



## **IRFLP 118 Participation of a Child in Proceedings**

### **Idaho Rules of Family Law Procedure Rule 118. Child Advocate.**

(a) **Child Advocate Appointment.** The court may appoint an attorney to either:

(1) be the child's attorney to represent the child's interests based on the child's wishes; or

(2) be the child's guardian ad litem to represent the best interest of the child as specified in Idaho Code § 32-717.

(b) **Child Advocate Qualifications.** The court may appoint an attorney who is qualified through training or experience, as determined by the court and according to any standards established by Idaho law or rule. At a minimum, the attorney should have five years of experience involving children and families in the courts and appropriate training as determined by the court.

(c) **Appointment Order.** The order appointing a child advocate must include:

(1) a clear statement of the type of advocate appointed;

(2) the duration of the appointment;

(3) the advocate's compensation, and an allocation of fees and expenses between the parties;

(4) authorization for the advocate to have immediate access to the child;

(5) authorization for the advocate to have immediate access to any privileged or confidential information and records relating to the child;



(6) requirements for the parties to sign appropriate releases that comply with the Health Insurance Portability and Accountability Act (HIP AA), understanding that the attorney for the child has no authority to release the confidential documents, unless by court order;

(7) requirements for a custodian of any of the child's records to provide the advocate with access to those records; and

(8) requirements for all parties to promptly notify the advocate of all hearings, investigations, depositions, or significant changes of circumstances involving the child.

**(d) Participation.**

(1) An attorney for the child appointed under this rule:

(A) must notify the court and decline appointment if the child is not of sufficient age, maturity, or intelligence to guide the attorney;

(B) must participate in any proceedings relating to child custody to the same extent as an attorney for any party;

(C) must not engage in ex parte contact with the court except as authorized by law;

(D) may call any court-appointed expert witness for cross-examination regarding the witness' report without a party listing the advisor as a witness;

(E) may not be compelled to produce the attorney's work product developed during the appointment;

(F) may not be required to disclose the source of information obtained as a result of the appointment;

(G) must not submit a report into evidence; and



(H) must not testify in court.

(2) A guardian ad litem appointed under this rule:

(A) must represent the child's best interest;

(B) must conduct an independent factual investigation of the circumstances of the child;

(C) must inquire of any child capable of expressing wishes;

(D) must meet with any parent or other person having legal or physical custody of the child, record the concerns of the parent, and report them to the court, or if no such meeting occurs, file an affidavit stating why no meeting occurred;

(E) participate in any proceedings relating to child custody;

(F) must not engage in ex parte contact with the court except as authorized by law;

(G) must submit a written report to the court stating the results of the investigation, the guardian ad litem's recommendations, and such other information as the court may require. The guardian ad litem's written report shall be delivered to the court, with copies to all parties to the case, at least 7 days before the date set for the final pretrial conference;

(H) will have the right and power to file pleadings, motions, memoranda, and briefs on behalf of the child;

(I) may be deposed by any party; and

(J) may testify at a hearing or trial.



(3) **Right to Call Child's Attorney Guardian Ad Litem as a Witness.** A party, including a child's attorney, may call the attorney guardian ad litem as a witness and cross-examine the guardian ad litem regarding the report and the investigation, even if the party did not list the guardian ad litem as a witness.

(e) **Confidentiality.** Nothing in this rule alters the duty of an attorney to report child abuse or neglect under applicable law.

(Adopted December 17, 2024, effective January 1, 2025.)

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