with the Clerk of
the Supreme Court of Arizona this 19th
day of October, 2015.

by: Chris Phillis

1 Arizona Public Defender Association proposed addition to Rules of Procedure
2 for Juvenile Court
3
4

5 **Rule 40.2**
6 **Duties and Responsibilities of Appointed Guardians Ad Litem**
7 **For Parents, Guardians and Indian Custodians**

- 8 A. A party may request or the court on its own motion may appoint a Guardian Ad
9 Litem for a parent, guardian or Indian custodian if the parent, guardian or
10 Indian custodian is believed to be incompetent or their interests need protection.

11 “Incompetent” means a parent, guardian or Indian custodian who does not
12 have a sufficient present ability to rationally and factually understand the
13 proceedings.

- 14 B. The Guardian Ad Litem shall conduct an investigation to ascertain whether a
15 parent, guardian or Indian custodian is incompetent or their interests are in need
16 of protection.
- 17 C. If the Court deems the parent’s, guardian’s or Indian custodian’s interests are in
18 need of protection after an investigation, the Guardian Ad Litem will remain
19 appointed for the purpose of protecting the parent’s, guardian’s or Indian
20 custodian’s fundamental rights. The Guardian Ad Litem shall be present for all
21 hearings to ensure the parent, guardian or Indian custodian understands the
22 proceedings. The Guardian Ad Litem is not a best interest attorney.
23 Communications between the Guardian Ad Litem and the parent, guardian or
24 Indian custodian are privileged.
- 25 D. The Guardian Ad Litem has the ability to file a notice of appeal without an
26 avowal for a client deemed to be incompetent or in need of protection.