

Common Questions about a Guardian Ad Litem

1. Must a guardian ad litem have received training prior to appointment?

Youth Court

In order to be eligible for an appointment as a guardian ad litem, such attorney or lay person must have received child protection and juvenile justice training provided by or approved by the Mississippi Judicial College within the year immediately preceding such appointment. *Miss. Code Ann. § 43-21-121(4)*.

Chancery Court

If an allegation of **abuse** or **neglect** arises during a **custody** proceeding, *Miss. Code Ann. § 93-5-23* and *§ 93-11-65* provide that the guardian ad litem appointed must meet the qualifications set out in *Miss. Code Ann. § 43-21-121(4)*.

Other cases

No other statute or rule which makes the appointment of a guardian ad litem mandatory or permissible references the training requirements set out in *Miss. Code Ann. § 43-21-121(4)*.

2. Must a guardian ad litem be an attorney?

Youth Court

The court may appoint either a suitable attorney or a suitable layman as guardian ad litem. In cases where the court appoints a layman as guardian ad litem, the court shall also appoint an attorney to represent the child. *Miss. Code Ann. § 43-21-121(4)*.

Chancery Court

If there is an allegation of **abuse** or **neglect** arising during a **custody** proceeding, *Miss. Code Ann. § 93-5-23* and *§ 93-11-65* provide that the guardian ad litem appointed must meet the qualifications set out in *Miss. Code Ann. § 43-21-121(4)*.

In a contested adoption, *Miss. Code Ann. § 93-17-8(b)* provides that the guardian ad litem appointed "shall be an attorney, however his duties are as guardian ad litem and not as attorney for the child."

M.R.C.P. 17(d) provides:

Whenever a guardian ad litem shall be necessary, the court in which the action is pending shall appoint an attorney to serve in that capacity.

3. May any court other than Youth Court and Chancery Court appoint a guardian ad litem?

M.R.C.P. 17(c) provides:

A party defendant who is an infant or is under legal disability and is not so represented may be represented by a guardian ad litem appointed by the court when the court considers such appointment necessary for the protection of the interest of such defendant. ... When the interest of an unborn or unconceived person is before the court, the court may appoint a guardian ad litem for such interest.

Rule 2.08 of the Uniform Rules of Procedure for Justice Court provides:

A party defendant who is an infant, or under legal disability and is not represented, may be represented by a guardian ad litem appointed by the court.

4. When is the appointment of a guardian ad litem mandatory?

Statute §	When the appointment is mandatory
43-21-121(1)	The youth court shall appoint a guardian ad litem for the child: <ul style="list-style-type: none"> (a) When a child has no parent, guardian or custodian; (b) When the youth court cannot acquire personal jurisdiction over a parent, a guardian or a custodian; (c) When the parent is a minor or a person of unsound mind; (d) When the parent is indifferent to the interest of the child or if the interests of the child and the parent, considered in the context of the cause, appear to conflict; (e) In every case involving an abused or neglected child which results in a judicial proceeding; or (f) In any other instance where the youth court finds appointment of a guardian ad litem to be in the best interest of the child.
43-47-13(2)	If DHS, through a petition, seeks protective services for a vulnerable adult and the vulnerable adult lacks the capacity to waive the right to counsel.
65-1-315(1)	In eminent domain and condemnation proceedings for parties who are minors, incompetents, or other parties who may be under a disability and without general guardian.
73-3-353	In a proceeding to discipline an attorney and to determine personal incapacity to practice law for an attorney who has been declared mentally incompetent, judicially, or who has been committed, judicially, to an institution for the treatment of the mentally ill and for an attorney who has asserted his incompetence, or whose incompetence to defend becomes apparent during the proceedings.
93-5-1	In a divorce proceeding based upon incurable insanity, if the defendant has no legal guardian.
93-5-23	If a charge of abuse and / or neglect arises in the course of a custody action in Chancery Court.
93-9-71	If the mother dies while a paternity case is pending.
93-11-65	If a charge of abuse and/or neglect arises in the course of a custody or maintenance action in Chancery Court.
93-13-38	In a guardianship action where an interested party wants to establish an estate plan for the ward and the court determines that the ward will probably remain incompetent during his lifetime.
93-15-107	Termination of parental rights.
93-17-8	Contested adoptions.
97-5-42	If an individual convicted of felony child abuse wants visitation with the child.
M.R.C.P. 4	For a mentally incompetent individual who is judicially confined and is sued and doesn't have a guardian or conservator.
M.R.C.P. 4	For an unmarried infant under age twelve who is sued and has no mother, father or legal guardian.

5. If I am a GAL only in Chancery Court, why do I need to know the Youth Court Rules?

Rule 2 of Uniform Rules of Youth Court Practice, in pertinent part, provides

- (a) Proceedings subject to these rules. The following proceedings are subject to these rules:
 - (1) any youth court proceeding;
 - (2) any chancery court proceeding when hearing, pursuant to section 93-11-65 of the Mississippi Code, an allegation of abuse or neglect of a child that first arises in the course of a custody or maintenance action;

6. What types of cases are handled in Youth Court?

Youth Court has jurisdiction over children who are allegedly:

- (a) abused;
- (b) neglected;
- (c) delinquent;
- (d) children in need of supervision (CHINS); or
- (e) in need of mental treatment.